Gazette LawSociety

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Hail to the Chief

The winds of change are certainly blowing. A new century, a new millennium and a new Chief Justice. I'm sure all my colleagues in the solicitors' profession will join me in welcoming Mr Justice Ronan Keane as he takes over the highest judicial office in the land. Rarely can such an appointment have been so warmly greeted or been so widely approved. And why not?

The new Chief Justice is a lawyer of consummate learning and erudition, but also – and just as importantly – a man of fine judgement and integrity, as he has displayed time and again since his appointment to the High Court in 1979. His sensitive handling of the Stardust Inquiry in 1981 was justly applauded, as was the time he spent as President of the Law Reform Commission. The author of a number of important textbooks, including the seminal *Company law in the Republic of Ireland*, Mr Justice Keane is a man who can truly do justice to the pivotal position he now holds in the third branch of our system of government. We wish him well for the future.

By the same token, we also extend our best wishes to outgoing Chief Justice Liam Hamilton and congratulate him on a job outstandingly well done.

Tiocfaidh ár lá?

The two other new appointments to the Supreme Court bench – Ms Justice Catherine McGuinness and Adrian Hardiman SC – will also be widely welcomed by the profession. While not exactly a surprise (both were widely tipped in the press in the days before the announcement), they prove that the Government can bring vision and imagination to the making of judicial appointments.

This is good news for both branches of the legal profession. Mr Hardiman's elevation directly from the Inner Bar to the Supreme Court bench shows that lack of experience on the bench is no obstacle to those with a sharp legal mind. As you will be aware, the Law Society has fought long and hard (and eventually successfully) to win the right of audience in the superior courts – and the right to sit on the benches of those courts. The *Report of the working group on qualifications for appointment as judges of the High and Supreme courts* (published early last year) recommended that appropriately-qualified solicitors should be eligible for appointment to the superior court benches.

We can look forward to the day when one of our gifted solicitor colleagues will be elevated to a seat on the Supreme Court in a similar fashion.

On a less weighty matter, readers of this month's issue of the *Gazette* will notice that a number of changes have been made to the design of the magazine. As you know, the magazine was last redesigned at the time of its relaunch three years ago. In the intervening period, the *Gazette* has won a number of awards and feedback from the profession has been extremely positive. But, as always, nothing stays the same for too long, and we felt that after three years a make-over was probably in order. A fresh look for a new century, if you like. I'm very pleased with the new design, which aims to make the magazine easier on the eye and more fun to read, and I congratulate the *Gazette* team on all the hard work they have put in to bring this to fruition.

We want to hear from you!

But a magazine is more about its readers than the way it looks, so we want to hear from you. We want your letters, we want your funny stories for the *Dumb and dumber* section – we can't run them if you won't share them with us! – we want to hear about who's moved jobs, and where. If you have news and gossip from the profession, we'd like to hear it for the *People and places* page.

Enjoy your reading anyway – and I hope the winds of change blow you nothing but good for the coming year.

Anthony Ensor,
President

'We can look forward to the day when one of our gifted solicitor colleagues will be elevated to the Supreme Court'

UNDERCOVER POSTINGS FOR GARDAÍ

The Law Society's Litigation and Family Law and Civil Legal Aid committees has recommended that solicitors, when writing to members of An Garda Síochána at their private addresses, should refer to the addressee as 'Mr' or 'Ms', rather than 'Garda'. The Garda Representative Association has brought to their attention that mail addressed with the 'Garda' title poses a possible security risk when delivered to residences.

LEGAL FIRMS SOUGHT FOR E-BIZ DATABASE

Enterprise Ireland's new e-business website, which aims to give small and medium-sized companies the know-how and contacts they need to put their business on-line, is looking for law firms for its database of e-commerce experts. Those interested in being included should fill in a form at the Enterprise Ireland website at *http://www.enterprise-ireland.com/ecommerce/form.*

FINANCIAL SEMINARS

Two seminars on the complementary topics of *Your real bottom line* and *How to improve your banking* will be held at Blackhall Place on 31 March. The cost is stg£185 per seminar or stg£333 for both. For a brochure and further information, phone Janine Smith on 0044 29 2039 8161 or e-mail her at janine@l-p-s.org.

MALE VICTIMS OF DOMESTIC VIOLENCE CONFERENCE

A conference on male victims of domestic abuse will take place on 30 March at the Carrickdale Hotel, Dundalk, Co Louth. The keynote speaker will be Dr Warren Farrell, author of *The myth of male power*. For further details and booking information, contact AMEN, 1 Brews Hill, Navan, Co Meath, tel: 046 23718; e-mail: amen@iol.ie; website: www.amen.ie.

Land Registry fees hike 'could fuel house price inflation'

Backlogs at the Land Registry, coupled with substantial increases in the cost of registering deeds, could further fuel house price inflation, the Law Society has warned. The Land Registry is currently answering its phones for only one hour a day in an effort to clear the backlog of work that has built up, while the Government recently increased the fees payable for registering title and deeds to property.

In some cases, these fees have nearly doubled. For example, a property costing over £40,000 will now attract a Land Registry fee of £450, as opposed to £250 before.

In a letter to the Minster for Justice, Equality and Law Reform John O'Donoghue, the Law Society's Director General Ken Murphy warned that the fee increases 'will not be welcomed by house purchasers at this time of grossly-inflated house prices'. He added that the new fee scale introduced by the Government 'can only represent a further inflationary factor in house prices, which will be an additional burden on purchasers'.

Ken Murphy: 'backlog a national disgrace'

Murphy concluded by urging the Minster to simplify the fee system and to moderate the recent increases.

• Separately, the Law Society has described the huge backlog at the registry as 'a national disgrace'. Apart from the huge inconvenience to purchasers, the backlog means that house sales may be delayed because proper title to the property in question has not yet been registered by the Land Registry, it says.

Mandatory CLE soon?

A Law Society working group has been established under the chairmanship of Council member and Education Committee Chairman, Michael Peart, to consider whether or not it would be desirable for every practising member of the profession to be obliged to spend a certain number of hours a year attending continuing legal education. Such a requirement exists in many other jurisdictions. Its objective is to ensure that practitioners spend at least a minimum period of time each year updating their knowledge of the law and, perhaps, also improving their office management systems and skills.

The Society's working group is currently engaged in a wide consultation process on this subject. If you have any views on the issue, please convey them in writing before Friday 18 February to Michael Peart, 24 Upper Ormond Quay, Dublin 7.

New Education Centre takes shape

The architects and builders of the new Education Centre have confirmed that the £5 million project is both on budget and on time for the scheduled completion date of the end of June. After that, there will be period of fitting out, with the first professional course of 300 apprentices due to begin in October.

'Enemy of legalese' dies

Lawyer, professor and writer David Mellinkoff, a lifelong opponent of the 'contagious verbosity' he claimed afflicted many lawyers, died in Los Angeles on 31 December at the age of 85. Mae West was one of the clients of his lucrative Beverly Hills law practice, but his primary claim to fame was his campaign against what he called 'the junk antiques' cluttering up the legal vocabulary, such as 'forthwith', 'heretofore' and 'whereas'. His most celebrated book, the 1963 volume *Language of the law* (Aspen Publishers), remains a classic today.

Mellinkoff's ultimate cure for legalese was simple, but perhaps too harsh to be put into practice: 'The most effective way of shortening law language', he wrote, 'is for judges and lawyers to stop writing'.

Society in talks to resolve army deafness litigation

The Law Society has agreed to the Minister for Defence's request that it assist him in seeking a resolution of the army deafness litigation. The Minister's invitation came in a letter just before Christmas in which he asked the Society to create a 'channel of communication' between himself and the plaintiffs' solicitors in the army deafness cases. The Minister's proposed solution, based on the recently-delivered Supreme Court decision in the *Hanley* case, centres on the establishment of a scheme to enable the speedy payment of compensation in the outstanding 10,000 claims.

Early last month the Society met representatives of the 20 law firms handling most of the army deafness claims. Following the meeting, Director General Ken Murphy wrote to the Minister making a number of points:

- The plaintiffs' solicitors, subject only to their clients' best interests, had always been anxious to settle army deafness cases in the most speedy and cost-effective way possible. It was the manner in which the State chose to defend these cases that resulted in the costs on both sides of this litigation being considerably higher than they needed to be
- Recent media statements attributed to the Minister had considerably diminished the goodwill which would be necessary for any agreement to be reached between the plaintiffs' solicitors and the State
- The plaintiffs' solicitors had agreed to a meeting with the Minister's representatives to discuss the proposed compensation scheme
- A group of four plaintiffs' solicitors had been nominated to meet the Minister's representatives and report back.

That meeting is scheduled to take place in Blackhall Place this month.

LUCK OF THE DRAW

The following members have been named as winners in the Law Society's 1999 prize bonds draw: William Crowley, Killarglin, Co Kerry; Michael Dickson, Dublin; PA Dorrian, Buncrana, Co Donegal; William Harnett, Dublin; Kevin McGilligan, Dublin; Justin Sadleir, Gort, Co Galway.

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in December 1999: Conor McGahon, 19 Jocelyn Street, Dundalk, Co Louth – £300.

CONSTRUCTION INDUSTRY REGULATIONS

The Construction Industry Monitoring Agency monitors firms in the construction industry for compliance with the terms of the *Registered Employment Agreement (Construction Industry Pensions Assurance and Sick Pay) Regulations* under the *Industrial Relations Acts, 1946-1969*. These regulations require employers to provide pension, sick pay and death benefit assurance. CIMA asks Law Society members to remind their construction industry clients of their legal obligations in this matter. Contact Cathy Harrison on 01 406 8026 or Eleanor Cullen on 01 406 8014.

Warm welcome for new Chief Justice

The appointment of Mr Justice Ronan Keane as the new Chief Justice was marked by warm approval from the legal profession and beyond. Welcoming the appointment on behalf of the Law Society, Director General Ken Murphy said: 'It would be impossible to think of a more popular choice'.

'He is a judge of great learning, integrity and humanity, with an outstanding intellect.

Mr Justice Ronan Keane

His very ordered mind and balanced judgement have been displayed in his long experience on the bench. He is also a remarkably modest person', Murphy added.

There was similar approval for the appointments of Ms Justice Catherine McGuinness and Adrian Hardiman SC to the Supreme Court, with one newspaper describing the three nominations as 'radical in the true sense of the word'.

No-fault compensation scheme 'could hit most vulnerable'

Children born with brain damage as a result of medical negligence could lose out if the Government pushes ahead with its reported no-fault compensation scheme, the Law Society has said.

According to recent press reports, the then Minister for Health, Brian Cowen, was keen to introduce such a scheme for children born with cerebral palsy, in an effort to reduce medical negligence costs in State hospitals. But Director General Ken Murphy expressed concern at proposals which 'reportedly would remove the constitutional rights of brain-damaged babies' and which were 'motivated primarily by considerations of cost'.

In a letter to the Minister, Murphy also pointed out that the handful of no-fault compensation schemes which operate in other parts of the world had shown 'significant shortcomings' over time. These included:

- Inadequate compensation levels
- Spiralling costs, and
- The removal of deterrents and accountability.

He added that the Society was particularly concerned that the proposal seemed to have reached a very advanced stage 'without consultation with the people who understand the current compensation system best, namely the lawyers on both sides, who have experience of it'.

The Law Society has formally requested a briefing on the contents of the former Minister's proposal as 'a matter of urgency'.

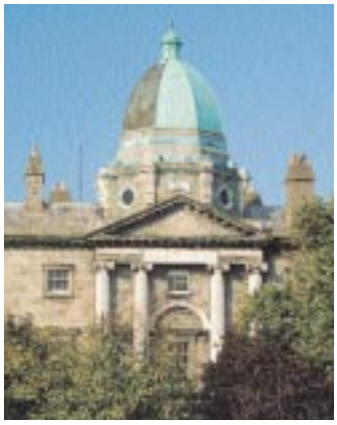
Letters

Parking problems at Blackhall Place

From: Conor O'Toole, Co Kildare

I was recently advised by the attendant at Blackhall Place that I was not allowed to park in the Law Society car park unless I was an employee of the Law Society or attending a seminar. This took place at 9am in the morning and, having run the gauntlet of traffic from Newbridge to the Law Society, I then had to drive back out into the chaos of Blackhall Place and with great difficulty find parking elsewhere. The car park at the time was less than half full.

As a practising solicitor and member of the Law Society, I think it is grossly unfair that I have been refused this facility. On previous occasions I have been able to find parking on parchment ceremony days when



car parking is at a premium and when cars were directed to the football pitch. Further, I am not at all convinced that a seminar would require the use of all of the car park. As a frequent visitor to the Law Library, the removal of this facility without prior notification from the Law Society has caused me great difficulty in commuting from Newbridge to Dublin. I would appreciate confirmation that this facility will be restored or at the very least an explanation as to why it has been curtailed in this unsatisfactory fashion.

The Law Society's Facilities Manager, Barry Carey, replies:

There are at present only 110 car parking spaces at the Society's Blackhall Place headquarters. Unfortunately, car parking cannot be provided at all times for every member who would wish it. Understandably, priority must be given to those working or conducting business on the premises. Blackhall Place is an extremely busy location, hosting a wide range of events and functions on a daily basis – everything from Council and committee meetings, members' functions, weddings, CLE seminars and so on. With the on-going renovations of the building and construction of the new Education Centre, a decision was taken late last year to prohibit student parking at Blackhall Place. This was done to ease congestion and facilitate the smooth operation of the premises.

It is very much regretted that the Society is not in a position to offer car parking facilities to every one of our 7,000 members. However, recognising the problem, the Society has been attempting to negotiate a reduced rate for members using a car park on nearby Benburb Street.

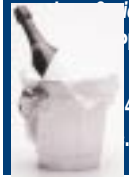
Your views

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

Dumb and dumber

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

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



Passing the Y2K buck

From: Peter Shee, Cork

In the November issue of the *Gazette*, the Law Society's Technology Committee highlighted the difficulties which could arise from computerised accounts not being year 2000 compliant. The committee urged members to take all necessary steps to ensure compliance, even at that late stage.

There is, of course, still a very real danger of accounts being disrupted and massive inconvenience caused. There is also a consequent danger of litigation against a firm should a client suffer loss arising from such a system failure. If the worst happens, what can be done? Perhaps more than you might think. All the available evidence points to a long-standing aware-ness within the computer industry of the nature and extent of the problem. There is a large amount of information available which suggests that the problem could, and should, have been avoided.

As early as 1979, any large financial institution involved in mortgages of 20 years' duration would have been aware of the problem. There are even indications that the problem came to light as early as 1969, particularly in insurance companies dealing with life policies.

Computer technical literature starts to refer increasingly to this problem from about 1971 onwards. Between 1979 and 1984, there were articles describing the problem in the computer trade press. In short, the computer industry – and indeed the larger financial institutions such as banks and insurance companies – would have been aware of the problem for well over 15 years.

In the circumstances, therefore, there was really no excuse for the supply of defective systems in recent years. If loss arises from such systems, it is very possible that a person affected will have a stateable case leading to redress.

Even more invidious is the practice of some systems suppliers suggesting that compliant systems and upgrades be installed – and charging for these installations.

There is much on-going litigation on this topic in the United States.

In a class action in Texas, a court has given preliminary approval to a settlement giving users of a computerised accounts system a year 2000 compliant upgrade at no cost. It is also intended that those who have already paid for an upgrade will get certificates redeemable against the defendant firm for other products. Causes of action included breach of implied warranty or merchantability, unfair or deceptive practices, and misrepresentation, fraud and deceit.

In another case, an Alabama law firm was notified by a supplier that it had a non-compliant telephone accounting system and that the supplier could install compliant software for $2,000. The firm has asked the court to declare that the supplier had a duty to keep the equipment in working order and to provide year 2000 upgrades free of charge. The firm is also asking the court to order reimbursements for customers who have purchased upgrades. This case is on-going.

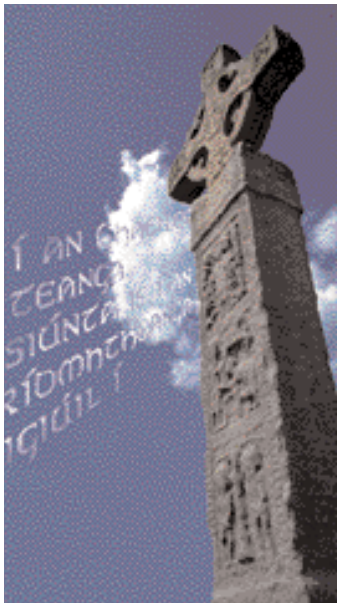
An action has been brought in Iowa by hospitals alleging that a healthcare information system purchased in 1995 is not year 2000 compliant, that the defendant concealed the fact that it was not so compliant and that it lacked the financial resources to correct the year 2000 deficiencies and defects. The plaintiffs are pleading fraud and concealment, negligent misrepresentation, duty to warn and negligent design/marketing. They are seeking actual and exemplary damages.

The results of the numerous US cases should prove to be of considerable interest in this jurisdiction.

Gallic versus Gaelic?

From: Maresa Wren, Galway

With reference to Patrick O'Connor's last *President's message* (November, 1999), I agree that the compulsory teaching of Irish failed miserably. However, I believe that this is a separate issue from the one of whether or not Irish solicitors should have the capacity to practise through the medium of Irish. Mr O'Connor used his important last message to inform us that he thinks that it is simply wrong for solicitors to be required to have a competent knowledge of the Irish language. How can it possibly be wrong for Irish solicitors to be required to be competent in the Irish language? Mr O'Connor calls on the Government to change its policy, but what of the Law Society's policy? For example, the Law Society provides access to courses in legal French and German but I am unaware of any courses being provided by it in legal Irish. Are there any? If not,



why not? There is surely as much demand in Ireland for Irish-speaking solicitors as there is for French or German speakers. In fact, as I write, there are two advertisements in the papers seeking Irish-speaking solicitors and, as far as I am aware, none seeking French or German speakers.

CONTINUING LEGAL EDUCATION
SPRING SCHEDULE 2000

THE BUDGET FROM A LEGAL PERSPECTIVE	Castletroy Hotel, Limerick Hodson Bay Hotel, Athlone Great Southern, Galway	11 February 22 February 29 February
THE PRINCIPLES OF PRACTICAL DRAFTING OF DEEDS IN CONVEYANCING TRANSACTIONS	Blackhall Place, Dublin	17 February
LAND REGISTRY	Hodson Bay Hotel, Athlone Fitzpatricks Hotel, Cork	21 February 30 March
MEDICAL NEGLIGENCE	Blackhall Place, Dublin	24 February
NEW HOUSES	Great Southern, Galway	28 February
MONEY MATTERS	Hodson Bay Hotel, Athlone	13 March
TRIBUNALS OF ENQUIRY	Blackhall Place, Dublin	13 March
FRANCHISING	Blackhall Place, Dublin	28 March
EMPLOYMENT EQUALITY ACT, 1998	Blackhall Place, Dublin	29 March

PLEASE NOTE: 18 FEBRUARY IS THE FINAL DATE FOR RECEIPT OF COMPLETED CLE QUESTIONNAIRES (SEE DECEMBER ISSUE OF *GAZETTE*). QUESTIONNAIRES RECEIVED AFTER THAT DATE WILL NOT BE INCLUDED IN THE DRAW FOR £500 WORTH OF CLE SEMINARS IN 2000

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

Cyberspace and defamation

Internet service providers are not like newspapers and should not be held accountable for the information they publish, writes Niamh Herron

With worldwide roots and no centralised authority, many people consider the Internet the last free marketplace of ideas. On-line activists and civil libertarians constantly fight to keep the Net free of all constraints in the belief that regulation threatens to curtail its expansion by imposing formidable civil and criminal liabilities for negligent or allegedly illegal on-line activities.

The decision of the New York Court of Appeals in *Lunney v Prodigy Services Company* (2 No 164, NY State Court of Appeals), delivered on 2 December last, is welcome in that it may serve to curtail the onslaught of litigation which ultimately has the potential to plague the Internet industry. In its first major ruling on privacy and defamation in cyberspace, the Court of Appeals unanimously held that an Internet service provider (ISP) is merely a conduit for information, as opposed to a publisher, and consequently no more responsible than a telephone company for defamatory material transmitted over its lines.

This ruling is viewed as one of the most significant New York court decisions on Internet issues since *Stratton Oakmont, Inc v Prodigy Services Co (1)* (No 94-031063, 23 Media L Rep (BNA) 1794, NY Sup Ct) in 1995. In this case, a Nassau County Court of First Instance held on motion by the plaintiff that Prodigy had sufficient editorial control over the content of messages posted on an electronic forum and so was liable for potentially libellous statements made by one of its users. It emerged during the trial that Prodigy employed personnel to monitor the contents of its bulletin boards and to delete unacceptable messages. It also used software to screen out

Niamh Herron: On-line access providers are the 'deep pockets' of cyberspace litigation

obscenities and other undesirable statements. Thus, the court decided, Prodigy exercised sufficient editorial control to render it a publisher with the same responsibility as a newspaper. Interestingly, in spite of Justice Ain's decision in *Stratton*, the plaintiff agreed to drop its lawsuit against Prodigy in return for an apology from the company.

In my opinion, the court's decision in *Stratton* was flawed insofar as it likened an ISP to a newspaper. A newspaper is more than a passive receptacle or conduit for news and comment; a newspaper exercises a high degree of control of its final product with respect to editorial judgements and ultimate content and size. With this increased editorial control comes increased liability, and rightly so. But a significant distinction between a newspaper and an ISP is the identity of the contributors, which in the case of a newspaper are identifiable with their services (which are usually contracted for and paid for) but in the latter case could be innumerable and anonymous. We have the ability to send anonymous computer messages, just as we have the capacity to make anonymous telephone calls and send unsigned letters.

Following the *Stratton* decision, the *Communications Decency Act 1996* was enacted in the United States to protect ISPs such as Prodigy from similar actions. Section 230 of the Act provides that: 'no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider'.

Federal immunity

By its plain language, section 230 creates a federal immunity to any cause of action that would make ISPs liable for information originating with a third-party user of the service. Specifically, section 230 precludes courts from entertaining claims that would place an ISP in a publisher's role. So lawsuits seeking to hold an ISP liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content – are barred. None of this means, of course, that the original culpable party who posts defamatory messages would escape accountability. But it may be impossible to identify the original author of a statement which is published on a bulletin board on the Net, as anonymous re-mailers are available which remove anything which might identify the author of a particular statement. Indeed, the author of the offensive statements in *Stratton* remained unidentified. In any event, on-line access providers are in essence the 'deep-pockets' of cyberspace and so the focal point in such litigation to date.

'America Online is like a private pool, and the Internet like the ocean across the street ... At the pool, lifeguards can be stationed and control established, but once the public crosses the street to the "vast sea of information" on the other side, there is no more control'.

William W Burrington, Assistant General Counsel and Director of Government Affairs, America Online

The decision in *Lunney* is eminently practical, otherwise every ISP would be placed under an obligation to make itself aware of the contents of every message posted on its computer network. It would be altogether unreasonable to demand so near an approach to omniscience. The decision will further encourage growth within the Internet community by reducing the threat of liability to on-line access providers. *Lunney* allows such companies to exist in a worry-free environment with respect to liability for information appearing as a result of their electronic transmissions.

Significantly, the court in *Lunney* evaluated the plaintiff's claim in the context of existing tort precedents and found that 'these settled doctrines accommodate the technology comfortably'. Of course, the court's reluctance to get involved in the *Communications Decency Act* debate leaves unanswered the question of whether ISPs are free from liability under US federal law. And there is still the question of whether an ISP has complete immunity for anything that

happens on its system, but so far no court decision has come down on that issue.

Ireland has yet to make any legislative efforts to tame the seemingly untameable on-line universe. It is only a matter of time before our courts will have to decide whether cyberspace defamation cases should be treated the same as defamation cases that occur in a non-cyberspace context – and where responsibility should lie for defamatory statements. It could be argued that our current framework of laws is sufficient to address these questions because they do not present new legal issues: cyberspace defamation cases are indistinguishable from cases arising in the traditional print and broadcast media and therefore can be decided by using the same analysis (proving the elements of defamation).

It is to be hoped that Irish courts will borrow American legal precedent and treat on-line communication akin to a common carrier such as a telephone company, in which case liability would rarely be imposed. Needless to say, the task of defining the liability of ISPs must be approached in a sensitive manner because the imposition of accountability on ISPs could result in a chilling effect on speech and the flow of information, consequently stunting the growth of electronic communication.

This would be a tremendous loss for society. G

Niamh Herron is a solicitor in Dublin solicitors Lennon Heather & Co. Last year she passed the New York State Bar Examination and is currently pending admission to the New York State Bar.

Shaping the Supreme Court

Isn't it time we debated the secret selection process that lies behind Supreme Court appointments?, asks Pat Igoe

In his memoirs, US President Richard Nixon wrote that he considered his four appointments to the Supreme Court as among the most constructive and far-reaching of his presidency. Closer to home, and despite the obvious differences, Bertie Ahern has a similar opportunity.

Nixon had a particular vision of what he wanted from his Supreme Court nominees. People with personal qualities of competence and some knowledge of the law, of course – but there was more. Those appointed would share his conservative judicial and, indeed, political, philosophy.

In Ireland, as in the United States and most countries around the world, the role of the highest court in the land is hugely significant for citizens. Judges traditionally distance themselves from politicians and political debate and also from their former work colleagues. Impartiality, and the appearance of impartiality, are important. The press release by former Chief Justice Hamilton last April announcing the appointment of a judicial complaints committee was in itself an unusual media event.

But solicitors and barristers, in particular, know that the low profile of the judiciary among the population at large, when compared with the other two wings of government, the Executive and the Oireachtas, belies its influence on everyday events. This applies particularly to the Supreme Court's interpretation of the Constitution and of laws.

'A clear message from the Four Courts: the arrogant use of power by the Government and civil service would no longer be tolerated'

If commentators can agree on anything, it is probably that we have tended to get a better judiciary in this country than we deserve. There are no formal open or closed hearings to select candidates for office. The criteria and requirements, beyond the statutory requirements, remain vague. Yet charges of political favouritism by judges or of cronyism are virtually non-existent. As we saw last year, there can be no hint of suspicion. The quality of judgments from the higher benches would suggest that the system does work.

Selection criteria

But what is the system? Appointments to the bench now go through the Judicial Appointments Advisory Board. The board draws up a list of people for each appointment based on their meeting the statutory requirements of the positions and on their general suitability. But it is not the function of the board to adopt a policy for the candidates in terms of their views on economic or social matters.

What does the Government want from its Supreme Court nominees? And what should the Government want? Personal qualities of competence and honesty, obviously. But how much thought is given towards developing a broad strategy or ethos for the higher courts?

It is at least questionable whether sufficient attention has been paid by successive governments to the role of the Supreme Court and to the significance of its role in interpreting legislation. It is questionable because we do not know. And we do not know because of the secrecy in decision-making. The selection process for a crucial tier of government in this democracy remains private.

A debate would at least seem healthy on the moral, political, economic and social directions that the Government expects the Supreme Court to aspire to. The Supreme Court does have a collective ethos, direction and attitude – even if by chance.

Once appointed, there can be no political interference with judges. It is arguable that it is important that the Government, which nominates appointees, should have a sense of what is required individually and collectively. This is particularly apposite now when four of the eight seats on the Supreme Court are at the Government's bidding in the first few months of this year.

Apart from former Chief Justice Hamilton and Kevin Lynch, who retired last year, Mr Justice Barrington and Mr Justice Barron are also due to retire in the immediate future. As if this was not enough, Mr Justice Murphy is 69 years old and may also retire before he reaches his 72nd birthday, giving the Ahern-led Government (if it is still in office) a fifth nominee on the Supreme Court to influence public policy for long after its term of office has ended.

Like politicians, judges also might be said to lead from the front or the back. Learned statements from the bench affirm that the Constitution is a living document. It is not expected to be frozen in time – in this case, 1937. It may be, indeed it must be, interpreted in accordance with the prevailing culture and norms of society.

On 16 December 1961, two distinguished jurists took office in the Supreme Court. They would lead from the front for 11 years, and the effects of their stewardship in enhanced rights and liberties for the individual citizen remain into the third millennium. Cearbhaill O'Dalaigh's tenure as Chief Justice and Brian Walsh's appointment as an ordinary judge of the Supreme Court ushered in a golden age of liberalism in the court.

Both men set about curbing arrogant and arbitrary use of power by the State, including Government Ministers and the gardai, against individual citizens. They began an earnest examination of what the Constitution meant. More than 30 years on, their decisions continue to be cited in legal argument. Many politicians and civil servants were not unhappy when O'Dalaigh decided in 1972 to go the European Court in Luxembourg.

'If commentators can agree on anything, it is probably that we have tended to get a better judiciary in this country than we deserve'

And the initiatives of the O'Dalaigh-led Supreme Court did not end with the appointment of Tom O'Higgins as Chief Justice. A clear message was emerging from the Four Courts: the arrogant use of power by the Government and civil service would no longer be tolerated, whether in the unfair dismissal of a Garda Commissioner or of an ordinary soldier. 'Natural justice' had become a lot more than a dusty legal term.

O'Dalaigh's last judgment

The last judgment of O'Dalaigh's court in 1972 ruled that an individual could sue the State. Kathleen Byrne's accident outside her home, when the path fell in as a result of work done by a cable-laying crew from the then Department of Posts and Telegraphs, gave both judges another important opportunity to further the rights of the citizen under the Constitution. Up to then, it had been believed that the immunity from legal action enjoyed by the British Crown had transferred to the new Irish state. For the first time, less than 30 years ago, the State became liable for negligent acts of its employees.

The decisions of the Supreme Court have kept pace with changes in Irish society since then, more or less. In the immediate aftermath of his retirement, even his detractors agree that Hamilton's period as Chief Justice was a success. The Hamilton-led Supreme Court was highly respected.

Among its more memorable decisions, of course, is *McKenna v An Taoiseach and Others*, which affirmed equality before the law as a fundamental tenet of justice. In curbing the excesses of the Government in spending public money disproportionately in seeking a 'yes' vote in the divorce referendum, Hamilton said that this was 'an interference with the democratic process and the constitutional process for the amendment of the Constitution and infringes the concept of equality which is fundamental to the democratic nature of the State'.

The six reports of the curiously-named Working Group on a Courts Commission, which was chaired by Ms Justice Denham, have provided a welcome and highly-regarded boost to the administration of justice. Many of the recommendations have already reached the statute book. One of the most high-profile recommendations relates to judicial conduct and ethics. Former Chief Justice Hamilton moved without delay to announce the establishment of a committee to 'contribute to high standards of judicial conduct'.

But a significant number of statutes and sections of statutes that govern us today are probably unconstitutional – if the success rate of legal challenges is a benchmark. We do not know until they are challenged by somebody who is sufficiently wealthy and sufficiently aggrieved – as we know from the recent tribunals-inspired constitutional challenges. In furtherance of their declarations to 'uphold the Constitution and the laws', what prevents judges from initiating an examination of the constitutionality of a statute or section?

Whether the Supreme Court should be conservative or liberal, favour the individual or the State, or mirror Irish society rather than pushing the frontiers outwards, could be matters for debate rather than chance. This country has arguably enjoyed a better judiciary than it deserves. In last month's appointments, the Government appears to have made a good start. G

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

Are we all to blame for the litigation boom?

Dr Ubaldus de Vries argues that the perceived growth in personal injury litigation can't simply be pinned on doctors or lawyers: society itself must take some of the blame

Professions emphasise the notion of ethical behaviour. This is reflected in the codes of practice drawn up by professional associations. It implies that the nature of the professional relationship is not limited to the implied and express contractual responsibilities mirrored in such a relationship. Rather, the professional owes a public duty that overrides his duty to the client or patient and is the expression of his commitment to the ethics of responsibility.

So how do we explain the perceived boom in personal injury cases in recent years? It would be easy to give out about the medical and legal professions and their vested interests, blaming them for the abuse of personal injury litigation. But to do so would be unjust and would fail to recognise the positive contributions by, and the importance of, these professions.

On a wider social and philosophical basis, perhaps we should ask ourselves whether we are not all to blame, as participants in this ever-evolving society? Do we not live in a 'risk' society? We do, but not in a society where, as was believed in previous times, 'man acted at his own peril'. Rather, we live in a risk society where all risks (or at least most of them) are insured. This has led us to believe that, as victims of personal injury, we can look for someone else to blame for life's misfortunes, rather than taking responsibility for our own actions and taking the loss on the chin.

Our risk society is facilitated by the extension of liability into categories not previously covered, by growing consumer awareness, and by the vested interests of certain parties (insurers, doctors and, yes, lawyers). These are not necessarily negative factors, though it does now appears that the system may be open to abuse. So in a way plaintiffs (either in good or bad faith) are helped by the systems we have put in place. It would be very difficult in this environment for plaintiffs to show restraint and to make moral judgements on whether to initiate a personal injury claim.

The role of doctors and lawyers in medical negligence

A recent Supreme Court decision in a medical negligence case illustrates how the system can be open to abuse – but also highlights the role of the doctors and hospital management (the defendants) and their lawyers.

In *Cooke v Cronin and Neary* (Unreported, Supreme Court, 14 July 1999), the plaintiff had given birth to a healthy baby in a hospital in Drogheda. The episiotomy cut needed to be stitched, as is usual. A hospital doctor did this. Some of the nylon stitches inserted in the outer skin fell out on separate occasions prior to the date they were scheduled to be removed. It was in relation to these events that the plaintiff initiated proceedings. She claimed that the stitches were sewn too tightly. This caused them to fall out and caused tenderness and discomfort.

'The professions have an over-riding public duty to combat bogus claims'

The defendants agreed that, had the stitches been sewn too tightly, this would amount to negligence on their part. However, the doctors denied that they were. After the first stitches had fallen out, the second-named defendant, a consultant doctor, had examined the patient but had not found anything unusual. He stated that stitches would fall out occasionally without any particular reason. It was something that doctors were not really worried about. An expert witness of 35 years' standing supported this opinion.

The trial judge in the High Court dismissed the case, and the plaintiff appealed.

Cause and effect

The increasing rate in personal injury litigation, in particular with respect to medical negligence, appears to suggest that the mere suffering of injury or loss is sufficient to warrant an action in negligence against a doctor. But a mere causal connection between conduct and loss is not enough. The doctor must be found negligent. It also means that the decision to initiate an action in negligence against a doctor must not be solely based on the existence of injury and loss alone.

Lynch J, who gave the leading judgment in the Supreme Court, dismissed the appeal and questioned the manner in which the plaintiff's lawyers had presented the case. He pointed to the fact that the expert witness for the plaintiff was the plaintiff's solicitor's GP, who had seen the patient once, just prior to the hearing in the High Court. He also stated that there must be some credible evidence to support the plaintiff's case that the defendants' conduct was the cause of the injuries suffered and that they might be guilty of negligence before such an action could commence. Such grounds were absent in the present case.

Denham J added that in the absence of any reasonable grounds, it would be irresponsible on the part of the plaintiff's lawyers to proceed. It would amount to an abuse of the process of the court and would be 'detrimental to [a doctor's] professional reputation and practice'. It would instil in a doctor an unnecessary fear that his conduct could be examined in open court in the absence of any reasonable grounds, even though the patient had suffered injury. Such a fear might have a detrimental effect on the provision of healthcare generally.

On the other hand, though,

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Denham J also referred to the responsibility of hospitals and doctors in the event that a patient has suffered injury as a result of medical treatment, regardless of whether the treatment was caused by negligence or not. It was quite clear that the patient had suffered injury. In court, she gave evidence that her condition was painful, that the scar was unpleasant and cosmetically unacceptable. She also complained of urinary and bladder difficulties, and menstrual problems. The High Court judge had stated that she 'might be better advised to seek a remedy with a medical authority and it might have been helpful if she had pursued that option from the outset'. In other words, she should have sought medical help elsewhere. Denham J added that the patient did not seem to be in a position to do so because of the lack of communication and information from the hospital. She regretted this, saying that relevant information should be made available and not excluded on unreasonable grounds founded on commercial considerations or for insurance purposes. In strong terms, she referred to the fact that information may not always be easily obtained, so the plaintiff's action against the defendants may have been compounded by a lack of communication on their part for the very purpose of avoiding such action.

'We live in a risk society where all risks are insured. This has led us to believe that, as victims of personal injury, we can look for someone else to blame for life's misfortunes, rather than taking responsibility for our own actions and taking the loss on the chin'

A double-edged sword

So the knife cuts both ways. To combat bogus claims and – perhaps more importantly – unnecessary claims, both the legal and the medical professions have an overriding public responsibility. Keane J in the *Cooke* case reminded lawyers in particular of the 'serious responsibility' they have in the 'institution and conduct of proceedings for negligence against professional persons'.

Indeed, one may argue that lawyers have generally a serious responsibility in the institution and conduct of proceedings for negligence against any person. A similar responsibility lies on the shoulders of the medical profession and hospital management, in the role of expert witnesses or as defendants. In the capacity as defendants, fear of litigation should not deter them from taking action where a patient has suffered injury as a result of medical treatment.

The cynic would react to this by pointing to our changing society: the commercialisation of healthcare, the growing gap between public and private health provision, and the lucrative business of personal injury litigation for lawyers and, arguably, insurance companies. The latter appears to dictate the process of personal injury cases. The cynic might also argue that the legal and medical professions' public responsibility is eroded by these factors. If he is right, it may mean the end of the true nature of the professions. G

Dr Ubaldus de Vries is a law lecturer at Dublin City University Business School. This article is based on his paper to the Conference of the Irish Association of Law Teachers last November.

It's often said that everybody has a book in them – and that's probably where it should stay. But an increasing number of Irish solicitors are putting pen to paper to share their expertise with their colleagues. So what does it take to become a legal author, and can you expect to retire on your royalties? Maria Behan breaks the bad news

'A book is like a child', observes solicitor and author Robert Pierse. 'There's the undeniable satisfaction of having it – but also the struggle to raise it and keep it going'. The senior partner at Pierse & Fitzgibbon in Listowel, who has penned two volumes, including *Quantum of damages for personal injuries 1999* (Round Hall), also makes a less positive analogy: 'A book is like a disease that afflicts you. You have to get it out of your system'.

Giving birth and battling disease are laudable endeavours – but not to be entered into lightly. So, too, is the process of writing a law book, according to authors and publishers alike. It isn't just a matter of expertise in your chosen topic: successful authors know the publishing marketplace, carefully pick their target audience and, of course, display a knack for the written word.

Until the 1980s, there were only a handful of publications devoted to Irish law. 'Practitioners and students alike had to content themselves with English materials', says Tom Courtney, a solicitor-author who heads the legal department at the ICS Building Society.

The first reason for this lies in our history: since Ireland inherited its legal system from Britain, initially it wasn't such a bad idea to rely on British sources. 'As the state evolved, though, it became increasingly dangerous to rely on those texts', says Catherine Dolan, commissioning editor at Round Hall Ltd, which is affiliated to the London-based publishing giant Sweet & Maxwell.

The second reason for the dearth of home-grown law books was economic. 'Multinational publishers believed there was no money in small jurisdictions', according to Bart Daly, who heads FirstLaw Publishing. 'And since Ireland was a small jurisdiction, they treated it as an add-on to the UK market'. Daly became the main instigator of Irish legal publishing in 1981 when he founded Round Hall, which was then an independent company. 'Round Hall showed there was a market for legal publications in Ireland, and the industry mushroomed', he says.

British publisher Butterworths became another major player when it set up an Irish division in 1988. Newer companies with smaller pieces of the legal market include Daly's current venture, FirstLaw, which is devoted to on-line and CD-ROM publishing, Oak Tree Press, a professional business book publisher which produces legal titles with a business slant, and Blackhall Publishing, which also has a business emphasis, although it publishes books strictly targeted at lawyers under the Inns Quay imprint.

Striking the deal

Agents – and, unfortunately, advances – are basically non-existent in the Irish market for law texts. A first-time author will generally earn 10% of net sales, though that figure can be as low as 7.5%, while an established writer might take in 15% of net sales.

Law publishers tend to be conservative when it comes to print runs, especially for an author's first effort. Initial runs can be as low as 500 copies (though reprints are common if a title sells well), while books with broader appeal may have first print runs of 1,000 to 1,500 copies.

'In Ireland, you're still looking at sales of 1,000 to 2,000 volumes for an average law book', says David Givens, general manager of Oak Tree Press. But he points out that law books are priced higher than most others, so the royalties are higher as well. 'You don't need to sell quite as many as other types of books to see a decent return', he says, though he's quick to add that money isn't the primary reason that members of the legal profession write books.

'Financially, writing a book is a total disaster', says Robert Pierse. 'You don't even recover your typing costs'. And Tom Courtney observes that 'the direct financial rewards for writing a law book will never recompense you

The write stuff!

for the labour that goes into it'.

So why have so many solicitors been bitten by the writing bug (including Courtney, who edits and occasionally writes for the journal *Commercial law practitioner* and has penned four books, including *Mareva injunctions and related interlocutory orders* (Butterworths, 1998)? 'As a practitioner, it's exceedingly difficult to stay on top of one's subject without being involved in on-going research', he explains. 'For me, the most expeditious way of staying current is by researching and writing, so I decided to get the most from what I was doing by publishing my work'.

Dermot Cahill, solicitor and lecturer in law at UCD, says that he decided to write his book *Corporate finance law* (Round Hall, 2000) because there was no text in the area. 'This was a way to make a contribution to scholarship and the dissemination of legal knowledge', he says.

McCann FitzGerald solicitor Michael O'Reilly reports that the book he co-wrote on environmental law grew out of material prepared for seminars, which he feels is a fairly common beginning for a legal tome. And what made all the work that goes into a book worthwhile? 'Having contributed to something which is actually used on a daily basis is satisfying', he says – then adds with a laugh: 'that and finishing the thing in the first place'.

In some cases, writing a legal textbook can further a solicitor's career, increasing promotion prospects within an organisation as well as the likelihood that he or she will be appointed to professional and governmental bodies. 'If you're an expert in a certain area, writing a book helps cement your reputation and make you a recognised expert', comments Oak Tree's David Givens. 'It enhances reputations – and I suppose it can bring in more clients as well'.

Round Hall commissioning editor Catherine Dolan points out that legal books are seldom referred to by their titles, but by the author's name. 'That fact is telling', she says. 'It shows that in the legal field, the author's expertise is considered the most important thing – and that the author has earned considerable respect'.

How the publishing process works

Like other publishing professionals, Dolan makes the initial contact with some of her authors, while others come to her. 'If solicitors ring me up with a great idea, I'll send them a short form to fill in so I can get a better sense of the idea they're proposing, the market they're aiming at, and what they plan to include in the book', she explains.

David Givens outlines the elements of a thorough proposal: 'The more information, the better', he says. 'You always want a one-page description of the book and, if possible, a detailed table of contents, with chapter headings and descriptions of the material covered in each chapter'. Other items on his wish-list are a description of the market and its size, why that market will be driven to buy the book, the author's qualifications, and a target date for completion of the manuscript.

Winning a book contract also depends on having a way with words. 'If we like someone's book idea, we'll ask them to prepare a draft chapter in order to ensure that they can actually write', says Louise Leavy, managing editor (law) at Butterworths. 'Some people have a lot of knowledge but they're not good at conveying it on paper'.

MAIN POINTS

- **Writing a book involves enormous time commitments**
- **Don't expect to make much money**
- **Targeting the right readership is crucial**

'Financially writing a book is a total disaster. You don't even recover your typing costs'

If solicitors prove as adept at expressing ideas as they are at formulating them, the chances are they'll be offered a book contract. 'Authors, especially if they're solicitors, shouldn't just accept the terms willy-nilly', warns Dermot Cahill. 'They should negotiate them, just as they'd negotiate a transaction on behalf of clients. Your book is valuable intellectual property, so you should seek the most favourable terms possible from your publisher'.

The hard part comes once the contract is signed. Finding the time to write the book is probably the toughest aspect for solicitor-authors. Cahill spent four years on *Corporate finance law* and says that's not very long, considering his subject matter. It would have taken him far longer, he adds, if he was a practising solicitor rather than an academic. Tom Courtney admits he finds it difficult to carve out writing time from a busy schedule. 'One would almost think it's impossible, in view of the demands of simply getting through the working day', he says. And Robert Pierse, who estimates that his first book took him more than two years to write, working about 15 hours a week at nights and weekends, sounds like a veritable speed demon.

McCann FitzGerald's Michael O'Reilly says that collaboration was the key to getting through the massive amounts of work behind *Irish environmental legislation* (Round Hall, 1999). He worked with two co-authors, fellow solicitors Barbara Maguire and Michael Roche, and says they received a good deal of help from others at the firm as well. 'We wrote it over many years, and the sheer volume of work involved was staggering', he recalls. 'Given our topic, we had to cover or at least be familiar with practically every piece of legislation that we could see having any connection with the environment. So there were hundreds of legislative enactments dating from the last century until today.

'We used to come in very early in the morning about three times a week to work for a couple of hours, and we now look back at those sessions fondly', he continues. 'We'd be going through obscure pieces of legislation and happily each of us has a good sense of humour – because you either laugh or you cry. Sometimes we still think that the laughter was bordering on hysteria'.

Cahill feels that a research assistant could prove an invaluable asset to a legal writer. 'I'd like to see more publishers provide a budget to help with that, because it means that the author can concentrate on getting the substance of the book to the highest possible level while somebody else is dealing with proofing, consistency, and that sort of thing', he says. 'Otherwise, you divert so many months to just proofing, proofing, proofing'.

The author's toil doesn't end with the delivery of the first draft. Round Hall's Catherine Dolan estimates that it takes an average of six months from manuscript delivery to the bound-book stage. During

TRICKS OF THE TRADE

The road to completing a successful law book is long and fraught with peril. Here, some authors and editors offer tips for the trip

'Make your writing clear. Use shorter sentences and if you have to use jargon, explain it. Footnotes are very important in legal texts, since they allow you to avoid clogging up the text with minutiae. Lawyers are used to writing letters for their clients in very obtuse language. The danger is that they might carry that into their legal publishing. When you're writing a chapter in a book, you're not giving a legal opinion, you're describing the law. That's very different'.
Dermot Cahill, UCD

'Be practical: people want useful information. The law obviously has its philosophical and moral aspects, but the real demand is for information that helps solicitors stay abreast and conduct their business'.
Elanor McGarry, Round Hall

LEGAL PUBLISHING: THE MAIN PLAYERS

Blackhall Publishing and Inns Quay. Blackhall prints law titles with a business slant; the affiliated Inns Quay imprint handles other legal books. Contact: Gerard O'Connor, 26 Eustace Street, Dublin 2, tel: 01 677 3242, e-mail: blackhall@eircom.net

Butterworths. Produces a wide range of legal titles. Contact: Louise Leavy, 26 Upper Ormond Quay, Dublin 7, tel: 01 872 8514

FirstLaw Publishing. Focuses on electronic publishing. Contact: Bart Daly, Richmond Campus, North Brunswick Street, Dublin 7, tel: 01 807 2400, e-mail: bartdaly@firstlaw.ie, website: *www.firstlaw.ie*

Oak Tree Press. Prefers titles with a business rather than strict legal emphasis. Contact: David Givens, Merrion Building, Lr Merrion Street, Dublin 2, tel: 01 676 1600, e-mail: dgivens@oaktree.iol.ie

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'If you have a legal speciality you really care about, stick with that. Interest is what keeps you going'.
Robert Pierse, Pierse & Fitzgibbon

'I would listen carefully to my publisher and be guided by them as to whether they believe a book will fill an existing *lacuna* in published material. If there are 15 books on a particular topic, it's not necessarily the case that the market needs a 16th. Still, the fact that a topic has been written on in the past ought to be no absolute bar if you believe you can bring something to the area that has not been addressed before'.
Tom Courtney, ICS Building Society

'The publisher's contract tends to be all-embracing as to rights. I'd advise solicitors to look carefully at the copyright. If they want to give away the entire copyright, that's fine. But if they foresee that the material could be channelled for another use by a different publisher, they should hold on to the electronic rights'.
Bart Daly, FirstLaw Publishing

this time, the author must be available to answer queries that come in from the editor and, in some cases, outside experts in the areas covered. The final hurdle usually comes when the writer reviews the final proof just before the book goes to print, which is his or her last chance to fix any mistakes or add updates on recent cases or regulatory changes.

And then there's marketing. 'Depending on the nature of the book, we may ask an author to help with marketing', says Blackhall Publishing's managing director Gerard O'Connor. 'For instance, we recently did a book on holiday law, and something like that, which appeals to travel agents and a broader audience, might attract the interest of a programme on RTÉ. It also depends on the personality of the author: some are keen to do it, others aren't'.

Keys to success

So what makes one title more marketable than another? One major factor is the target readership. 'It depends on the nature of the book, whether it's purely for practitioners or whether students might buy it as well', O'Connor explains. And more copies are likely to be sold when a book has appeal outside the legal field, for example, to human resource managers, banking officials or, in the example he cited, travel professionals.

Another pivotal area is theme. 'While a particular topic may be of great interest to an author, it may simply not have a commercial attraction', says Tom Courtney. Louise Leavy says that books on company law always do well, citing Courtney's *Law of private companies* (Butterworths, 1994) as an example. Catherine Dolan also feels that company law can

Tom Courtney: 'The high point comes when you get the first copy of the book'

Elenor McGarry: 'Increased demand for specialist publications'

David Givens: 'You don't need to sell as many to see a decent return'

be marketable, especially specialist areas such as take-overs and mergers. She singles out conveyancing and criminal law as hot topics, and says the Irish market could use a criminal-law bible, such as *Archbold* in the UK.

According to Round Hall's managing director Elanor McGarry, one can look to the changes in Irish society to gain an insight into the kinds of legal books that will be popular now and in the future. 'Family law is a key area', she says. 'And there have been many changes in the legal profession driven by the economic boom'. In this regard, she cites the environment, planning and construction.

McGarry feels that the rise in demand for specialist law books reflects a change in solicitors' career patterns. 'Several years ago, the majority of solicitors worked in sole or dual-practitioner firms', she observes. 'Now firms are growing, and there are more practitioners in medium-sized firms than in small ones. Solicitors who work in big and medium-sized firms tend to be specialists, hence the increased demand for specialist publications'.

Besides target readership and topic, a third factor in the equation is the writer. 'If the author is well-regarded in the legal field, that can generate enthusiasm', says Gerard O'Connor. 'And if they're controversial, that can generate media interest – which helps to sell books'.

21st century publishing

Most publishers now see the digital world, and the Internet in particular, as the way of the future. According to Elanor McGarry, Round Hall's extensive market research has revealed a sea-change in the demand for electronic publishing. 'In 1997, 20% of those surveyed could use the Net, but in 1999 it was 80%', she says. 'That's a four-fold increase in demand over just two years, which is phenomenal'.

FirstLaw is already producing legal publications for the Internet, and the other players in the field plan to do the same. 'It's not a question of should we do it, but with what products', says McGarry. 'It's probably the area that offers the greatest growth potential'.

Butterworths' Louise Leavy agrees: 'The future definitely lies in electronic publishing. More and more people have computers and expect to use them to get things quickly. It makes life easier if you can look things up on-line with search engines and download information. Because of that, I think the hardcopy book will die out a bit'.

Tom Courtney – along with many other writers – might be less than thrilled with that last prediction since it may deprive authors of the thrill of holding newly-minted books in their hands. 'The highpoint of the writing experience comes when you get the first copy of the book from the publisher', he says. 'That's certainly way up there in any author's life'.

So if you hope to experience that thrill, you'd better go warm up your word-processor. G

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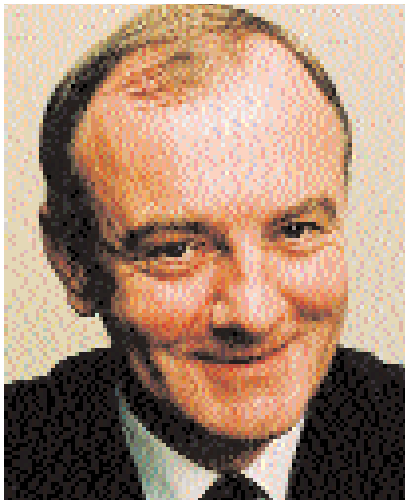
Courting success

As Chief Executive of the new Courts Service, PJ Fitzpatrick is the man charged with dragging our creaking courts system into the 21st century. Here he tells Conal O'Boyle about the work done to date and his plans for the future



PJ Fitzpatrick: 'I think there is a lot to be done – and it won't all be done overnight'

■ ***Gazette:*** **What will be the main changes that lawyers can expect to see over the coming months and years?**

■ ***Fitzpatrick:*** The big issue identified by the Working Group on a Courts Commission was the fact that the administrative and management arrangements for the courts had virtually not changed at all since the foundation of the state. So the modernisation of the courts will take place on two levels: first, by putting in place professional management and administrative arrangements and, second, in the whole area of information technology. The Government has approved an £11-million capital investment programme for IT, and planning for that is at an advanced stage.

Some 85% of all the court buildings in the state have now had IT cabling installed, so the infrastructure is in place to link court buildings with each other, with the Courts Service headquarters, and with other bodies such as the gardaí, the prisons and so on.

In phase two of that development, we hope to provide facilities where users can their business electronically via the Internet. Indeed, in the not too distant future we hope to move to a situation where users can pay fees and send documents electronically. Of course, that will mean changes in court rules. In any event, the Government has just launched its e-commerce Bill, which will give people the right to conduct their business with the state electronically.

For us, that means we have to have facilities in courts where people can do that. Obviously it's a bit away yet, but that is the direction we are going in. Despite what the public impression might be, there's a lot of enthusiasm among judges and court staff for information technology.

■ ***Gazette:*** **Another major issue to be addressed is the very poor state of court buildings and accommodation. When you took over, were you surprised at how bad they were?**

■ ***Fitzpatrick:*** Yes, I was surprised that some of them were as bad as they were. We estimate that it will take about £200 million over the next five to seven years to bring court accommodation up to a reasonable standard and to provide the sort of privacy and dignity that the public and practitioners can reasonably expect in this day and age.

■ ***Gazette:*** **Has there been any pressure to close rural courthouses around the country?**

■ ***Fitzpatrick:*** No, there hasn't been any pressure about any particular venues. Obviously, we are seeking very significant additional funding to provide modern court facilities and to ensure that there are a reasonable number of venues, and that people have reasonable access. But on the other hand, it would be very difficult to justify having new court buildings five, six or seven miles apart, and maybe used once a month. We have to be able to justify which venues will be upgraded and where we are going to spend the money.

■ ***Gazette:*** **Would you envisage a decrease in the use of pubs and hotels as court venues?**

■ ***Fitzpatrick:*** Well, if we're talking about providing accommodation which is modern, which provides the type of consultation rooms, meeting rooms, privacy and dignity that ought to be provided, then pubs, ballrooms and hotels are not suitable and cannot continue long-term.

■ ***Gazette:*** **So practitioners and the public can't expect an overnight change in their experience of how they are using the courts?**

■ ***Fitzpatrick:*** I think there is a lot to be done and it won't all be done overnight. But the website is there, practitioners can now access the on-line legal diary free of charge, some of the building projects have started and consultation with practitioners' representatives has begun, so hopefully people are beginning to experience some change.

We will be asking people to be patient because we are looking here at a five to seven-year programme to implement all of the recommendations in the reports. But hopefully, quite significant and substantial improvements will begin to appear on

SOCIETY OF YOUNG SOLICITORS IRELAND

(sponsored by Bank of Ireland Trust Services)

THREE-DAY MILLENNIUM CONFERENCE 2000

(hosted by Northern Ireland Young Solicitors' Association)

24–26 MARCH at THE HILTON HOTEL, BELFAST

www.sys.ie for further details

Friday 24 March
13.00 – 15.00 Registration at Law Society House, Victoria Street. Reception hosted by NI Law Soc President. Coach departs Dublin 11.00 hrs

16.00 hrs Reception at Belfast City Hall

20.30 hrs till late. SALSA NIGHT at THE EMPIRE

Saturday 25 March
10.00 – 16.00 hrs SEMINAR SESSIONS at THE HILTON

Competition law: a European perspective. Damien Collins, Brussels
European Commission and the regulation of e-commerce. Mads Bride Andersen, Denmark
Regulation of the Internet. Dr David Taylor, Paris
The implementation of the Good Friday legislation in Northern Ireland. Prof Brice Dickson, University of Ulster
Association of Personal Injury Lawyers. Nigel Tomkins
Recent developments in tort/negligence actions. Sean Doran, Queen's University
Centre for Dispute Arbitration and Resolution (CEDAR). Anthony Montgomery.
A land law system for the 21st century. Prof JCW Wylie, Cardiff University

19.30 – 02.00 hrs Gala Dinner & Cabaret/Disco, Hilton Hotel.

Sunday 26 March
11.00 hrs Brunch and goodbyes. Coach departs Jurys 14.00 hrs

NOTES:

1. Millennium Conference 2000 is being hosted and organised by NIYSA. Delegates will attend from Northern Ireland, Ireland, Scotland, England & Wales and Member States of the European Union. SYS has been allocated a limited number of delegate spaces for solicitors practising in Ireland. Irish solicitors wishing to attend this conference MUST APPLY through the SYS. Demand will be high. The application procedure will be applied strictly.
2. **Belfast Jurys Hotel** has been allocated to SYS for accommodation of Irish conference delegates (**IR£130 pps**). A small number of twin rooms may also be available in **the Hilton** and **McCausland** Hotels **(IR£150pps). No single rooms.**
3. Irish delegates may opt for a return ticket on a coach, arranged by the SYS committee (IR£15 extra). The coach will depart Custom House Quay at 11.00 hours SHARP on Friday 24 March. Irish delegates BOOKED on the coach, MUST arrive at Custom House Quay not later than 10.30 hours, departing Jurys Hotel at 14.00 on Sunday 26 March.
4. Accommodation is limited and will be allocated on a strictly first-come, first-served basis and in accordance with the procedure set out below.
5. The conference fee is IR£130pps for Jurys/IR£150pps for Hilton or McCausland and includes Friday and Saturday night accommodation, two breakfasts, two receptions, subsidised events, Salsa Night, lunch on Saturday, Gala Dinner and conference materials. No non-accommodation rate available.
6. One application form must be submitted per room per envelope together with cheque(s) for the appropriate conference fee and coach and a self-addressed envelope. All applications must be sent by ordinary prepaid post and only applications exhibiting a post mark dated 14 February or after will be processed. Rejected applications will be returned in due course.
7. Applications cannot be accepted without appropriate payment. Cheques payable to SYS please. Names of Irish delegates to whom the cheque(s) apply MUST be written on the back of the cheque(s).
8. Cancellations must be notified to 'treasurer@sys.ie' on or before 10 March. Cancellations after that date will not qualify for a refund.

APPLICATION FORM

Please use block capitals. One form per room per envelope.

Name 1 _____ Name 2 _____

Firm 1 _____ Firm 2 _____

e-mail _____ e-mail _____

One contact address _____

_____

Phone (H) _____ (O) _____

ACCOMMODATION IN JURYS HOTEL IR£130pps (HILTON/McCAUSLAND IR£150pps):
Please tick ☐ Double ☐ Twin
RETURN COACH: Please tick ☐ 1 ☐ 2

I enclose cheque in the sum of IR£260/300 plus IR£15/30 and I enclose self-addressed envelope.
Application to the treasurer, SYS, PO Box 7255, Dublin 4.

the building side, right across the country, very quickly.

There is a lot of goodwill around. I've been to all of the court offices around the country, met all the judges and many local solicitors and barristers. I think everybody wants to see it work, everybody wants it to be successful and, of course, there are also huge expectations, which is understandable. People are looking for improvement.

■ ***Gazette:*** **It must strike you as being a bit like Mao's Great Leap Forward, trying to modernise a 70-year-old courts system within five to seven years?**

■ ***Fitzpatrick:*** Yes, it's a great challenge – for the board, for me as chief executive, and for the staff. But given the commitment and enthusiasm for the changes that I've encountered at all levels, I've no doubt that it will be successful.

'Court by its nature is adversarial and there's very little we can do to change that, but we can try to create the surroundings that will put them more at ease before they go in'

■ ***Gazette:*** **You've spoken about 'demystifying' the court system and making it more 'user-friendly'. What exactly do you mean by that?**

■ ***Fitzpatrick:*** There's still a lot of misunderstanding about the courts among the general public. What we are hoping to do through things like the website and information leaflets is to explain what the courts are, what they do, where they sit, the different jurisdiction limits and so on. We are also hoping to provide information leaflets for the public and looking at producing information videos on the courts for schools.

A lot of people never use the courts – and for those who do use them perhaps once in a lifetime, it can be a daunting experience. So we're really trying to make people more aware of what to expect when they go to court. Court by its nature is adversarial and there's very little we can do to change that, but we can try to create the surroundings, the environment, and provide the information that will put them more at ease before they go in there.

■ ***Gazette:*** **You've also suggested putting judgments on-line?**

■ ***Fitzpatrick:*** At the moment we're in discussion with the judges about that, and the intention is to start with Supreme Court judgments and then follow that up with High Court judgments and so on. What is critical there, of course, is that the judgments are available quickly, following delivery, because that's when people want to access them.

■ ***Gazette:*** **Have you been consulting the legal profession about the more far-reaching changes?**

■ ***Fitzpatrick:*** Yes. For example, we have done up a consultation protocol for all new court buildings and for the projects in Dublin. The Chief Justice and the presidents of the three court jurisdictions have nominated a number of judges who are available to us on an on-going basis for consultation. Similarly, the Law Society, the Bar Council, the gardaí and all the other user groups have named people who are available for consultation, and we are consulting with them. For projects outside Dublin, we consult with the local bar associations. So in areas where major innovations are proposed, there will be on-going consultation with all of the user groups, particularly the user groups representing legal practitioners.

■ ***Gazette:*** **So you won't be springing any major surprises on anyone?**

■ ***Fitzpatrick:*** No, and hopefully we will accommodate people's views and wishes, but as you know it is very difficult to do that all the time. However, we can certainly assure people that their views and suggestions will be very seriously taken into account and, where at all possible, accommodated.

■ ***Gazette:*** **You're trying to create a unified staffing structure in the Courts Service. What could that mean for county registrars who at the minute are largely recruited from the ranks of solicitors?**

■ ***Fitzpatrick:*** The county registrars are a key group and by virtue of their particular training and knowledge are in a position to very considerably contribute to the development of the new Courts Service. I am currently in discussion with them about the continued development of their role within the service.

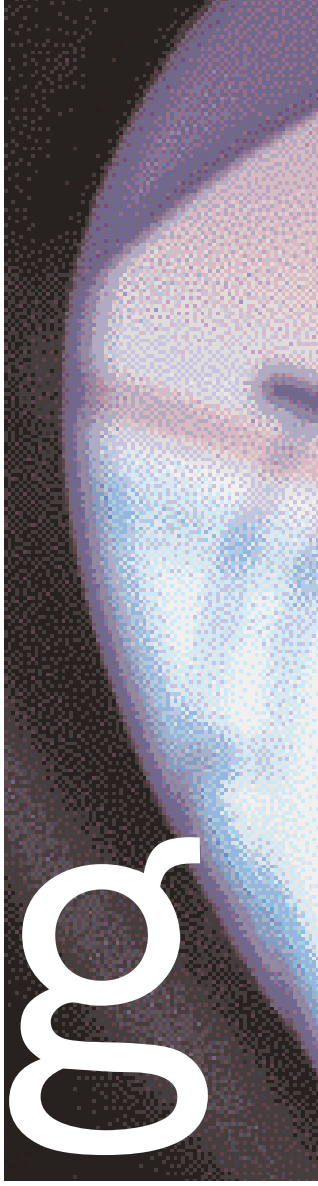
The changes in the Courts Service are affecting everybody, not just any one particular group. The very fact that we were able to reach agreement with the unions representing the staff on such fundamental issues as promotion and methods of filling posts is indicative of the amount of goodwill there is – and people's wish to be part and parcel of the new service. I think county registrars are every bit as enthusiastic to contribute to that as any other group, and I've no doubt that our discussions with them will result in an equally beneficial arrangement for everybody – the Courts Service, county registrars, the public and practitioners.

■ ***Gazette:*** **Are you happy with your budget allocation?**

■ ***Fitzpatrick:*** Yes, I think the increase in the budget for this year will certainly meet the programme of work that we have planned. Some of the increases are very significant: for example, almost 100% for staff training, over 200% for the Judicial Studies Institute, 200% for telecommunications and IT, and almost 60% for the building programme. But that's not to say that we won't need more next year. We will – particularly in the area of IT and building. These projects are at a developmental stage, but we will need to spend a lot more next year because they will be further advanced. The increase in the budget for the Courts Service over the last two years has been nearly 50% – that's an indication of the commitment of the Departments of Justice and Finance.

■ ***Gazette:*** **And you're confident they'll continue to give you the funds you need?**

■ ***Fitzpatrick:*** Yes. We have no reason to believe they won't. But it will be up to us to prepare the arguments to convince them that it will be money well spent. G



Most solicitors are justifiably proud of the work they do, but some seem to forget that they deserve to be paid for it and leave the cost-gathering exercise to the end. Tony Halpin and Taxing Master James Flynn discuss the fundamental concepts behind legal costs and the importance of proper recording systems in a law firm

Taxing

A law firm is in business to provide legal services and to generate an income. This must be sufficient to attract and retain professionals who will provide a superior, quality service to the client. While some services may not exactly be profitable, they may be seen as essential to the overall ethos of the firm. In this regard, loss leaders may be offered because of the potential work that could be generated in the future or because the firm wishes to provide the full range of services that should be available to the legal marketplace. A classic example of this occurred during the early 1980s when margins in conveyancing transactions were somewhat depressed and those transactions were a constant drain on the labour resources of many firms because of their acute time-consuming nature. But few – except for some highly-specialised firms – could contemplate not providing such a service.

According to Professor Milton Friedman of the Chicago School, the purpose of a firm is to use its resources and to conduct its activities in such a way as to increase or maximise profit so long as it stays within the rules of the game. The 'game', as it were, is the contest of litigation and the rules are those laid down by the *Rules of the superior courts*. The costs incurred in litigation are directly governed by specified rules and adjudicated by a taxing master on a taxation of costs. We shall look briefly at the rules of the game later, but first let's consider the importance of recording costs data and the part it plays in billing a client.

Recording costs data

A detailed costing of each individual file is important because the collection of the costs of all files ultimately underpins the measurement of a firm's

MAIN POINTS

- **Detailed costings of each case are vital to a firm's profitability**
- **Time costs are only one part of the global information needed to manage a firm**
- **The taxing master relies on information submitted to support the costs claimed**
- **The party claiming costs must justify why they should be allowed**
- **The party expected to pay the costs will certainly seek the supporting documents**
- **Party-and-party costs versus solicitor-and-client costs**

profitability. Proper costing sheets will reflect the number of hours worked by each solicitor on a case, the number of expert witnesses, the number of counsel and the nature and extent of the work done, and the apportionment of fixed costs.

But while it is obviously important to record the amount of time spent on a case, this merely indicates the number of man-hours taken to perform a task. To translate this into a monetary rate chargeable to the client, one must apply an hourly rate to the actual number of hours involved. The definitive rate per hour is directly related to the category of personnel involved in doing the work. It is therefore necessary to choose the right person to do the job – preferably someone who is sufficiently experienced in that particular task.

Indeed, Laffoy J accepted that the category of personnel and the amount of time expended were essential criteria in the assessment of the amount of remuneration rewarded to the solicitor, but added that these may not be sufficient to reflect the overall level of the instruction fee. In *The Minister for Finance v Laurence Goodman & Ors* (Unreported, High Court, 8 October 1999), she said:

'The sum of £275,000, in my view, properly reflects the preparatory work and properly rewards overall for the other relevant factors *[that is, in addition to a time-based rate]* – complexity, skill, responsibility and so forth. I reject the argument advanced by the Minister that the latter factors are already rewarded through the daily rate. Unlike the application of an appropriate hourly rate to the appropriate number of allowed hours in respect of the appropriate cadre of personnel, the application of a flat daily rate without regard to actual time worked or by whom worked does not reflect those factors'.

So recording time costs is simply one element in the global information needed to manage any firm, whether big or small. Planning and control is necessary to compare budgeted costs with actual

THE PURPOSE OF RECORDING COSTS DATA

The system chosen by a firm to record costs data can perform several functions within the business unit. For example, it may help to increase the recovery of costs, while:

- Improving the quality of decisions made by partners
- Motivating staff to make decisions that will help the firm prosper, and
- Aiding the partners in evaluating the performance of each department and highlighting those areas that need attention.

'While it is obviously important to record the amount of time spent on a case, this merely indicates the amount of man-hours taken to perform a task'

ACCURATE BILLING

'Unless time is recorded, there is no other means of monitoring it. It is becoming an increasingly important factor in assessing what is fair and reasonable remuneration. An effective time-recording system will invariably result in an increase in remuneration and efficiency'.
Alfred E Anderson, CBE, *Legal costs in Northern Ireland* (1990)

costs, which in turn will influence managers in regard to the projected price of future services. Overheads must in some way be included in the pricing mechanism, and it is normal to use a time unit in applying a fair apportionment of these costs.

Briefly, recording data, although time consuming, will enable partners to perform their roles properly. It helps to identify areas that require attention and will indicate performance levels, potential growth areas, profitability and show whether or not the firm is on a sound financial footing.

Taxation of costs

The taxation of costs is the settlement of the amounts payable by a party or parties in respect of the costs in an action, cause or matter which is assessed by a taxing master. In order to achieve a fair and just amount, the taxing master relies on the information submitted to support the costs that are claimed. Notwithstanding the fact that allowing any particular item in the bill of costs depends on the court order awarding costs, each item must be supported by evidence, and its allowance or disallowance may in great measure depend on the information provided at taxation. If one is to be in a position to furnish all necessary documentation, for obvious reasons one should begin compiling it at the start of a case.

The taxing master in *Superwood Holdings plc & Ors v Sun Alliance and London Assurance plc & Ors* (17 December 1997) described how useful records could be during a taxation:

'Had a time-record been kept, it would have been helpful in determining the physical input into the case and the actual cost thereunder. Therefore, the best and most accurate way to establish exactly and precisely how much to charge a client for work is to determine how much time it took to finish or complete that work, having regard to the calibre of the personnel, dictated by the nature of the work, coupled with the other elements of the instruction fee ... The instruction fee is dependent upon the actual work that is done and, as such, incorporates all factors, both tangible and intangible. Time should be justifiably spent on a case and any time that is abnormal, excessive or improper should be disallowed on taxation, whether it be on a party-and-party or a solicitor-and-client basis. This case was at the outset envisaged to take some time both in preparation and in the course of the hearing. Therefore, given the amount of estimated damages, it was incumbent upon the solicitor to record the work in some sort of a concrete manner'.

When recording the amount of labour involved in a case, it is not enough merely to record the amount of time, but also how that time was spent. The taxing master in the *Superwood* case quoted the *dicta* of Payne J in *Re Kingsley* ([1978] 122 SJ 457), where he stated:

'I ought to add that this case illustrates the dangers which are present if reliance is placed on a modern system of recording, without at the same time retaining the old and well-tried practice of keeping attendance notes showing briefly the time taken and the purport of the work done by day. It may be that this case will invite attention to the importance of appreciating the limits to which the computer system can be used in cases where taxation of costs must follow litigation and to the necessity of preserving as well the use of the traditional systems'.

The records should reflect all the work and expense incurred in a case. Time costs are only one element; other costs that should be supported by sufficient evidence are counsel's fees, witness's expenses, the cost of reports and so on.

The Courts and Court Officers Act, 1995 gives the taxing master the power to examine the nature and

THE LOGIC BEHIND TAXING COSTS

Taxing costs reassures the public that the costs allowed are fair and reasonable. The public can then have confidence in solicitors and in the fees charged. In the United States, the fees charged by lawyers came under fire from the public and an American lawyer, Miles McMillin, took umbrage at the apparent ease with which lawyers could charge what they liked without proving that the work had been done. He wrote: 'The public must not only pay the rates the lawyers decree from their privileged closed shop, it must take the word of the lawyers on how much work they put in. If the lawyer says he put in an hour's work on a case, there is nothing the client can do but pay the $25. How can he prove the work wasn't done? But the lawyer is urged by the bar to snoop into the client's status ... the lawyer is told that he should check what kind of car the client is driving to help determine whether he can pay the charges – in this case, literally what the traffic will bear. The new fee schedule does not suggest that the lawyer also check the client's liquor cabinet, deep freeze, refrigerator and wardrobe, but lawyers have a Latin expression that covers the situation: *Expressio unius est non exclusio alterius.* (The inclusion of one does not mean the exclusion of others). It's a pity the public doesn't have some rules in Latin or otherwise to protect its interests'.
Madison Capitol Times, 12 November 1966

SECTION 68 OBLIGATIONS

Section 68 of the *Solicitors (Amendment) Act, 1994* now obliges the solicitor, on taking instructions from the client, to inform him in writing as soon as is practicable of the likely costs in the action. In *Purdy v Nordquist and Durham* ([1961] 95 NW 2d 91), Montague J of the US Supreme Court found that failing to fully inform and advise the client of the level of fees was a breach of duty. He emphasised that 'in conjunction with their [the lawyers'] methods and conduct, the procurement of grossly excessive fees for their services ... constituted a fraud'. He went on to remonstrate that the 'careless and unbusinesslike administration ... failure to make reports as required by law, failure to keep accurate and correct records of the financial transactions' were altogether unacceptable. Indeed, he ordered that all the fees were to be repaid to the plaintiff and hinted to the professional bar that the matter was worth their attention.

extent of the work undertaken in a case. In order to do this, he must be given detailed information about the nature and extent of the work done. It is best if that information is collected from the outset, because if you leave it until taxation it will take considerably longer to compile. A party must provide all the relevant material that will help in an examination of the costs of an action and, as the costs are those of the client, the solicitor has a duty to satisfy this requirement. This has placed what was traditionally accepted as a practical method of collecting costs data on a more permanent and statutory footing. All too often things are left to the last minute and an item in the bill of costs may easily be missed and so be irrecoverable.

In *Superwood*, the taxing master said:

'Although the costs herein were incurred prior to the enactment of the *Courts and Court Officers Act, 1995*, there was a traditional custom to record the extent and import of the work done on this case. I do not think it incumbent upon me to set out the expansive authorities upon this area for it is well and truly accepted that, upon a taxation, the amount and extent of work performed must be supported by evidence so that justice is done to both parties to a taxation'.

Accordingly, solicitors are ultimately responsible for the compilation, retention and gathering of all the evidence in supporting the costs of the party they represent. The taxing master emphasised that 'it is recognised by the courts that to determine a matter it must be determined upon evidence, no matter how small, meagre or diminutive it is'.

Party-and-party costs

If a client is successful in an action and has been awarded costs against the unsuccessful party by the court, the unsuccessful party will pay most if not all the actual costs incurred. Simply, party-and-party costs are those costs which are usually paid by the loser to the winner in an action, thereby covering the bulk of the legal costs incurred by the winner. The party-and-party basis does not mean that all the costs incurred are recoverable from the unsuccessful party; there is no guarantee that they will all be met. In fact, the costs allowed are confined to those which are deemed necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

In *McGarry and Others v Sligo County Council* (Unreported, Supreme Court, 5 May 1989), Walsh J held that the whole basis of party-and-party costs is one of indemnity. Party-and-party costs do not normally cover all the charges incurred in the course of the action and therefore rarely provide a complete indemnity. Essentially, this means that anything over the amount recovered from the paying party must be met by the party having their costs taxed, and this amount represents the solicitor-and-client costs.

If a party is expected to pay costs, it is axiomatic that they will certainly seek the supporting documents in order to satisfy themselves, first, that the costs were indeed incurred and, second, that those costs were necessary and proper for the advancement of the litigation. There is an onus on the party claiming costs to demonstrate to the taxing master's satisfaction that the costs incurred were proper and reasonable in all the circumstances. But the taxing master is guided by his experience as to when this onus has been discharged and he is not controlled by the strict limits imposed, for example, by the onus of proof in criminal courts; rather, he is guided by the evidence presented. The fees claimed cannot be construed as being within a scale because scales as such do not exist.

'Necessary and proper' costs

So the costs incurred must be necessary and proper and determined on the basis that they were incurred in furthering the action of the party whose costs are being taxed. In the case of *Stuman v Dixon* (22 QBD 529), the following distinction was made between party-and-party and solicitor-and-client costs in an action: 'The costs of the plaintiff as against the party do not mean all the costs he has incurred but all the costs he has incurred by the act of the defendant. That is the difference between party-and-party and solicitor-and-client costs. For example, it may be reasonable to have several consultations, but it doesn't follow he is to get them all against the party'.

The method of assessment is of critical importance in that the approach is not a concrete science and the justification of a cost is exclusively dependent upon the part it has played in the

FEE SCALES OR PRICE-FIXING?

'A fee schedule promulgated by a bar association is nothing more than price-fixing, which is illegal in inter-state commerce and is frowned upon generally in the business world as an attempt to stifle competition. It has no higher standing in the practice of law'.

Chicago lawyer Jackson L Boughner in '*Let's throw out the reasonable fee schedules*', *Journal of the American Bar Association*, March 1962

SOLICITOR-AND-CLIENT COSTS: SUPERIOR COURT RULES

Order 99, rule 11 of the *Rules of the superior courts 1986* says that:

'•
- On a taxation as between solicitor and client, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred
- Any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs as between party and party shall, unless the solicitor shall have expressly informed his client in writing before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred
- On a taxation as between solicitor and own client, all costs incurred with the express or implied approval of the client evidenced by writing shall be conclusively presumed to have been reasonably incurred, and where the amount thereof has been so expressly or impliedly approved by the client, to have been reasonable in amount'.

'Party-and-party taxation does not mean that the paying party must completely indemnify the other for all expenses incurred'

litigation or matter under taxation. The assessment is only as good as the information that is furnished to support the costs claimed. The party must lay a proper foundation to his case in order to succeed; costs incurred above what is considered a reasonable minimum may suggest over-caution and so the party authorising them will be liable to pay the solicitor for the excess costs incurred on his behalf.

In *Ryan v Dolan* (IR 7 Eq 92), the court held that if an excessive and extravagant outlay had been directed or insisted on by the client himself, it would not be allowed as part of the costs in the suit, that is, as party-and-party costs. In *The Attorney General (McGarry) v Sligo County Council* ([1991] 1 IR 99), it was held by the Supreme Court that the underlying principle of party-and-party costs was that:

- The party chargeable was only obliged to indemnify the party awarded costs where an order for costs had actually been made, and
- The items claimed had been properly incurred, and
- The claiming party was under a legal liability to pay them.

Moreover, the court held that the claiming party could recover no more than what he had actually expended, or remained legally liable for, if such expenses were properly incurred. There may be costs in an action that are not allowable as party-and-party costs: it is necessary to isolate these and, in the interest of the paying party, show which costs are not covered on a party-and-party basis and the reasons for this. The party claiming costs must justify why they should be allowed.

In *Dyott v Reade* (10 ILTR 111), the following principle was laid down by Sullivan, MR:

'In costs between party and party, one does not get full indemnity for costs incurred against the other. The principle to be considered in relation to party-and-party costs is that you are bound in the conduct of your case to have regard to the fact that your adversary may in the end have to pay your costs (the adversary should also have regard to this in the conduct of his case). You cannot indulge in a "luxury of payment"; a remarkable instance of that occurred in this case, but it was occasioned by way of excessive caution, and the adversary is not to pay for that. When a case is laid before counsel to advise proofs, and he requires the due consultation, that must fall as solicitor-and-client costs and not as costs taxable as between party and party'.

Moreover, order 99, rule 37(18) of the *Rules of the superior courts 1986* states: 'On every taxation, the taxing master shall allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for enforcing or defending the rights of any party, but, save as against the party who incurred same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons or by other unusual expenses'.

Solicitor-and-client costs

Party-and-party taxation does not mean that the paying party must completely indemnify the other for all the expenses that have been incurred. The costs that fall outside party-and-party costs are termed solicitor-and-client costs. A solicitor in working for a client may have to pursue certain lines of enquiry or undertake certain tasks in an action that are not recoverable under the party-and-party award of costs. Such costs are properly within the solicitor-and-client category and must be discharged by the client. The rule is that on the taxation of a bill between a solicitor and own client, charges which were not expressly or impliedly approved by the client should be allowed if they are reasonable (see *Lavin v Walsh* [1967] IR 129, at page 135).

The bill of costs furnished to the client should include all costs of the action, that is, party-and-party costs and the solicitor-and-client costs. Again, records are of great importance here in computing and compiling this bill.

Keeping proper attendance notes will help you to gauge the amount of time spent on a case and indicate exactly what business was transacted. The note should include the date, the parties attending, the amount of time spent and the substance of what was accomplished. If counsel was present, the note should include what directions were given. Similarly, telephone calls received or made on the client's behalf should also be logged and a brief note of the nature and duration of the call.

Always remember that even the worst ink is far superior to the greatest memory, so write it down! G

Tony Halpin BL and Taxing Master James Flynn are the authors of Taxation of costs *(Blackhall Publishing, 1999).*

The French like to do things differently. Their *viager* system allows you to sell your house in return for a one-off lump sum and regular payments – the twist is that you can still live there for the rest of your life. Brendan Walsh explains the system and asks: could it work here?

Frenchco

In France, *viager* is an established and respected system by which people (referred to in *viager* jargon as 'heads') can transfer the eventual ownership of property – whether it be a holiday home, family home or even a portion of a residence – to another person while remaining in possession, occupation and enjoyment of the property for the rest of their lifetime. They usually (but not always) receive a *bouquet*, which is a kind of down payment, and after that a regular monthly payment (usually index linked).

Although the *viager* system operates in a similar format in other European countries, this article is confined to the French system. It was very popular as an investment years ago, but its use has declined considerably, partly because of its unpredictability as an investment and partly because of France's capital tax legislation. These days its use is principally in family situations or where there is a friendship between, say, the transferors and the parents of the buyer. (In family situations, it is most often a childless person selling to his niece or nephew.) However, because Irish capital tax legislation is more favourably laid out, in certain circumstances the system could operate beneficially in this country.

As an investment, a *viager* arrangement might be beneficial to a person seeking to broaden his range of investments, but it is not without its hazards. The most dramatic example in France was a case in which the transferor was an 80-year-old lady and the buyer was a *notaire* (coincidentally) of approximately 45 years of age. The *notaire* died a few years ago, aged over 80, while the transferor lived until last year, when she died at the age 121. Jeanne Calmet, who was at the time the oldest resident in France, was still being paid by the estate of the deceased *notaire* until the day she died.

In France, the system has been used deliberately and effectively to disinherit children. Under French law, there is a *réserve* that depends on the number of children surviving the testator. If he has only one child, then only half the estate can be left other than to that child. If the testator is survived by two children, then only one-third is free for distribution other than to those children; and if the testator has three or more children, then only one quarter is free, or what the French call *quotité disponible*. But under the *viager* system, they would have disposed of their principal asset during their lifetime, thereby effectively denying their offspring the benefit of that asset upon their death.

A typical example of how the system operates would be as follows: a 70-year-old widower finds himself without adequate pension or assets other than a house worth, say, the equivalent of £200,000. He would obviously be in an unenviable position financially. As it is at the moment in Ireland, he would probably be advised to sell his house and move into either a smaller house, investing the differential, or to move into a flat. His preferred choice – remaining in the residence and locality in which he has spent all his adult life – might not be open to him without extreme hardship. Whatever social welfare payments or other income he receives would be subjected to the cost of necessary repairs, insurance and so on. In such circumstances, he might do well to take advantage of the *viager* system.

Picking the *bouquet*

The *bouquet* asked is usually about 50% of the value of the property and can vary depending on the requirements of the transferor. If it is a second or holiday home, then the *bouquet* could very well be whatever would be necessary to clear the transferor's capital gains tax liability, so as not to leave an outstanding problem in this regard. As a general rule, the system is rarely used with larger properties, though there is no reason why that has to be the case.

Referring back to the theoretical 70-year-old widower described above: he would go through a specialist agency or a *notaire* who would conduct a professional valuation of the property and help him decide whether he needed a *bouquet* and, if so, how much it should be. If there were two transferors, they would have to expect a lesser monthly payment because the life expectancy of two individuals would obviously be longer. The greater the *bouquet*, the smaller the monthly payment. A *bouquet* has the further advantage of allowing the transferor the comfort of knowing that he will have something to leave to his children, relations or friends – he's not 'dispossessing' them entirely. Having decided on the type of package best suited to the needs of the transferor, the *notaire* or agency would then place a small advertisement in a national newspaper, somewhat along the lines of the examples below.

The notaire would then sift through the replies received, concentrating on two or three offers and negotiating according to the client's wishes until agreement is reached. Sometimes the buyer negotiates with the transferor's *notaire* directly, usually in family or friendship situations. In any event, the *notaire* would have a fairly accurate idea of what could be expected for the property by reference to life-expectancy tables (*Baremes Rapides*) freely available from the *Centre d'Etudes du Viager*. (In fact, the schedule to the *Capital Acquisitions Tax Act, 1976* could be used for people in this country.)

The agreement could take a number of different forms, depending on whether the client wished to have a *bouquet* and a regular cash payment thereafter or no *bouquet* and a larger monthly payment. These monthly payments are usually index linked.

A typical example of the system based on a ff1,600,000 (approximately £200,000) property for a widower of 70 years of age would be either:

- A *bouquet* of ff320,000 (approximately £40,000) plus payment of ff6,945 (approximately £868) a

THE *VIAGER* SYSTEM IN ACTION

The *viager* system is usually effected through newspaper advertisements. Here are translations of two typical ads for properties in towns near Paris:

Angouleme, in the Victor Hugo district. A *viager* occupied by two heads of 70 years of age each. A detached house of 94 square meters. Upstairs: two bedrooms, living room, kitchen, bathroom. Ground floor: garage, bedroom, veranda. Oil-fired central heating. Tank capacity of 1,800 litres. 445-square-meter garden. *Bouquet:* 50,000 francs plus 3,800 francs a month.

St Maur des Fosses. An occupied *viager* on one head of 69 years of age. A stone villa, two entrances, five principal rooms, 150 square meters. Full basement, attic capable of conversion, garage and store house. 1,000 square meter walled lot. Possibility of building second structure in future. Close to transport, shops, schools. *Bouquet:* 850,000 francs plus 6,500 francs per month.

onnections

MAIN POINTS

- ***Viager*** **agreements can be a source of income for the elderly**
- **They can also make buying property affordable for first-time buyers**
- **But they're not without risk**

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month, index linked, or
- No *bouquet*, but monthly payments of ff8,680 (approximately £1,085), index linked.

The life-expectancy rate and the expected interest rate given by the *Centre d'Etudes du Viager* for a man of 70 years are .593 and 10.98% so the formula is as follows:
- Property – ff1,600,000
- Less bouquet – ff320,000
- Total: ff1,280,000
- @ .593 = ff759,040
- @ 10.98% = ff83,342
- Per month = ff6,945.

Since the *bouquet* is paid up front and the buyer has to await the transferor's death before he sees any benefit, if you look at it from the buyer's point of view, the smaller the *bouquet*, the better. Hence the need for the transferor to have a *notaire* or other agent negotiate on his behalf.

In France, there are set procedures and documentation to cover the actual conveyancing aspects, but in this country, from a conveyancing point of view, the transferor would have to convey or assign his property to the buyer, reserving a life interest in it. There would be a separate but related agreement to the effect that the buyer would pay the transferor so much a month (or over some other agreed time-frame).

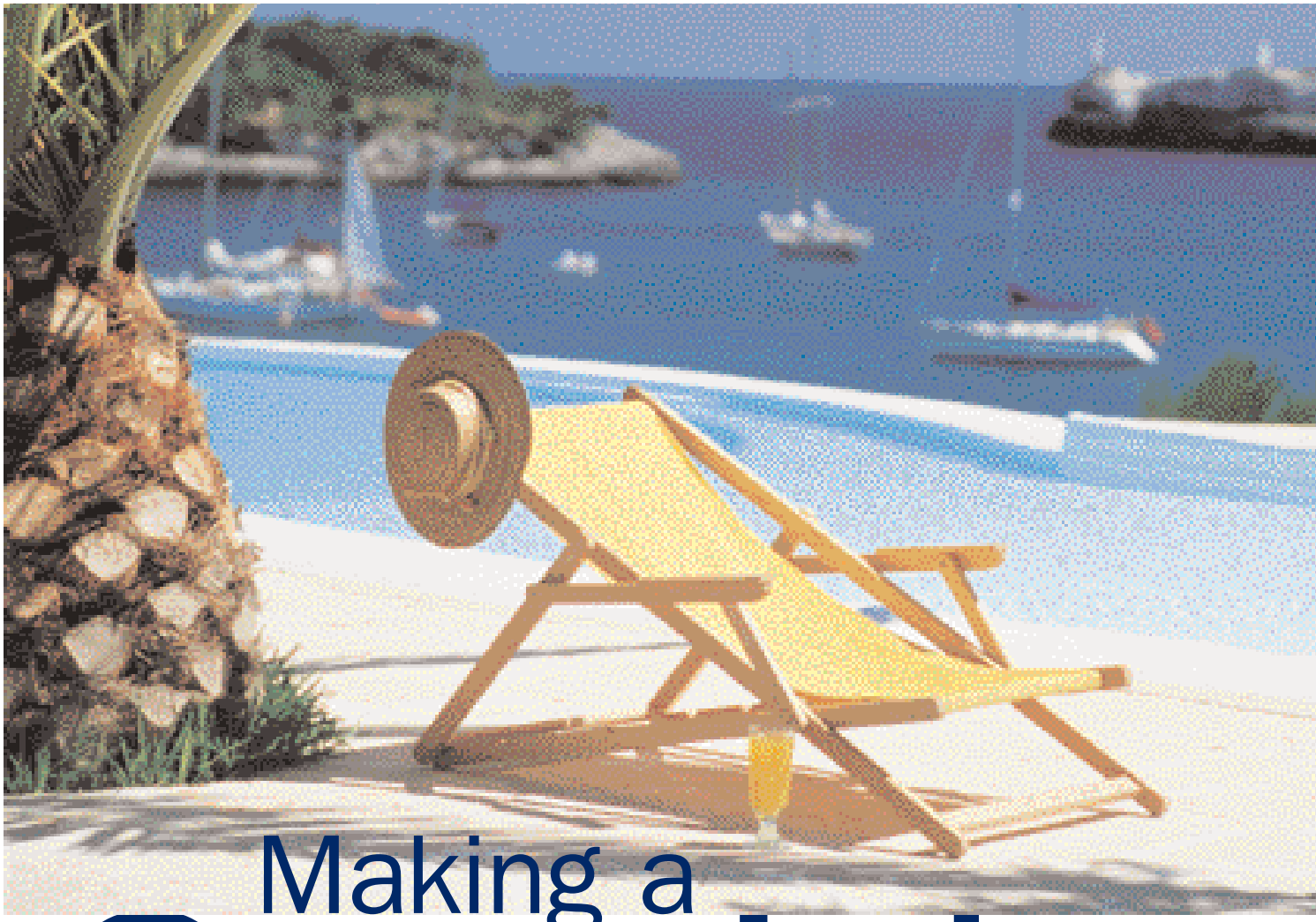
This agreement would also set out the buyer's obligations in relation to the property by way of maintenance, repair, insurance and so on. In France, the buyer insures the property and pays all taxes and outgoings as well as all repairs, so the transferor is getting his rent net and 'into his hand'. The buyer would then become registered as owner, paying stamp duty based on the value of the interest passing. Again, this could be set by reference to the tables in the *Capital Acquisitions Tax Act, 1976*.

In France, there is statutory provision that in *viager* transactions the transferor has to live for 20 days after the deal is concluded. If the transferor does not live for that amount of time, the deal is void and all monies are handed back. The normal contract allows the buyer to move into the property two months after the death of the transferor (or, if there are two of them, after the death of the second).

Because of the use of tables such as those issued by the *Centre d'Etudes du Viager* or those in the schedule to the *CAT Act, 1976*, the transaction can be seen to be a genuine one, but it is imperative to keep a strict and auditable record of all payments made, otherwise the buyer would be open to the accusation of having set up a fictitious deal to evade CAT, which can be up to 55% in France. G

Brendan Walsh is managing partner of the Dublin-based solicitors' firm Brendan Walsh & Partners. The author would like to thank Elisabeth Marie of the Paris firm of SCP Etasse, Rivoire et Associés for her help with his technical queries.

'It is imperative to keep a strict and auditable record of all payments made, otherwise the buyer would be open to the accusation of having set up a fictitious deal to evade CAT'



Making a Spanish w

Most Irish people understand the importance of leaving a will, but those who own property in other jurisdictions must make special arrangements. Rafael Berdaguer explains what's involved in drawing up a Spanish will to cover Irish assets in that country

The growing number of Irish people who own assets in Spain could save their heirs the trouble of wading through an administrative backlog by drawing up a Spanish will. On the testator's death, the Spanish part of the estate can be wound up at the same time as the Irish estate.

Apart from the Spanish will, only two other documents are required to transfer Spanish assets to the heirs: the testator's death certificate, which must be translated into Spanish by a sworn translator and legalised at the Spanish embassy in Dublin, and a certificate from the Central Last Will Registry in Madrid confirming that the testator has left a will executed before a notary public and that the recorded will is the last one left by the testator. The Central Last Will Registry is the official registry where all wills executed before Spanish notaries are recorded.

Upon the execution of a Spanish will, the attesting notary must send a note to the registry with the name of the testator, the date of execution and the protocol number of the will. If a testator has executed a second or further will, Spanish law

dictates that the latter will automatically revoke any former will unless otherwise specifically provided for by the testator. Wills executed in Ireland before an Irish notary public can also be registered in Spain, provided the will is drawn up in Spanish or has been duly translated into Spanish and legalised by the Spanish embassy in Dublin.

With these two documents and a notarised copy of the Spanish will, the heirs (or someone granted power of attorney by them, usually a lawyer) can go to a notary public and proceed with the execution of the deed of declaration and acceptance of inheritance (*escritura de declaración manifestación de herencia*), whereby the assets of the testator are transferred to the appointed heirs. The deed has to be submitted for payment of death duty to the Spanish Revenue Commission within six months of the testator's death. Once the tax has been paid, the deed is lodged with the land registry for final registration of the assets in the name of the heirs.

If the deceased Irish property owner has not left a Spanish will to govern the transfer of his assets, the heirs will face a more complicated situation. If there is an Irish will that has provisions for the Spanish assets, a grant of probate will have to be obtained through the Irish courts ratifying the legal heirs to the part of the estate in Spain. If no will was left by the deceased, the corresponding intestacy proceedings will have to be followed through the courts in Ireland to obtain a resolution declaring the legal heirs to the estate. That resolution or grant of probate will have to be translated by a sworn translator into Spanish and legalised by the Spanish embassy in Dublin. By the time the heirs have gone through this lengthy and costly process, the six-month statutory period for paying Spanish death duty on the Spanish assets will probably have passed so surcharges and penalties will have accrued to the tax bill.

Laws governing inheritance

The international law provisions of the Spanish civil code stipulate that the nationality of the deceased person governs all inheritance matters relating to him. In the case of an Irish citizen, this means that Irish law will be applicable to his inheritance and, in particular, to his Spanish estate.

The Irish *Succession Act, 1965* contains limitations on the testator's freedom to dispose of his assets and provides that specific shares of the estate must be transferred to specific heirs. In most cases, these limitations will not apply to Irish people who own property in Spain and who have made a Spanish will since the Spanish legacy should not affect the legal right of the heirs in Ireland. The appointed heirs under the Spanish will are usually the spouse or children of the testator, who are the people entitled to the legal right of the estate anyway.

The execution of a Spanish will

The most common type of will in Spain is the open will (*testamento abierto*), signed by the testator before a notary public. An Irish person executing a will before a Spanish notary will have to use an interpreter who translates the terms of the will into English and who signs it as well. The will must be prepared in bilingual form. In most cases, the interpreter is the lawyer assisting his client in this matter.

The will is a personal and individual act which means that it has to be signed personally by the testator, and not by someone with power of attorney from him. It also means that two people cannot execute the same will, so a joint will is not valid under Spanish law.

The notary reads the last will as given by the testator and then the testator, notary and interpreter sign it. The notary notes the exact time and date of the will's execution in the document and declares in the will that he has identified the testator by his passport and that the testator has the legal capacity to execute the will. In certain cases, the use of witnesses is required. All these formalities must be completed at the same time, otherwise the will could be declared null and void.

In the case of a will signed before an Irish notary public, the formalities of the place of execution (*locus regit actum*) are applicable – that is, the need for witnesses and any other formalities required by Irish law have to be complied with. The will executed in Ireland has to be executed in bilingual form and legalised by the Spanish embassy and registered in the Last Will Registry in Madrid.

Proposal for a Spanish will

A Spanish will must be confined to Spanish assets, which means that specific mention must be made that any other will executed by the testator for his remaining assets elsewhere will not be revoked by the Spanish will.

In the most common scenario, an Irish couple with children and Spanish property that has been registered in the parents' name will usually bequeath all their assets, interests and rights in Spain to each other (in the case of one spouse dying before the other). In case of unexpected incapacity or one spouse renouncing inheritance rights, the appointed heir would be substituted by the children in equal shares. It is very important to include the substitution clause in the will to avoid the possibility of intestacy proceedings. Any other provisions are also valid as long as they respect Irish law and the applicable regulations as required by Spanish law.

So if Irish people want to enjoy their property in sunny Spain with a trouble-free mind, they would be well advised to execute a Spanish will. And after that, they can catch a flight without worrying about what will happen to their Spanish assets if the plane crashes – although I suppose that would be the least of their problems. G

Rafael Berdaguer is a lawyer with the firm Rafael Berdaguer, Abogados, based in Marbella, Spain.

MAIN POINTS

- **Only two documents required to transfer Spanish assets to heirs**
- **Wills executed in Ireland can be registered in Spain**
- **Irish will must be in bilingual form and legalised by Spanish embassy**

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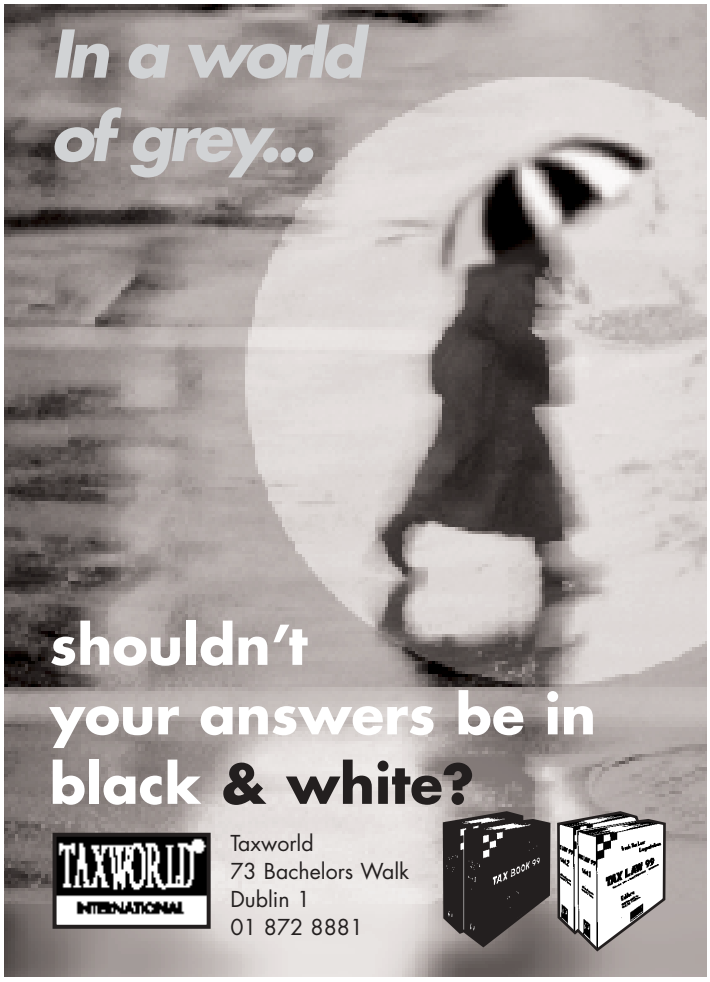

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References from Irish Law Firms: Hayes & Sons (Andrew O'Rorke), Dillon Solicitors (Brendan Dillon), Sherrys Solicitors (Brian Sherry).

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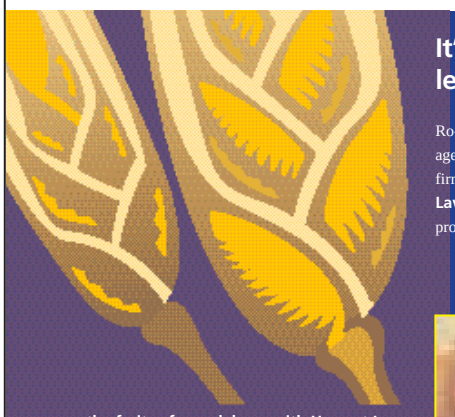

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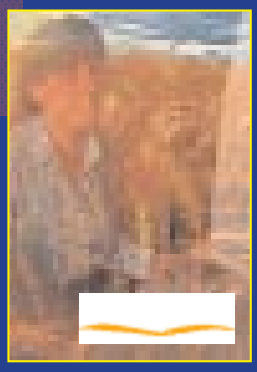

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CDU: criminal law

Continuing its series of articles on the professional practice course syllabus for apprentices, the Law Society's Curriculum Development Unit explains what's involved in its criminal law module and invites members to air their views on how it could be improved

For quite a number of years, the subject of criminal law had the status of something of a poor relation on the Law School's professional course (now known as the professional practice course) – despite the dedication and enthusiasm of those members of the profession involved in organising and delivering lectures and tutorials, and students' obvious interest in the module. One explanation for this state of affairs was undoubtedly the profession's perception of the practice of criminal law as a specialised area, rather than one with which every solicitor ought to have at least some functional familiarity in order to provide his or her clients with the best service possible. Another lay in the perennial problem of insufficient teaching time on the course in its previous incarnation, an issue which has largely been addressed by redesigning it, allowing plenty of absorption-time for students.

As part of the overhaul of the professional practice course, criminal law has been expanded to cover more teaching hours and to include tutorials and role-play (students, for instance, might be asked to present a model plea in mitigation during a tutorial). As usual, those members of the practising profession who have contributed all along, together with newer contributors, have rowed in with their customary and invaluable expertise and enthusiasm.

In summary, the curriculum currently covers the following topics and they are dealt with comprehensively in both the teaching texts and in lectures and tutorials.

District Court procedure
Short historical background, importance of District Court as originating court in all criminal matters, initiation of proceedings, matters dealt with summarily/on indictment, venue on indictable charges, disclosure of pre-trial information (*DPP v Gary Doyle*).

Duties of a defence solicitor
Preliminary considerations (including possible approach to prosecution to ascertain whether they do in fact intend to proceed – taking in matters such as staleness, triviality of the offence, youth or old age of offender, mental health of offender and so on), taking client's instructions, advising client, preparing the case itself, legal aid.

Bail
DPP v O' Callaghan, procedure on a bail application, including situations where client is in custody, refusal of bail, sick warrants, summary of provisions of *Bail Act, 1997*.

Conducting a case
Charging procedure, admissibility of evidence, refreshing the memory, cross-examination, right of election, factors in favour of/against both venues, preparation of a Circuit Court case, trial thereof, arraignment, search warrants, sentencing, scope of orders made after conviction, children's court.

Appeals
General summary of appeals procedure.

Powers of detention
Detentions under sections 30, 4 or 2 of the respective statutes, regulations while in custody, advising clients in custody (this constitutes a very detailed and comprehensive section of the teaching notes), right to silence, advisability or otherwise of making a statement (*Heaney v McGuinness*), tactical considerations at the garda station, client decides to make a statement, consideration of article 6 of the *European convention on human rights*, taking of forensic samples from a client in custody (issues of consent and so on), Garda Complaints Board, identity parades and the advisability or otherwise of participating in them.

Driving offences
Importance of checking summons or charge sheet very carefully, conflict of interest where civil case pending and insurance company instructs, detailed notes on the most common driving offences (statutory sources of offence, ingredients of each offence, proofs required and so on), detailed consideration of factors to be taken into account when advising, including checklist of most important points, taking of specimens, procedure at bureau regarding specimens, summary of court procedure, appeals, cases stated, inquests.

In addition to all this, there are sections in the teaching texts covering recent changes in the law, which is kept up-to-date, an interpretation of the provisions of the *Criminal Justice (Drug Trafficking) Act, 1996*, compensation and other considerations for crime victims, money-laundering controls in the Irish criminal law system, including the functions of the Criminal Assets Bureau, and criminal law in a European context. Although these items are not, strictly speaking, part of the core curriculum, they make absorbing and informative background reading for students. Specimen files and summonses for tutorial work, all relevant legislation and case law, and further reading lists are also provided. Areas such as prison visits, children's court, appeals procedures, advocacy skills pertaining to the practice of criminal law in particular, and a more detailed overview of the workings of the legal aid system (including its impact on cashflow within a practice with an eye to the now-considerable percentage of solicitors in practice for themselves) will benefit from more comprehensive treatment in the future.

The views of the profession on the content and scope of the curriculum are invited. Members with an interest in becoming involved as tutors or lecturers should forward details of their experience in the area, together with those of any prior teaching experience they may have had.

This opportunity is taken to extend sincere thanks to all members who have contributed to the teaching of the subject in the past and who continue to do so. It couldn't be done without you! G

Please send any comments or suggestions on the curriculum and applications to tutor to Katherine Finn, Co-ordinating Solicitor (Criminal Law), Law Society of Ireland, Blackhall Place, Dublin 7, DX: 79 Dublin, tel: 01 672 4800, fax: 01 6724803, e-mail: k.finn@lawsociety.ie.

Book reviews

The *Family Law (Divorce) Act, 1996*

Nuala Jackson and Stephanie Coggans. Round Hall Sweet & Maxwell (1998), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-125-0. Price: £25.

The recent publication of the *Annotated Family Law (Divorce Act), 1996* by Stephanie Coggans and Nuala Jackson – the third in a series of Round Hall *annotated legislation* – is a welcome addition to the libraries of all family lawyers. The general notes will be of interest not just to family lawyers but to psychologists and sociologists alike, setting the divorce legislation in the social as well as legal context. The references to the Dáil debates and the rationale behind the inclusion of certain terminology and conditions in the legislation will be of great interest to those of us who struggle with the consequences arising from the (at times) somewhat illogical and impractical conclusions arrived at by our legislature.

The whole issue of the 'living apart' principle is tested out extensively at pages 14-16 and, in the view of the authors, is an issue which ultimately will require Supreme Court interpretation. Similarly, the rationale behind the four-year period, while laudable in its intention, is 'entirely removed from the reality of marriage breakdown'.

Of particular interest – and, indeed, compulsory reading for all practitioners – will be the notes dealing with sections 5, 13-15 and 20 of the Act. This is not to say that the general notes relating to the other sections are not of equal importance, but these particular sections deal with the constitutional imperatives, together with the inevitable financial consequences of divorce. Section 20, in particular, discusses the criteria taken into consideration by the court in determining ancillary orders relating to financial matters and will greatly assist practitioners who have difficulty in explaining to litigants the impossibility of predicting the outcome of any court proceedings and the lack of certainty with regard to financial consequences. There are interesting references to the whole issue of a clean break situation, particularly the judicial pronouncements in *F v F* and the assertion by McGuinness J in *JD v DD* that the statutory policy is totally opposed to the concept of a clean break. The obligations of practitioners to advise clients on this whole issue is well highlighted.

This is a book not just for family lawyers, but indeed for all conveyancers and company lawyers, who ignore the consequences of the recent family law legislation at their peril. Property adjustment orders have brought family law into the public and general arena as no other provisions of family law have done. The cross-references both to earlier family law legislation, the various *Finance Acts* and other related legislation is particularly helpful.

Coggans and Jackson are to be commended on the extent and breadth of the information supplied, reflecting as it does the social and economic factors which plagued the legislators during the passage of the Act. In addition, their explanations of the various definitions which underpin the legislation are useful and informative, and the subsequent interpretations placed by the courts on these various definitions will eventually develop a jurisprudence which will be of invaluable assistance to all practitioners. Our judiciary is to be commended on the growing frequency with which considered judgments are being handed down in divorce and judicial separation cases. It is to be hoped that such judgments will grow into a body of law which will develop a consistency in the application of the various principles contained in this and the earlier *Family Law Acts*.

My only complaint – strictly of a personal nature – is the size of the print in the general notes. No account is taken by the publishers of the effects of many years of practice on the eyes! G

Joan O'Mahony is the Principal of the Dublin firm O'Mahonys Solicitors.

Administrative law in Irela

Gerard Hogan and David Gwynn Morgan. Round Hall Sweet & Maxwell (1

Harlan F Stone, the only university professor ever to serve as Chief Justice of the US Supreme Court (Associate Justice, 1925-1941, Chief Justice 1941-1946), noted extra-judicially in 1921 that the United States had been trying some dangerous experiments in autocracy in passing numerous laws under which administrative officers were given extraordinary powers over the liberty and property of individuals without appropriate safeguards afforded by judicial review and by traditional legal procedure. The authors, in their preface, remark on the renaissance of administrative law in Ireland, refer to the re-kindling of that renaissance with the 'seminal trilogy' of cases, *East Donegal Co-operative Livestock Marts Ltd v Attorney General* ([1970] IR 317), *Re: Haughey* ([1971] IR 217) and *Byrne v Ireland* ([1972] IR 241), and conclude that the renaissance has now 'flowered almost to full bloom'. So any move to autocracy with administrative officers exercising extraordinary powers over the liberty and property of individuals has the potential of being firmly checked by the judicial arm of government in this country.

The authors note that lawyers have hitherto been slow to admit administrative law 'to the charmed circle of blocs of law which are officially regarded as discrete legal subjects'. Let it be said: any self-respecting lawyer ignores administrative law at his or her peril. Administrative law has come of age.

Here, I can only signal to the reader some of the contents of this monumental work. The early chapters cover sources of administrative law, the Dáil, Ministers, departments and civil servants, State-sponsored bodies and aspects of local government law. *Tribunal and inquiries* is the heading of a single chapter, which is followed by an investigation of three *causes célèbres*: the non-statutory Hepatitis C Tribunal, the Dáil inquiry into the fall of the Fianna Fáil/Labour government, and the Dunnes Stores Tribunal. The general principles of licensing and the ombudsman are also examined.

The authors then examine in some detail the fundamental

Freedom of information law in Ireland

Maeve McDonagh. Round Hall Sweet & Maxwell (1998), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-79-7. Price: £89.

The idea behind freedom of information (FOI) is fairly simple. There is a presumption of a right of access to information from public bodies covered by FOI law. This access can be limited or defeated only by explicit restrictions laid out in the Act.

The practice can be somewhat more problematic. The *Freedom of Information Act, 1997* is a complex statute with many provisions that are difficult to interpret. Its length and detail result in difficulties in navigating text. For instance, try to identify precisely which public bodies are governed, what exact procedures apply, and how exemptions might apply to a given case. All this leaves open a great demand for a reliable guide with which to break into this fascinating subject matter, a service which is comprehensively rendered by Maeve McDonagh in her impressive textbook.

Most users will be coming to the book for quick and reliable reference to the provisions of the *FOI Act*. Accordingly, the bulk of the text is devoted to the Act itself. Chapter 3 is dedicated to matters of internal organisation in public bodies. The scope of access, the manner of applying for disclosure and options for redress are dealt with in later chapters.

The thorny question of exemptions takes up well over half the book, and this should be no cause for surprise. The Act attempted to codify much of the common law case law on FOI exemptions in its legal provisions in order to avoid excessive litigation consequent on the ambiguity (or, some might say, the clarity) in the short and simple type of exemption characterised by the equivalent legislation in the United States. Chapter 5 provides a useful and logically-presented overview of some general issues concerning exemptions and is recommended background reading before taking on the detail of individual exemptions. For instance, do not presume to know what is meant by the schizophrenic term 'public interest' until you have read the relevant passages here.

The author devotes a full chapter to each exemption. The provisions themselves are analysed in some detail. However, much of the context comes from comparisons with experience in other FOI regimes. In the absence of Irish FOI case law, there is liberal reference throughout to relevant international precedents, especially from Australia, Canada and the

nd (third edition)

1998), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-76-2. Price: £62.

principles of judicial review, constitutional justice, control over discretionary powers, the application for judicial review, the scope of public law, damages, legitimate expectations and estoppel and, finally, the State and litigation.

As administrative law issues grow more pronounced and complicated in Ireland, Hogan and Gwynn Morgan have become even more indispensable. Based on meticulous research, with grace and verve, Ireland's foremost scholars in administrative law have produced an authoritative, brilliant and enlightening masterpiece, a major contribution to Irish law. G

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BOOKS PUBLISHED

Irish family legislation handbook
Muriel Walls and David Bergin
Jordan Publishing,
21 St Thomas Street,
Bristol BS1 6JS, England.
ISBN: 0 85308 500 5.
Price: £45.

Report on gazumping
Law Reform Commission, IPC House, 35-39 Shelbourne Road, Ballsbridge, Dublin 4.
ISSN: 1393-3132.
Price: £5.

Insurance law in Ireland
Attracta O'Regan Cazabon
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-68-1.
Price: £85.

The law of road transport and haulage
James K Canny
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-87-8.
Price: £45.

The law of meetings
Michael Maloney and Jarlath Spellman
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-62-2.
Price: £39.

The *Civil Liability Acts*
Anthony Kerr
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-92-4.
Price: £19.95.

Trade union membership and the law
Cathy Maguire
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-74-X.
Price: £35.

Dangerous driving cases
Gerard O'Keeffe and Niall Hill
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-44-4.
Price: £69.

Working within the law (second edition)
Frances Meenan
Oak Tree Press, Merrion Building, Lower Merrion Street, Dublin 2.
ISBN: 1 86076 073 2.
Price: £26.95.

Probate law and practice
Albert Keating
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-90-8.
Price: £89.

Contract law in Ireland (fourth edition)
Robert Clark
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-83-5.
Price: £89.

The capital markets: Irish and international law and regulations
Agnes Foy
Round Hall (1998),
43 Fitzwilliam Place, Dublin 2.
ISBN: 1-899738-54-1.
Price: £98.

United States. It is likely that, for the foreseeable future, much reliance will be placed on such case law, particularly from the Australian and Canadian systems, both of which influenced the Irish Act.

As FOI directly challenges administrative secrecy, the Act has come into close contact with an array of statutes which for various reasons impose prohibitions on disclosure. These are grounded on concerns of confidentiality and privilege, and typically occur where State bodies are being established. The author very helpfully devotes a chapter to this problematic interface, which in no small manner constrains disclosure of official information. The author also dedicates substantial attention to three specific instruments more closely related to the *FOI Act*: the *Data Protection Act*, the *National Archives Act* and the *Access to Information on the Environment Regulations*.

For those with an academic interest, the author outlines the background to the *FOI Act* and the development of FOI in other common-law jurisdictions. The comparative credentials of the book are evidenced by the detail in the tables on international cases and legislation. As concerns Ireland, while there is very little case law in the pipeline, a large volume of FOI dispute resolution is being conducted by the Information Commissioner, all of whose decisions are quickly published – although somewhat after the publication of this work. It is probably through the commissioner's office that most FOI developments will take place in the coming years, and readers of this book will gladly welcome their incorporation into a future edition. G

David Meehan is a Dublin solicitor and environmental consultant.

Powers of Attorney Act, 1996

Brian Gallagher. Round Hall Sweet & Maxwell (1998), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-112-9. Price: £19.95.

This annotation of the relevant legislation concerning powers of attorney reproduces in full the *Powers of Attorney Act, 1996*, with excellent commentaries on each section by Brian Gallagher, who also refers to relevant case law. The book includes the statutory instruments made under the Act, which among other things prescribe the form of an enduring power of attorney, and reproduce the practice direction relating to the registration thereof.

The Act, while providing for an enduring power of attorney, also makes certain amendments and improvements to the law relating to powers of attorney generally and amends the *Conveyancing Act 1881*. Gallagher sets out how the law, as contained in the *Conveyancing Acts 1881 and 1882*, has been amended by the *Powers of Attorney Act, 1996*. He also suggests the best practice in relation to the execution of deeds by the donee of a power of attorney, which is as follows:

- The deed is prepared in the name of the donor
- The attestation clause states that the deed is executed on behalf of the donor by the attorney
- The donee executes by writing in his or her own hand: '*AB (the donor) by his or her attorney CD (the donee)*' who then signs his or her own name.

In relation to the revocation of powers of attorney, he states: 'The donor can revoke it at any time unless it is an irrevocable power. It appears that the revocation can be oral, in writing or by deed, but it is ineffective until it is received by the donee'.

He also warns practitioners that anyone relying on an enduring power should check the register of Registered Enduring Powers of Attorney in the Wards of Court Office to ensure that the registration of the enduring power has not been revoked. And he reminds us that section 5 of the *Family Law Miscellaneous Provisions Act, 1997* makes a couple of amendments to the legislation regarding ordinary powers of attorney.

In relation to enduring powers of attorney, Gallagher confirms that while the Act permits the attorney to make personal care decisions, these decisions do not empower the donee to make decisions regarding the donor's medical treatment. In relation to the regulations on the format of enduring powers of attorney, he warns practitioners that the regulations are quite technical and ought to be followed slavishly.

If the form of the power of attorney does not follow the directions set out in the regulations, then a court application may be required to confirm its validity. As he points out: 'No practitioner will want to run the risk of having to make an application to the court (and presumably pay the costs thereof) because he or she was not careful enough in preparing the enduring power'.

On the subject of gifts, he confirms that in common law an attorney has no power to make gifts or to make a will for the donor. However, section 6(5) of the *Powers of Attorney Act, 1996* gives the donee the power to make certain gifts in certain circumstances. If an attorney is to be given a power to make gifts as authorised by the Act, then this power should be specifically inserted in the enduring power of attorney document as drafted.

Gallagher also clarifies that it is possible to make one enduring power of attorney conferring on a certain attorney the power to make personal care decisions, and a second enduring power conferring on a different attorney the power to make decisions relating to the 'affairs' of the donor.

The book contains the practice direction for the registration of an enduring power of attorney. However, in due course rules of court will provide for a simpler application for registration to be made to the Registrar of Wards of Court.

In the first schedule, part A, of the explanatory memorandum to the *Enduring Powers of Attorney Regulations 1996* (SI No 196/1996), it is stated that where the attorneys are appointed jointly they must all act together and cannot act separately; but when they are appointed jointly and severally, they can all act together, but they can also act separately if they wish. If the enduring power does not specify how the attorneys are to act, they shall be deemed to have been appointed to act jointly.

There are many more very helpful comments and points which clarify the legislation in this extremely useful and practical book. It is essential reading for anyone with queries relating to the *Powers of Attorney Act, 1996* and the regulations made under it. G

John Costello is an associate solicitor with the Dublin solicitors' firm Eugene F Collins.

Report on Council meeting held on 1

Patrick A Glynn

The Council made a presentation to Patrick A Glynn to mark his retirement from the Council after 21 years of distinguished service.

New Council members

The Council welcomed its newly-elected members, Stuart Gilhooly and Thomas Murran, together with the new nominees from the SLA, Patrick Casey and Patricia Harney, and from the DSBA John O'Connor, and wished them well for their term of office.

Taking of office by President and Vice-Presidents

The outgoing President, Patrick O'Connor, thanked the Council, the Director General and staff of the Society, his wife Gillian and their four children for their tremendous support during the past year. He expressed his best wishes to the incoming President, Anthony Ensor, who was then formally appointed to office by the Council. Mr Ensor said that he was deeply honoured to have been appointed President. On behalf of the Council and the profession, he paid tribute to Patrick O'Connor who had represented the profession with energy and enthusiasm during his year of office and who had projected a very high profile for the profession during the previous 12 months.

The Senior Vice-President, Ward McEllin, and the Junior Vice-President, Owen Binchy, both then took office and pledged their support to the President and the Council for the coming year.

Motion: stage payments

'That this Council is opposed to the practice by some builders/ developers of including in building contracts for new houses that the purchase price be paid by way of stage payments and requests the Minister for the Environment and Local Government to make the necessary regulations to prohibit this.'

Proposed: John B Harte
Seconded: Sean Durcan

The Council considered examples of circumstances in which stage payments were used, together with a summary of the contents of letters received from members of the profession in relation to the motion. John Harte said that the principal reasons given by those in favour of stage payments focused on the benefits to builder clients. Stage payments operated to the benefit of builders, who obtained full payment without any risk, and it was the strongly-held view of the Conveyancing Committee that they were unfair and biased in favour of builders. Sean Durcan said that stage payments increased work for solicitors and profit for builders. While there might have been some justification for the system when interest rates were high, this justification no longer pertained.

Simon Murphy said that, under the stage-payments system, builders received 90% of the cost of the house prior to completion, with the purchasers often having to wait 18-24 months for full completion. The system operated to the detriment of purchasers and he fully supported the motion. The Council unanimously approved the motion and it was agreed that the Director General would write both to the Minister for the Environment and Local Government and the Director of Consumer Affairs.

Motion: apprentices' salaries

'That this Council recommends that, with effect from 1 January 2000, apprentices should be paid the following salary:

- *£155 per week for the first six months following completion of the professional practice course*
- *£235 for the remaining period spent in the office of the master;*

and that the recommended salary for apprentices' pre-professional practice course should be raised to £135 per week.'

Proposed: Owen Binchy
Seconded: Michael Peart

Report on Council meeting held on 1

Law Society of Northern Ireland

The Council approved the appointment of Catherine Dixon, Colin Haddick, John Meehan, Alistair Rankin and John Neill as nominees of the Law Society of Northern Ireland to the Council for 1999/2000.

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

John Fish reported on the meeting with the Minister for Justice, Equality and Law Reform to discuss the proposed designation of solicitors. At the outset, the President had outlined the strongly-held views of the Council and the profession in opposition to any erosion of the principle of solicitor/client confidentiality. The Director General had given a comprehensive account of the basis upon which the Council objected to the proposal and had emphasised that, if solicitors were obliged to report suspicions in relation to their clients, this would represent a fundamental breach of the solicitor/client relationship. Mr Fish had outlined developments at a European level and had queried the wisdom of designation at a time when a new EU directive was being considered.

Deputy Director General Mary Keane had concentrated on the fact that section 31 already made it an offence for anyone, including a solicitor, to engage in or facilitate money-laundering and that the Minister had the power, under section 32(10A), to exempt solicitors from any of the obligations imposed by the Act, particularly the reporting obligation under section 57. The meeting had concluded with an assurance from the Minister that he would be in contact in due course.

Practising certificate fee for 2000

The Council discussed the various elements of the practising certificate fee for 2000 and approved a full-rate fee, inclusive of membership, of £1,300, with an equivalent fee of £1,082 for those less than three years' qualified.

Library and restaurant facilities

The Director General reported that, because of the developments in education and the increased numbers of students on site after October 2000, there was a requirement for increased restaurant facilities, study areas and computer terminals in the south wing of the Blackhall Place premises. As a result, it had been agreed by the Finance Committee to relocate the library to the existing lecture hall, with a mezzanine floor, thereby doubling the available space for both

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The Council unanimously approved the motion.

Motion: *Establishment directive*

'That this Council agrees (a) to place before the Minister for Justice, Equality and Law Reform the papers marked 'A' and 'B' in the documentation on Directive 98/5/EC (the Establishment directive) enclosed herein and for a working committee of the Society, in conjunction with the King's Inns, to commence discussions with officials of the said Ministry with a view to bringing forward a statutory instrument on this matter, and (b) in particular, to accept the principal recommendations of the EU and International Law Committee set out on the paper marked 'C' attached herein.'

Proposed: Michael Irvine
Seconded: Michael Carroll

Michael Irvine outlined the basis for each of the recommendations of the EU and International Law Committee and each was approved, in turn, by the Council. It was agreed that Mr Irvine should make contact with the Bar Council and that the working group should commence discussions with the department.

Revenue audits of solicitors: access to client account information

The Council discussed the outcome of representations made by the Taxation Committee to the Revenue Commissioners in relation to information sought in the course of audits of solicitors' practices. A number of recommendations from the committee, which would provide the necessary verification of transactions while preserving the confidentiality of client information, were approved.

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

The Council noted that a meeting had been scheduled with the Minister for Justice, Equality and Law Reform to discuss the Society's concerns regarding the proposed designation of solicitors under section 32 of the *Criminal Justice Act, 1994*. It was agreed that the Society should be represented at the meeting by the President, the Director General, John Fish and Deputy Director General Mary Keane.

Professional indemnity insurance

Ward McEllin sought, and obtained, the Council's approval for amending *Professional indemnity insurance regulations* (a) updating the definition of 'legal services' to reflect the amendment made by the *Investor Compensation Act, 1998*, and (b) reducing the mandatory period of run-off cover where a solicitor was ceasing practice from six years to two years. He explained that the purpose of the latter amendment was to equalise the requirements for solicitors within and outside the assigned risks pool. However, the Society would emphasise the prudence of any solicitor retiring and discontinuing his practice to continue run-off cover for at least six years.

Land Registry

John Harte reported that a new Land Registry fees order was due to come into effect in February. One of the provisions of concern to the Conveyancing Committee was the introduction of penalties where dealings were withdrawn and re-submitted. He also reported that the Land Registry had established a user group to discuss various issues, including difficulties arising from the 75,000 dealings in arrears. The Registrar of Titles had indicated that, from January to April 2000, the registry would not respond to letters from solicitors enquiring as to the state of their dealings and priority would be given to the issuing of copy folios.

Approval of motions passed at the annual general meeting

As required under bye-law 4(10)(a), the Council approved the motions which had been passed at the annual general meeting held on the previous evening. G

10 December 1999

members and students. Study areas and computer terminals would also be provided, and the restaurant facilities were to be expanded into the existing library area. As the Education Centre was opening in October 2000, the work on the south wing was likely to commence in February 2000.

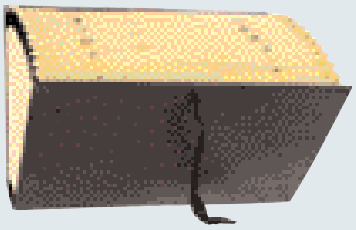
The Director General confirmed that the majority of the required expenditure was already provided for in the education budget. It was consequential on the decision to construct the new Education Centre envisaged in the decision which was made by the profession to accept the *Report of the Education Policy Review Group*.

Company Law Reform Group

On behalf of the Council, the President extended congratulations to Tom Courtney, solicitor, on his appointment as chairman of the Company Law Reform Group, which represented a significant honour for the profession.

Conveyancing

The Vice-Chairman of the Conveyancing Committee, Philip Joyce, reported that a new fees order for the Registry of Deeds would come into force on 1 February 2000. Fees for registrations were being increased to £35, with a £10 fee for re-submission of a deed. G



Committee reports

PRACTICE MANAGEMENT

Turnover of support staff

The Practice Management Committee is concerned at the high turnover of support staff in solicitors' offices, particularly in the Dublin area, and is interested in hearing from members of the profession with regard to the provision of training for support staff in solicitors' offices. If practitioners have engaged the services of training providers in the past, the committee is keen to hear of their experiences, particularly with regard to the quality of training provided and may also be interested in the possibility of compiling a database of training providers at a future date. If you would like to share your views on this subject, please contact the secretary of the Practice Management Committee at the Law Society.

Practice Management Committee

Safety statements

The Practice Management Committee has produced a draft safety statement for solicitors' offices. As you are aware, this document is a requirement under the health and safety legislation. It sets out the health and safety procedures that a solicitor's office might adopt and records who is responsible for their implementation.

The safety statement is a draft only and should be adapted for use by each office in accordance with the legislation and their own circumstances. The purpose of producing the draft is to remind practitioners of the necessity and good sense of having one and to give them a starting point in the drafting of their own safety statement.

The draft is available on the Law Society website in the members' area under *What's new*. Claire O'Sullivan (c.osullivan@lawsociety.ie) can provide printed copies and assist with queries.

Anthony Brady, Practice Management Committee

REGISTRAR'S

Section 68 letters

The Registrar's Committee would like to remind solicitors of their obligations under section 68(1) of the *Solicitors (Amendment) Act, 1994*. Failure to comply with the statutory obligation to confirm details of costs in writing will be taken into account by the committee if a complaint is made by the client about fees.

Solicitors are also reminded of the recommendation made by the Independent Adjudicator of the Law Society that as a matter of good practice solicitors should confirm their clients' instructions in writing as soon as is practical. This communication could be combined with the section 68 letter.

BUSINESS LAW

Guide to the *Consumer Credit Act, 1995*

Practitioners should note that the Business Law Committee has prepared a guide to the *Consumer Credit Act, 1995*. The guide is available for consultation on the members' area of the Law Society website under *Professional information*. To access the guide, simply click on the members' area icon on the Law Society homepage. Enter your solicitor number preceded by an 's', together with your surname on the log-in page. The members' area icon can be found on the left navigation bar. If you have any difficulty, contact Claire O'Sullivan at c.osullivan@lawsociety.ie or tel: 01 672 4800.

Companies (Amendment) Bills, 1999: update

Nos 1, 2 and 3 are enacted: No 3 as the *Companies (Amendment) Act, 1999* and Nos 1 and 2 as the *Companies (Amendment) (No 2) Act, 1999*. No 4 is not enacted yet.

Companies (Amendment) Act, 1999. This deals with stabilisation rules on public offerings of shares and was brought in with the Bord Telecom Éireann plc flotation in mind.

Companies (Amendment) (No 2) Act, 1999. This Act was passed in December 1999 and is in the process of being implemented on a gradual basis. Parts I, II and III will be in force by 21 February. Part I is the introductory part, part II is concerned with examinerships, and part III removes the requirement for the audit – but not accounts – of very small companies. Part IV was not, as at 21 January, the subject of any commencement order.

Part IV of the No 2 Act. When enacted, this will have the following consequences:

- A requirement to specify exactly what a new company will do (thereby rendering it difficult, if not impossible, to form shelf companies)
- A requirement for new companies to have an Irish director *or* an Irish activity *or* a bond for £20,000
- An ability, at last, for resigning directors to notify the fact of their resignations to the Companies Registration Office where the company does not
- The CRO being able to strike companies off the register more easily.

Irish *Listing rules*

The *Green pages*, officially the *Notes on the listing rules* have been updated as of 3 December 1999. They are available in hard copy from the Irish Stock Exchange, 28 Anglesea Street, Dublin 2 and at *http://www.ise.ie/search/frgeneral.htm*.

Stamp Duty Consolidation Act, 1999

This is now enacted. The law has not changed but is restated.

Business Law Committee

CONVEYANCING

Registry of Deeds (Fees) Order 1999 (SI 346/1999) and *Land Registration (Fees) Order 1999* (SI 343/1999)

The Conveyancing Committee regrets that the Minister for Justice did not consult the Law Society prior to signing these statutory instruments which contain provisions that, we believe, will cause hardship to house purchasers and difficulties to solicitors. The statutory instruments provide for a substantial increase in Registry of Deeds fees (which came into effect on 1 February) and Land Registry fees (coming into effect on 1 May) which will not be welcomed by house purchasers at this time of grossly inflated house prices.

Land Registration (Fees) Order

There is no longer a maximum fee per transaction (previously £250). In some cases, the fees have more than doubled. This increase in fees can only be a further inflationary factor in house prices which will be a further

burden on house purchasers. For example, a property costing £40,001 will attract a fee of £300, together with a further fee of £50 if a new folio is to be opened, and a fee of £100 if there is a mortgage – total: £450. Most people would not even be able to acquire a site for a house for £40,000 or less, with the result that nearly all purchasers coming in even at the lower end of the fees scale will pay a minimum of £450 for a transaction currently costing £250. The fee for registering a house costing over £200,000 with a mortgage has gone from £250 to £550.

In relation to a voluntary transfer, the present fee is £30 and this has been more than doubled to £70. If the voluntary transfer concerns part of a folio (as would be quite common with the transfer of sites in rural areas from parent to child), a further fee of £50 for opening the new folio will be chargeable, bringing the total sum to £120 – that is, four times the previous fee. If the transferee then takes a loan to build a house, there will be an additional fee of £100 – a total of £220.

The fee for registration of a transfer order under section 90 of the *Housing Act, 1966* has been increased by a multiple of 14 from £5 to £70 – again, this is a measure which the committee would be concerned would cause difficulty to people on low incomes who are likely to avail of such transfers. The new folio fee of £50 and a mortgage fee of £100 would also be chargeable where a purchaser is getting a loan.

The fee for a certified copy of a map showing rights of way has been increased from £20 to £50. This is a significant fee when one thinks of how frequently clients in rural areas require maps of their rights of way, and again this is something the committee is most concerned about.

Item 22 of the *Land Registration (Fees) Order* is a new charge of £250 for approving a scheme map for new building estates, which will be yet another cost which builders will presumably pass on to purchasers of new houses, together with the further additional fee of either £500 or £1,000 should the scheme map have to be revised at a later date.

NOTE

Practitioners are advised to obtain copies of the new fees orders and start advising clients as soon as possible of the new rates. Solicitors should ensure that provision is made now in section 68 letters or draft/estimates of costs and outlays for the new fees in transactions due to be lodged for registration after 1 May 2000 so that they will be able to comply with their undertakings in certificate of title cases. Note that the new fees apply even if the transaction was closed prior to 1 May 2000 if application for registration is made after that date.

The committee also takes exception to items 24 and 25. Item 24 imposes a penalty on the applicant of either £50, or the fee already paid, whichever is the lesser, where an application for registration is refused, abandoned or withdrawn. Item 25 imposes an extraordinary penalty when the only mistake made by the applicant is to pay a fee which exceeds the correct fee. It must be unprecedented for a statutory service provider to impose such penalties on its consumers. The committee strenuously opposes penalties levied for administrative inconvenience.

Registry of Deeds (Fees) Order

The provision in this fees order to which the committee takes particular exception is the new head of charge relating to the recomparison of deeds. This head of charge never previously existed, going right back to 1707. There was always one charge to register a deed, being stamp duty on the memorial. We can only assume that the reason for this new head of charge is to impose a penalty when the Registry of Deeds raises a query on the memorial. While the committee understands that some memorials are queried for a valid reason, it is the experience of practitioners that memorials are also sometimes queried for reasons which are not valid. While there may, perhaps, be some justification for imposing a charge where a full recomparison is necessary, in the view of the committee there is no justification for making an extra charge where there are minor queries, and certainly no justification where the queries are themselves incorrect. We have no doubt but that this charge will cause a degree of friction.

In our view, the imposition of this penal charge, which is incidentally quite anti-consumer, is entirely unjustified and is the wrong way to go about improving the efficiency of the Registry of Deeds. The big problem in the registry, as all solicitors will no doubt be aware, is the cumbersome format of the memorial prescribed by the 1707 and 1832 Acts. The solution is to simplify the form of memorial. The Law Society has sought amending legislation frequently in its discussions with the Registrar of Titles. Legislation empowering the Minister for Justice to prescribe a simpler form of memorial would be very straightforward, and is long overdue.

Co-operation

The committee is very anxious that conveyancing should be simplified rather than being made more complicated and, indeed, confrontational. Over the last 40 years or so, the burden of conveyancing has been greatly increased. The committee very strongly resists the further burdens which these fees orders impose. The Law Society and the Registrar of Titles have always enjoyed very good relations, and have always worked in close co-operation. The imposition of the penalties by the two fees orders will, we have no doubt, lead to resentment by solicitors and their clients. We believe the imposition of the penalties is not the way to secure co-operation – quite the contrary.

While the committee appreciates the improvements which have been made by the present registrar, these increased fees and new heads of charge are imposed at a time when dissatisfaction among the profession with the services provided by the Land Registry – and particularly the delays in providing them – is running at a high level. The registries have asked the profession to be patient with the current restrictions on telephone access and in dealing with routine enquiries while they try to catch up on a backlog of dealings awaiting registration. In addition, the Land Registry has sought the co-operation of the profession in using its experimental form 17. To date this has resulted in a huge increase in the number of dealings rejected by the registry, much to the increased frustration of the profession which sees no latitude whatever being exercised by registry staff in the use of the new form. The profession is asked on the one hand to embrace new systems while on the other it is also asked to bear the brunt of inadequate lead-in times for the implementation of these systems with little or no transitional arrangements or allowances made for a familiarisation period on the implementation of these new systems. The profession and the public are, in the view of the committee, entitled to ask what they will get in return, not only for their forbearance in the face of long delays but also for the current increase in fees, and they are also entitled to know when they may expect to see the long overdue improvements in the services offered by the registries and the elimination of delays in the provision of those services. Unfortunately, the increases and new heads of charge have been imposed with no corresponding guarantees of increased staffing,

improved service or indeed new services, and the committee feels that this is indeed regrettable.

The Director General has written to the Minister for Justice urging him to reconsider the two fees orders, with a view to simplifying the heads of charge, removing the penalty provisions and moderating the increases. With regard to the Registry of Deeds, the Minister has been advised that the introduction of a simple Bill to amend the 1707 and the 1832 Acts to provide for a simplified form of memorial would greatly alleviate the difficulties in relation to the present form of memorials and that the committee would be very willing to assist in the preparation of this legislation.

Pending receipt of a response from the Department of Justice, the committee is of the view that the profession and its individual members at local level should make it clear to clients and to local public representatives that the profession was not made aware of the level of registration fee increases being sought or of the new heads of charge until after the fees orders were published, and that it strongly opposes them.

It is to be hoped that the Minister will reconsider the fees orders as requested and the Society will keep members updated on any progress on this front. In the meantime, practitioners who experience difficulties with the Land Registry or the Registry of Deeds, either in relation to delays in service or in relation to the new fees orders, should contact the Law Society, c/o the Conveyancing Committee, as the Society would like to have an indication of the level of difficulties being experienced by the profession as a whole.

Brian Gallagher, Chairman, Conveyancing Committee

PRACTICE NOTES

Dublin Circuit Criminal Court call-over

Solicitors who have cases listed for the above court are reminded that it is essential that they attend the Wednesday call-over of cases for hearing on dates starting the following Monday week. Solicitors have a duty to the court to advise as to the status of such cases. The call-over takes place in Court no 26. The recent improvements in the listing system have been widely welcomed by all those involved in the process. The co-operation of all concerned is required if these improvements are to be sustained.

Criminal Law Committee

Legal Aid Board: fees payable to private practitioners

The Law Society has been advised by the Legal Aid Board that the Department of Finance has sanctioned an increase in fees payable to private practitioners for legal aid work in family law cases in the District Court and in refugee cases. The new fees are £143.37, with a fee of £35.85 for each subsequent day. The unanimous recommendation of the Family Law and Civil Legal Aid Committee was that the Society should not endorse the participation of private practitioners at this level of fee. The Society believes that the fee does not reflect in any way the amount of time involved in the preparation of a family law matter in the District Court or an appeal against a decision of the Department of Justice, Equality and Law Reform to refuse recognition of refugee status.

The Society accepts that it is a matter for each individual solicitor to decide whether or not to participate in the scheme, but the Society is encouraging solicitors to withhold their support pending the establishment of a realistic fee structure.

Family and Civil Legal Aid Committee

LEGISLATION UPDATE: 16 NOVEMBER – 31 DECEMBER 1999

ACTS PASSED

Appropriation Act, 1999
Number: 34/1999
Explan-memo: No
Contents note: Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act, 1965*; makes certain provisions in relation to financial resolutions passed by Dáil Éireann on 1/12/1999, and provides for the payment to the Minister for Health and Children of certain monies collected in respect of the duty of excise imposed by s2 of the *Finance (Excise Duty on Tobacco Products) Act, 1977*
Date enacted: 16/12/1999
Commencement date: 16/12/1999

Companies (Amendment) (No 2) Act, 1999
Number: 30/1999
Explan-memo: Yes, with *Companies (Amendment) (No 2) Bill, 1999*
Contents note: Amends the *Companies (Amendment) Act, 1990,* relating to examinership; amends the *Companies Acts, 1963 to 1990* in relation to the removal of the statutory audit requirement for certain private limited companies and partnerships; prohibits the formation of a company unless it appears to the Registrar of Companies that the company will carry on an activity in the state; requires one of the directors of a company to be a person resident in the state; amends s240 of the *Companies Act, 1990* and s16 of the *Investment Limited Partnerships Act, 1994* and provides for related matters
Date enacted: 15/12/1999
Commencement date: 21/12/1999 for part I of the Act (preliminary and general) and certain provisions of part III (ss33(2), 33(3) and 33(7)) (request not to avail of exemption from statutory audit requirements being provided for in this part) and certain provisions of part IV (ss40, 41, 52 and 53, and s54 in part) (miscellaneous provisions); 1/2/2000 for part II of the Act (amending the law in relation to examiners) and the second schedule in so far as it relates to part II; 21/2/2000 for the remaining provisions of part III (removal of statutory audit requirements); 24/12/2000 for s54(1)(a) insofar as it is not already in operation (per SI 406/1999)

Fisheries (Amendment) Act, 1999
Number: 35/1999
Explan-memo: Yes
Contents note: Amends the *Fisheries (Amendment) Act, 1980* in relation to the composition and functions of the Central Fisheries Board and Regional Fisheries Boards, and related matters; amends the *Fisheries (Amendment) Act, 1991* to provide for the appointment of management committees of Fisheries Co-operative Societies and for related purposes; makes consequential amendments to the *Fisheries (Consolidation) Act, 1959*; amends the *Marine Institute Act, 1991*, and provides for related matters
Date enacted: 17/12/1999
Commencement date: 20/12/1999 for all sections of the Act, except s23 (per SI 419/1999)

ICC Bank Act, 1999
Number: 29/1999
Explan-memo: Yes

Contents note: Makes the necessary legislative provisions to facilitate the sale of ICC Bank plc. Provides for the disposal by the Minister for Finance of shares in the bank and the issue of shares in it for the purposes of the employee share ownership trust. The Act also makes provision in relation to certain guarantees of the borrowing of ICC Bank, provision for additional borrowing by the bank and for the repeal of the *ICC Bank Acts, 1933 to 1997*, as well as certain other related matters. The Act also provides for additional borrowing by ACC Bank plc
Date enacted: 15/12/1999
Commencement date: Commencement order/s to be made per s10(3)

Intoxicating Liquor Act, 1999
Number: 32/1999
Explan-memo: Yes
Contents note: Amends and extends the *Licensing Acts, 1833 to 1997*, and the *Registration of Clubs Acts, 1904 to 1995*, to make provision for licensed premises to remain open until 1.30am on 1/1/2000 for the celebration of the Millennium
Date enacted: 15/12/1999
Commencement date: 15/12/1999

Stamp Duties Consolidation Act, 1999
Number: 31/1999
Explan-memo: Yes
Contents note: Consolidates the legislation relating to stamp duties and the management of those duties
Date enacted: 15/12/1999
Commencement date: 15/12/1999

Temporary Holding Fund for Superannuation Liabilities Act, 1999
Number: 33/1999
Contents note: Provides a temporary holding fund for exchequer moneys set aside in 1999 – pending the enactment of detailed legislation – providing for the establishment and on-going management of two separate funds, one for social welfare pensions and one for public service pensions
Date enacted: 16/12/1999
Commencement date: 16/12/1999

SELECTED STATUTORY INSTRUMENTS

Circuit Court Rules (No 1) (Organisation of Working Time Act, 1997) 1999
Number: SI 373/1999
Contents note: Insert a new order 63B into the *Circuit Court rules 1950* which prescribes procedures for applications brought under s29 of the *Organisation of Working Time Act, 1997*
Commencement date: 6/12/1999

Circuit Court Rules (No 2) (Data Protection Act, 1988) 1999
Number: SI 374/1999
Contents note: Insert a new order 63C into the *Circuit Court rules 1950* which prescribes procedures for appeals brought under s26 of the *Data Protection Act, 1988*
Commencement date: 25/11/1999 (date of signing of rules by Minister for Justice)

Criminal Justice (Legal Aid) (Amendment) Regulations 1999
Number: SI 385/1999
Contents note: Provide for an increase of 1.5% with effect from 1/7/1999 and 1% with effect from 1/4/2000 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 to solicitors and barristers in respect of essential visits to prisons and other custodial centres (other than Garda Stations) and for certain bail applications

Health (In-Patient Charges) (Amendment) Regulations 1999
Number: *SI 401/1999*
Contents note: Amend the *Health (In-Patient Charges) Regulations 1987* (SI 116/1987) – as amended by the *Health (In-Patient Charges) (Amendment) Regulations 1997* (SI 510/1997) – by raising the daily charge for in-patient services and the maximum amount payable in any period of 12 consecutive months to £26. Exemption for medical card holders and hardship
Commencement date: 1/1/2000

Health (Out-Patient Charges) (Amendment) Regulations 1999
Number: SI 402/1999
Contents note: Amend the *Health (Out-Patient Charges) Regulations 1994* (SI 37/1994) – as amended by the *Health (Out-Patient Charges) (Amendment) Regulations 1997* (SI 509/1997)) – by raising the charge to £25 in respect of attendance at accident and emergency or casualty departments where the person concerned has not been referred by a medical practitioner. The charge will not apply where such an attendance results in hospital admission. Exemption for medical card holders and hardship
Commencement date: 1/1/2000

Land Registration (Fees) Order 1999
Number: SI 343/1999
Contents note: Provides for increases in Land Registry fees from 1/5/2000; revokes the previous fees order (SI 363/1991)

Local Government (Planning and Development) (No 2) Regulations 1999
Number: SI 431/1999
Contents note: Provide for a number of matters under the *Local Government (Planning and Development) Act, 1999*. Both the Act and the regulations came into force on 1/1/2000

Registry of Deeds (Fees) Order 1999
Number: SI 346/1999
Contents note: Prescribes fees payable in the Registry of Deeds
Commencement date: 1/2/2000

Road Traffic Act, 1994 (Section 17) Regulations 1999
Number: SI 326/1999
Contents note: Prescribe the form of the statements to be produced by an apparatus for determining the concentration of alcohol in the breath pursuant to s17 of the *Road Traffic Act, 1994*, and prescribe the manner in which the statements are to be completed by a member of an Garda Síochána
Commencement date: 22/10/1999

Road Traffic (National Car Test) Regulations 1999
Number: SI 395/1999
Contents note: Specify the vehicles liable for tests, exemptions and operative dates; require a test disc to be displayed on a liable car and a test certificate to be provided when taxing a car; prescribe procedures in relation to car testing
Commencement date: 4/1/2000

Solicitors Acts, 1954 to 1994 (Professional Indemnity Insurance) (Amendment) Regulations 1999
Number: SI 362/1999
Contents note: Substitute a new definition of 'legal services' for the definition contained in regulation 2(a) of the Solicitors Acts, 1954 to 1994 *(Professional Indemnity Insurance) Regulations 1995* (SI 312/1995) to make it consistent with the definition contained in s2 of the *Solicitors (Amendment) Act 1994*, as amended by the *Investment Compensation Act, 1998;* amend the definition of 'run-off' cover in regulation 2(a) to provide that the mandatory period of run-off cover be reduced from six years to two years
Commencement date: 1/1/2000

Prepared by the Law Society Library

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Personal injury judgments

Public liability – forklift colliding with person – injury to back and depression – fruit and vegetable dealer and farmer – credibility of plaintiff – issues of law relating to assessment of damages – income tax affairs – legal questions in relation to loss of earnings

CASE

***Michael McNeela v Sam Dennigan & Co Ltd and Laurence Mooney*, High Court, before Ms Justice Laffoy, judgment of 4 May 1999.**

THE FACTS

Michael McNeela, 50 years of age, was standing on the road alongside the pavement at St Mary's Lane near the fruit and vegetable market in Dublin, at about 10.15am on 28 August 1995, when a forklift came from behind him and collided with him. The forklift went over his left foot and knocked him to the ground. Immediately following the accident, Mr McNeela was taken to the Mater Hospital where he was x-rayed and a soft-tissue injury was diagnosed. The same day, Mr McNeela was brought back to his home in Castlebar. The following week, he attended his general practitioner who had known him for approximately 30 years. The general practitioner found him in great pain, particularly affecting his left foot, his ankle, his lower back and his left hip. For three or four days in a row, the general practitioner administered a morphine injection to Mr McNeela and subsequently the morphine was replaced by a strong dosage of painkillers.

The GP referred him to a consultant orthopaedic surgeon in Galvia Hospital. The orthopaedic surgeon's clinical diagnosis was of acute twisting and a muscular injury to Mr McNeela's lower back. X-rays revealed some degenerative change at the base of the lumbar spine which pre-dated the accident and which had become symptomatic as a result of the injury.

Prior to the accident, Mr McNeela had traded in fruit and vegetables. He travelled from Castlebar to Dublin twice weekly to buy produce at the market. He sold the produce as a casual trader in the town of Castlebar from a pitch close to the square. He traded on six days of the week during the summer months and five days during the winter. He had been doing so since 1989. In addition, he owned a 32-acre farm which he had inherited. He extended the farm by purchasing 14 additional acres of land in 1994.

Subsequently, in January 1996, an MRI scan revealed extensive degenerative changes at the L5/SI disc area with early degenerative changes at L4/L5 level but no direct signs of nerve root entrapment, no significant bulging or protrusion of the disc, no signs of nerve root impingement and no facet joint degeneration. The orthopaedic surgeon in a report in January 1996 reported that the overall diagnosis was a soft-tissue injury to the lower lumbar spine aggravating a degenerative disc at the base of the lumbar spine, combined with left sacro-iliac strain.

Six weeks after the accident, Mr McNeela developed depression. In June 1996, the GP referred him to the chief psychiatrist in St Mary's Hospital, Castlebar. The chief psychiatrist in his report dated 1 November 1996 stated that since the accident Mr McNeela had become extremely depressed. He had a very gloomy view about his future and his ability ever to return to work or lead any kind of normal life. At times he felt life was not worth living.

In June 1996, the GP referred Mr McNeela to a consultant urologist in connection with Mr McNeela's complaint of erectile dysfunction which manifested itself in January 1996. The consultant urologist concluded that the cause of his impotence was psychogenic – mentally induced rather than physical. When *viagra* came on the market, the GP prescribed it for Mr McNeela, apparently without success.

Liability was initially denied, but during the course of the trial the defendants acknowledged that the forklift should not have collided with Mr McNeela. Issues remained of contributory negligence. Further, Mr McNeela's credibility was challenged on the basis that what was involved was a mere minor injury.

THE JUDGMENT

Having outlined the facts as set out above, Laffoy J stated that, in the light of the defendants' attack on Mr McNeela's credibility, she found it necessary to outline the evidence in greater detail than would normally be the case in an *ex tempore* judgment of this nature.

The judge referred to Mr McNeela's examination by medical experts for the defendants. One of those experts was Professor TJ Fahy, consultant psychiatrist, University College Galway, who examined Mr McNeela in March 1997. In his report, Professor Fahy stated that, assuming the main elements of Mr McNeela's story to be true, the extent of the psychiatric consequences of the injury seemed to be confined to depressive symptoms, reactive

to the extent of painful motor disability. Professor Fahy noted that it was not unusual for impairment of sexual drive to be associated with severe chronic painful motor disability when there is no neurological or neurodiagnostic evidence of direct compression or other interference with the pudendal nerves.

The judge noted that throughout 1997 and 1998 Mr McNeela continued to have his physical symptoms investigated. He was also investigated by Mr O'Laoire, consultant neurosurgeon in the Mater Hospital on a number of occasions, and a repeat MRI scan in August 1997 revealed nothing new and a CT myleogram showed no evidence or suspicion of nerve root compression.

Mr McNeela also attended a consultant anaesthetist for injections for pain, which had given him short-term relief. His orthopaedic surgeon in a report in September 1998 stated he would not advise surgical treatment, particularly discectomy, as there was no major protrusion into the spine and repeat investigations did not show any evidence of nerve compression. The surgeon's main advice was to persist with a conservative exercise programme.

Mr McNeela's anti-depressant medication was changed on a number of occasions because of lack of response. He was then put on tranquillisers and, on one occasion, a major tranquilliser, but he showed little progress. In a report in February 1998, Professor Fahy for the defendants noted that Mr McNeela's condition was unchanged. He appeared depressed in relation to two factors: one was his persistent painful disability affecting his lower back and left side, the second his complaint of total impotence. He noted that the depressive component of Mr McNeela's complaints was not likely to recover completely as long as he continues to have disabling pain. Similarly, if it were a fact that he was completely impotent, the consultant noted that it was difficult to see how he could be otherwise than severely depressed indefinitely. In oral testimony, Professor Fahy expressed a view that the diagnosis of Mr McNeela's sexual problem as being psychogenic was 'highly speculative'.

The judge noted that Mr McNeela had been driving a motor car since June 1996 but he had not driven a truck or lorry, and the general practitioner's evidence was that he would not certify him as fit to drive a truck.

One of Mr McNeela's sons was running the farm reluctantly on the promise of being paid for his labours. In December 1998, due to financial pressure, Mr McNeela sold the 14 acres he had previously purchased.

The judge referred to a number specific matters which were raised as being indicative of Mr McNeela's alleged lack of credibility. It was alleged that he had a drink problem before the accident. Mr McNeela admitted to one drinking binge and the general practitioner confirmed he had been a 'bad boy' on occasion. The judge was satisfied that drink had not been a factor in Mr McNeela's post-accident psychiatric condition.

It was also alleged that Mr McNeela had matrimonial problems. The judge stated that in 1984 Mr McNeela and his wife had matrimonial problems and he was away from the family home for a period. However, the couple addressed their problems and these problems were behind them for a decade when the accident happened.

Third, it was alleged that Mr McNeela had been jailed for contempt of court in 1990 arising out of a dispute with the Land Commission in relation to land. The judge stated that Mr McNeela had been jailed but, in her view, there was nothing to suggest that this had any bearing on his post-accident condition.

Fourth, it was alleged that Mr McNeela had been prosecuted and convicted for trading without a licence, contrary to section 3 of the *Casual Trading Act, 1980*. The judge stated that this was so but had occurred five years before the accident.

Fifth, it was alleged that Mr McNeela's tax affairs were in disarray before the accident and this accounted for or contributed to his anxiety and depression post-accident. The judge noted that Mr McNeela's tax affairs were indeed in disarray. However, in her view, the evidence did not suggest a link between this factor and his post-accident psychiatric condition.

Laffoy J noted that Mr McNeela's physical and psychiatric problems were clearly interlinked. The most telling feature of the case, according to the judge, on the issue of his credibility was that three experienced medical practitioners regarded Mr McNeela's complaints as genuine and had continued to treat him on the basis that they were genuine for almost four years. Professor Fahy's testimony was noted to the effect that he could not commit himself on the side of genuineness or otherwise. The judge rejected the proposition advanced by the defendants that Mr McNeela's claim was 'bogus'. On the evidence, she was satisfied that it was genuine, although she believed that, as in most personal injury cases, the existence of litigation was a factor in his current condition.

The judge considered that it was probable that Mr McNeela's condition would improve both mentally and physically, but she did not think it probable he would ever return to his pre-accident state. On the evidence, the judge noted it was not possible to conclude that his sexual dysfunction would probably resolve.

Major legal issues arose in the case in relation to loss of earnings. On the issue of the fact that Mr McNeela was trading without a casual trading licence contrary to the law, the issue arose whether this was a bar to recovery. The judge found that from 1992 to 1995 Mr McNeela was openly trading in a manner which constituted a criminal offence. However, it seemed to her that the correct principle was that stated in White on *Irish law of damages* as follows: 'Recovery ought to be denied only where the defendants can demonstrate public policy would otherwise be subverted'. The judge noted that that was clearly not the case and the absence of a casual trading licence was not a bar to recovery.

The second issue addressed by the judge was whether the fact that Mr McNeela was not tax-compliant before the accident was a bar to recovery. The judge noted that although Mr McNeela had not made any income tax returns before the accident, she was satisfied on the evidence that more than a year before the accident he had begun to rectify his tax position and at the time of his accident was doing his best to regularise his affairs. Since the accident, Mr McNeela's tax affairs had been regularised. In the judge's view, neither the past nor the current state of his liability to tax was a bar to recovery.

The issue then arose of what Mr McNeela was earning from the fruit and vegetable business before the accident. Financial statements prepared by Mr McNeela's accountant were 'hotly disputed'. Apparently no books such as sales journals, purchase journals or cash books were kept. While cheque stubs filled in by Mr McNeela and bank statements were available, there was no corroborating documentation of the cheque stubs, and in particular Mr McNeela was unable to produce statements from suppliers. However, having regard for an overview of the totality of the evidence, the judge came to the conclusion that before the accident he was probably earning about £15,000 a year, or £1,250 a month or £288 a week from the fruit and vegetable business after tax.

The next issue was what Mr McNeela was capable of earning since the accident and what he would be capable of earning in the future. On the evidence, the judge was satisfied that he had been unable to work at the fruit and vegetable business since the accident. She considered that, apart from farming, the only business he knew was selling fruit and vegetables and she did not consider it probable that he would ever be able to resume that business. Therefore, she concluded that Mr McNeela had been permanently deprived of his principal source of income as a result of the accident.

The issue then arose of the capital value of Mr McNeela's future loss of earnings from the fruit and vegetable business. An actuary had stated that the appropriate multiplier was 467 on the basis that Mr McNeela would probably have continued in the fruit and vegetable business until age 65 had the accident not occurred. However, the judge stated that, given the nature of Mr McNeela's pre-accident business, she considered that this was a case where there must be a substantial discount 'for adverse contingencies'. The relevant factors were his age, the nature of the work involved in running the business, the return journey from Castlebar to Dublin twice a week and selling fruit and vegetables out of doors five or six days a week, with a probable heavy toll on his health as he got older. She considered that in all the circumstances the appropriate discount was 25%. Therefore, the capital value of Mr McNeela's future loss of earnings in the fruit and vegetable business was £100,872.

The next issue addressed by the judge was the effect of the injuries sustained by Mr McNeela on his income from his farming enterprise and how that should be compensated. The judge noted that to date the farm had been run by his son and the only loss to Mr McNeela was the cost of his son's labour, which he had committed himself to rewarding. Based on evidence, the judge proposed allowing for loss of labour at £8,000 to date. The judge considered that £20 a week should cover the additional labour costs that he was likely to incur in the future in the context of labour requirements of a 32-acre farm carrying 17 sucklers and their calves, assuming that Mr McNeela would improve sufficiently to do all but the heavy aspects of work on the farm. Capitalised to age 65 on the basis of the multiplier of 467, this put a capital value of £9,340 on this loss, which the judge proposed to round up to £10,000.

The issue of contributory negligence then arose for consideration. The judge stated that Mr McNeela was standing in the roadway just off the pavement when he was struck by the forklift. The judge noted that Mr McNeela should not have been standing on the roadway in the position he was and he should have heeded the traffic, including forklifts, on the roadway because of the frenetic activity of the markets.

In all the circumstances, the judge stated, Mr McNeela must bear 20% responsibility for the accident.

Counsel for the defendants applied for a stay. After legal argument, Laffoy J stated she would give a stay on condition of a payment out of £150,000.

Mr H Bourke SC, Mr P O'Higgins SC and T Dillon Leetch BL, instructed by T Dillon Leetch & Sons, Solicitors, Ballyhaunis, Co Mayo, represented Mr McNeela.
Mr R Robbins SC and Mr F Duggan BL, instructed by Stephen McKenzie & Co, Solicitors, Dublin 2, represented the defendants. G

THE AWARD

Laffoy J awarded damages as follows:

- Special damages (other than loss of earnings and farm labour costs), agreed at £6,500
- Loss of earnings from the fruit and vegetable business to the date of trial (£1,250 a month for 44 months), £55,000
- Future loss of earnings from the fruit and vegetable business, £100,872
- Additional farm labour costs to the date of trial, £8,000
- Additional farm labour costs in the future, £10,000
- Pain and suffering to the date of trial, £50,000, and
- Pain and suffering for the future, £50,000.

This brought the figure to a total of £280,372, of which the defendants were liable for 80%, which came to £224,297.60.

This summary was compiled by Dr Eamonn Hall, solicitor, from Reports of personal injuries 1999, *published by Doyle Court Reporters, 2 Arran Quay, Dublin 7.*

First Law Update

ELECTRONIC PUBLISHING

News from Ireland's on-line legal awareness service

Compiled by John X Kelly of FirstLaw

AGRICULTURE

Consumer protection

Agricultural products – dietary products – milk – cheese – labelling – description

The European Court of Justice has ruled that a company could not market as 'cheese' a product where milk fat had been replaced by other ingredients.

Union Deutsche Lebensmittelwerke v Schutzverband gegen Unwesen in der Wirtschaft

ECJ, Case C-101/98, 16/12/99

COMPANY

Insolvency

Receiver's duty to account for disposal of assets – rights of directors to acquire such information – application for directions under Companies Act, 1963, *section 316 and* Companies Act, 1990, *section 171*

The applicant had been a director of a company of which the respondent was acting as receiver. The majority of the assets of the company had been disposed of by the receiver. The applicant brought an application seeking information regarding the affairs of the company. The High Court found that the applicant had been afforded as much information as the receiver could reasonably furnish. Also, it was held that the applicant had not shown sufficient cause for the court to exercise its discretion to grant the relief sought and accordingly the application was refused.

***Kinsella v Somers*, High Court, Mr Justice Budd, 23/11/99**

Injunction

Shareholder dispute – interim interlocutory injunction – specific performance – oppression of minorities – removal of a director – balance of convenience – whether the existence of a clause providing for a pre-emptive offer to existing shareholders on a pro-rata basis renders the contract inoperable – whether the right of a registered owner of shares to vote the shares as he saw fit could be affected by the court – Companies Act, 1963, *section 205*

Unpaid vendors of shares are entitled to exercise their voting rights in respect of the shares. A court of equity will not entitle an unpaid vendor of shares to vote deliberately so as to damage the purchaser, or contrary to the interests of the purchaser. In the case of specific performance for purchase of shares, where a pre-emptive clause exists, the proper form of relief is that the contract ought not to be performed subject to the pre-emption rights of the members of the company. The balance of convenience favors maintaining the status quo on the board of directors until the trial.

***O'Gorman (& Others) v Kelleher (& Others)*, High Court, Ms Justice Carroll, 19/07/99**

Taxation

Expenses – deductibility – case stated – taxpayer company obtained a loan having spent commensurate sum in redemption of preference shares – company engaged in trade of 'retailing of food, clothing and other household goods' – whether interest payments on loan were 'wholly and exclusively laid out or expended for the purposes of [its] trade' – findings of fact made by Circuit Court judge

The redemption of preference shares by the respondent had left a gap in its finances and it had to borrow funds in order to continue trading, and the funds so borrowed were used for trading. In those circumstances, it was reasonable for the Circuit Court judge to hold that the respondent was entitled to a deduction in respect of the calculation of its profits under schedule d, case 1, in the amount expended in its interest payments on the sum borrowed. So held by the High Court in upholding the findings of the Circuit Court.

***MacAonghusa v Ringmahon Ltd*, High Court, Mr Justice Budd, 26/11//99**

COMPETITION

Vertical agreements

European Commission – competition – vertical agreements – vertical restraints – selective distribution – exclusive distribution – exclusive purchasing – franchise agreements

A few days before Christmas, the European Commission adopted the much-awaited vertical agreements block exemption regulation (OJ L336/21, 29/12/99) which, from June 2000, will replace the present three block exemption regulations applicable to exclusive distribution agreements, exclusive purchasing agreements and franchise agreements.

CONSTITUTIONAL

Defamation

Brussels convention – *libel – motion to strike out proceedings by second defendant – booklet published in England containing references to plaintiffs – plaintiffs alleged references defamatory – booklet also published in Ireland – second defendant author of booklet and undesirous of publication in Ireland – whether alleged harm occurred in this jurisdiction – whether author of defamatory statement responsible for republication by another person – whether publication of booklet in this jurisdiction a natural and probable consequence of publication in England – whether Irish courts have jurisdiction to hear claim – whether claim against author should be struck out – jurisdiction of* Courts and Enforcement of Judgments (European Communities) Act, 1988

The natural and probable consequence of publishing a book in the United Kingdom about the 'Birmingham Six' was that it would also be published in Ireland, particularly as the author had given the worldwide right of publication to his publishers and did not insist on a contractual stipulation that the book not be published in Ireland. The High Court so held in dismissing the second defendant's application.

***Hunter v Duckworth*, High Court, Mr Justice Kelly, 12/10/99**

Insolvency

Bankrupt plaintiff summoned for examination before the High Court – whether examination of a bankrupt was an administrative function rather than part of the administration of justice – whether provisions of the Bankruptcy Act, 1988 *directing the examination of a bankrupt by the court were repugnant to the constitution*

The examination of a bankrupt by the court cannot be characterised as a judicial function. However, since the entire bankruptcy procedure is judicial and the examination is incidental or ancillary to it, it is then a function properly conferred on the court. The mere inclusion

among the functions given to the court by the legislature of certain powers which may not constitute the administration of justice does not render those powers unconstitutional. The High Court so held in dismissing the application.

***O'Donoghue v Official Assignee (& Others)*, High Court, Mr Justice Kearns, 24/11/99**

CONSUMER

Estée Lauder Cosmetics v Lancaster Group

Free movement of goods – cosmetics – labelling – 'lifting' – misleading advertising – consumer protection 'lifting' cosmetics unlikely to be mistaken for surgery substitutes

The European Court of Justice has ruled that the term 'lifting', applied to a cosmetic product, was unlikely to be misunderstood as a substitute to a surgical lifting operation, but it was for the national court to confirm by reference to the expectations of an average consumer.

ECJ, Case C-220/98, 13/01/2000

CONTRACT

Practice and procedure

Plaintiff brought action in relation to cash-control system installed by defendant – first third party a company domiciled in England – supplied defendant with equipment – claimed contract with defendant subject to jurisdiction clause requiring claim to be brought in England – jurisdiction clause contained in conditions of sale – whether effective agreement reached to oust jurisdiction of Irish courts – whether jurisdiction clause an agreement within meaning of Brussels convention *– whether jurisdiction clause covered reliefs in addition to those arising directly from the contract* – Rules of the superior courts 1986, *o16, r8(3)* – Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988

The jurisdiction clause in the present case is one which provides for the exclusive jurisdiction of the English courts in relation to disputes arising out of the contract between the defendant and the first third party. Having regard to the course of trading between them and the fact that the clause was repeatedly set out in invoices sent by the first third party, the court was satisfied that there was consensus between the parties as to this clause. Further, the claims in relation to negligence, breach of duty and misrepresentation were intimately bound up with the contractual claim and should be heard together. The High Court so held in saying that the Irish courts had no jurisdiction to hear and determine the defendant's claim against the first third party.

***Clare Taverns v Gill*, High Court, Mrs Justice McGuinness, 16/11/99**

COSTS

Practice and procedure

Plaintiff entered into an insurance contract with the defendant – defendant refused to indemnify the plaintiff for a fire at the plaintiff's premises for alleged material non-disclosure which would render the insurance policy voidable – plaintiff subsequently struck off and restored to the Register of Companies – whether the plaintiff's claim should be struck out for want of prosecution – whether the delay on the part of the plaintiff was inordinate and inexcusable – whether the defendant was prejudiced by the delay

Since the case would be based largely on documentary evidence, the defendant was not prejudiced by the plaintiff's delay and would be in a position to defend the claim. However, in light of the delay it would be unjust of the plaintiff, if it succeeded, to claim *Courts Act* interest. If the plaintiff were unsuccessful, the defendant might not be able to recover costs. The High Court so held in refusing to dismiss the plaintiff's claim but in requiring it to undertake not to claim *Courts Act* interest and in making an order for security of costs.

***Truck & Machinery Sales Ltd v General Accident*, High Court, Mr Justice Geoghegan, 12/11/99**

Injunction

Injunction sought in plenary summons in relation to wrongful interference with plaintiff's business – ancillary claim for damages included in statement of claim – interlocutory injunction granted – injunction unnecessary at plenary hearing – damages within District Court jurisdiction awarded at plenary hearing – costs of the action awarded to the plaintiff – lowest court having jurisdiction to grant relief ordered – jurisdiction of the Circuit Court – whether costs awarded in respect of interlocutory application should be Circuit Court scale – whether costs awarded in respect of plenary hearing should be District Court scale – whether Circuit Court has jurisdiction to grant equitable relief in an action not relating to property

Where an injunction is claimed at the commencement of an action, and granted in an interlocutory order, and is no longer necessary by the time the matter comes for plenary hearing, if the plaintiff would have been entitled to that injunction at the time of commencement of proceedings, then the injunction will be part of the relief granted in the action for the purposes of an order for costs. The Circuit Court does not have jurisdiction to grant an injunction by way of primary relief in an action not relating to property. Accordingly, the High Court was the lowest court having jurisdiction to grant the reliefs to which the plaintiff was entitled at the commencement of this action. So held by the High Court in dismissing the defendant's application.

***Rodgers v Mangan*, High Court, Mr Justice Geoghegan, 15/07/99**

CRIMINAL

Proceeds of crime

Nature of proceedings under Proceeds of Crime Act, 1996 – *jurisdiction of court in relation to crime committed abroad – whether property of third defendant represents proceeds of crime – whether proceeds of crime legislation applies to crimes committed abroad*

The *Proceeds of Crime Act, 1996* does apply to crimes committed abroad as the object of the Act is to prevent the enjoyment in the state of assets generated by or in connection with crime and there is no reason why that object should be limited to offences committed in this jurisdiction. The High Court so held in making the order sought in respect of the property of the third defendant.

***DPP v Hollmann (& Others)*, High Court, Mr Justice O'Higgins, 29/07/99**

Consultative case stated

Power of arrest – jurisdiction of District Court – accused arrested for assault contrary to s2 of Non-Fatal Offences Against the Person Act, 1997 *– no power of arrest under the Act – Whether district judge entitled to dismiss case on ground of unlawful arrest – whether valid arrest essential ingredient of offence – whether unlawful arrest deliberate and conscious violation of rights of accused* – Constitution of Ireland 1937, *articles 38 and 40* – Criminal Law Act, 1997, *s4*

The jurisdiction of the District Court to embark on any criminal proceeding is not affected by the fact, if it is the fact, that an accused person has been brought before the court by an illegal process but a district judge is entitled to decline to embark on the hearing of the case if he determines that there has been a deliberate and conscious violation of the constitutional rights of the accused. The High Court so held in answering the case stated with a qualified affirmative.

***DPP v Bradley*, High Court, Judge McGuinness, 09/12/99**

Extradition

Extradition of applicant to Scotland sought for alleged sexual offence in September 1993 – district judge satisfied that alleged offence corresponded with offence of rape contrary to s2 of Criminal Law (Rape) Act, 1981 – *whether offence alleged in warrant corresponds with offence in this jurisdiction – whether warrant bad for duplicity – whether lapse of six years makes extradition unjust – whether departure from usual practice by Scottish court renders certification of warrant invalid –* Constitution of Ireland 1937, *article 40* – Extradition Act, 1965, *s50* – Criminal Law (Rape) (Amendment) Act, 1990, *s4*

The test to be applied in assessing whether the offence alleged in an extradition warrant corresponds with an offence in this jurisdiction is to determine whether the factual components of the offence, as specified in the warrant, would constitute an offence of the required gravity if committed in this jurisdiction. The High Court so held in saying that the offence alleged corresponded with the offence of rape contrary to s4 of the *Criminal Law (Rape) Act, 1990* and further saying that the delay in this case was caused by the applicant and he was not entitled to be released because of that delay.

***Stanton v O'Toole (& Others)*, High Court, Mr Justice O'Donovan, 07/12/99**

Practice and procedure

Conviction – alibi evidence – appeal – sentence – whether sentence excessive – summation of evidence – jury had seen accused in custody during trial – allegation that juror asleep – whether jury should have been discharged

The applicant had been convicted of robbery and sentenced to ten years' imprisonment. The applicant appealed against the conviction on a number of grounds and also appealed against the sentence. It was alleged that the trial judge had dealt unfairly with the accused's alibi evidence and that in general the trial judge's summation of the evidence was unfair. The Court of Criminal Appeal held that the trial had been conducted fairly, rejected the arguments made and dismissed the appeal.

***DPP v O'Regan*, Court of Criminal Appeal, 25/03/99**

DAMAGES

Hepatitis C

Personal injury – quantum – Hepatitis C Compensation Tribunal – plaintiff appealed award of general damages of £130,000 – plaintiff contracted hepatitis C in 1979 at age 21 – entire adult life ruined by infection – whether overall award should be reduced having regard to amount awarded for financial losses

The court was satisfied that the entire adult life of the plaintiff was devastated by contraction of hepatitis C and would continue to be so affected and, in the circumstances, an award of £250,000 for general damages would be appropriate. The High Court so held in further saying that this was not an appropriate case for a reduction of general damages, having regard to the amount already awarded for financial losses.

***M O'N v Minister for Health and Children*, High Court, Mr Justice O'Neill, 19/10/99**

Building and construction

Specific performance – agreements entered into between the parties – whether the obligations of each party had been carried out – the rule in Pinnel's Case – *remuneration for professional services – quantum meruit*

If a liquidated sum is owed by a creditor, a promise by a debtor to take a lesser sum in full satisfaction of a larger debt will not bind the debtor. *Pinnel's Case* ([1602] 5 Co Rep 116A) followed. The agreements were not adhered to by the plaintiffs and a claim for specific performance must fail. The plaintiffs are entitled to adequate compensation for their efforts in furthering the development of the first-named defendant's land. The court so held in granting the relief claimed.

***Bergin (& Others) v Farrell (& Others)*, High Court, Ms Justice Carroll, 17/12/99**

EMPLOYMENT

Fair procedures

Sexual harassment allegations – finding of gross misconduct – unfair dismissal – whether the employer applied the rules of natural and constitutional justice in investigating the alleged misconduct – whether declaratory relief available – Unfair Dismissals Act, 1977, *section 15*

That declaratory relief is available in employment situations unless precluded by pursuing rights under the *Unfair Dismissals Act*. That 'fair hearing' means to be treated fairly according to the ordinary reasonable standards of fair play. That the employer is obliged to apply the rules of natural and constitutional justice in investigating misconduct. That if an employer does not provide the employee with either a full account of the allegations made against him, or an opportunity to refute the allegations, a subsequent dismissal is unlawful. The court so held in granting the relief claimed.

***Cassidy v Shannon Castle Banquets and Heritage Ltd*, High Court, Mr Justice Budd, 30/07/99**

Damages

Applicant sought order quashing his dismissal – liberty granted to deliver statement of claim – applicant sought to amend points of claim to include conspiracy – whether liberty to deliver statement of claim changed nature of proceedings from judicial review – whether test to be applied for amendment of statement of grounds more stringent – whether applicant guilty of delay in bringing application – whether claim of conspiracy relevant to reliefs sought – Rules of the superior courts 1986, *o28, r1*

The nature of the proceedings before the court did not change by virtue of the fact that liberty

was granted to deliver a statement of claim and the court should only allow an amendment of the original grounds, in respect of which leave to seek judicial review was granted, in exceptional circumstances. However, even if the application did come within order 28, rule 1 of the *Rules of the superior courts*, it would still fail, as the claim of conspiracy had no relevance to the reliefs sought and therefore an amendment would not be necessary to determine the real question in controversy between the parties. The High Court so held in refusing the application.
***O'Leary v Minister for Transport*, High Court, Mr Justice Kelly, 26/11/99**

Informal mediation

Injunction – compromise of proceedings – settlement agreement
The plaintiff is a professor of economics and head of the Department of Economics at University College, Cork. He sought to restrain the university from proceeding with an informal mediation process concerning litigation in which the plaintiff and the university were defendants. The plaintiff claimed that the university agreed not to settle the litigation without his consent. The litigation was discontinued against the plaintiff. An informal exploratory exercise at dispute resolution such as the mediation process does not imply a legalistic framework. The plaintiff was no longer a party to the litigation once the notice of discontinuance had been served. There was no issue to be tried in such circumstances. The High Court so held in refusing the application.
***Fanning v UCC*, High Court, Ms Justice Carroll, 07/07/99**

ENVIRONMENT

Commission takes action against Ireland

Environment – nature preservation – Wild birds directive – special protection areas
The European Commission has decided to make an application to the European Court of Justice against Ireland for non-respect of the *Wild birds directive*. The decision concerns the failure to curb sheep overgrazing, particularly in the west of Ireland, leading to serious damage to Ireland's largest special protection area, the Owenduff-Nephin Beg Complex in County Mayo, as well as wider loss of habitat of the red grouse.
ECJ, 06/01/2000

TELECOMMUNICATIONS

Electronic signatures

Information technology – Internet – contracts
On 13 December 1999, the Council of Ministers opened a new era for electronic commerce by unanimously adopting the *Directive on electronic signatures*. The directive will facilitate the use of electronic signatures and will encourage their legal recognition by establishing a legal framework and minimum requirements for certification services. The directive has left a number of fields unploughed where the Member States will continue to apply their national laws, such as the law on the formation and validity of contracts and the acceptability of electronically-signed data between the parties to a contract. It will not apply either to closed networks such as intranets. The directive must be implemented by 19 July 2001. 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

Replacement of the *Brussels convention*

The most significant development in the field of European private international law is the imminent replacement of the *Brussels convention* with a *Regulation on jurisdiction and enforcement of judgments in civil and commercial matters*. The commission has also announced a new *Regulation on jurisdiction and enforcement of judgments in matrimonial matters* (to replace the current draft convention) and a *Regulation on service of documents within the EU*.

The *Brussels convention* has been reviewed over the last few years. In early 1998, the European Commission published a proposal (OJ C 33, 31 January 1998) which would have made significant changes to the jurisdictional provisions in the convention and would also have simplified the recognition and enforcement of foreign judgments. It was put before the European Parliament but did not proceed any further. This proposal gathered dust for almost two years.

The *Amsterdam treaty* took effect on 1 May. On 28 May, the commission put forward a fresh proposal for revision of the convention (*Proposal for a council regulation (EC) on jurisdiction and enforcement of judgments in civil and commercial matters*, COM (1999) 348 final). It proposes the replacement of the convention with a regulation. This would bring the convention within the framework of EC law. The *Luxembourg protocol* would become redundant, as the regulation would be subject to article 234 (formerly article 177) of the treaty. It would also mean that the regulation would enter into force on its implementation date rather than requiring a number of signatories to implement a treaty as at present. The accession convention for Austria, Finland and Sweden (which makes a number of minor amendments) has not yet entered into force for this reason.

The legal basis for this proposal is Title IV of the *EC treaty*. Measures adopted under this title are not applicable in Denmark, the UK and Ireland. However, at the council meeting on 12 March last, the UK and Ireland indicated that they would 'opt in' for this and other proposals on judicial co-operation. If Denmark does not opt in, the regulation will apply between all other Member States, the convention between those states and Denmark, and the *Lugano convention* between the EU and EFTA Member States.

The regulation very largely corresponds to the existing convention. The scale of the proposed changes is much less significant than in the original proposal. The major proposed changes are as follows.

Domicile. The regulation retains the concept of the domicile of natural persons. This is in contrast to the original proposal, which proposed replacing domicile with habitual residence. The regulation proposes an autonomous definition of the seat of a legal person. The convention currently provides that this is to be determined by national law. The regulation retains a reference to national law as regards the validity, nullity and dissolution of legal persons and decisions of their managing bodies.

Contract. The regulation retains much of the original wording of article 5(1): jurisdiction is given to the 'place of performance of the obligation in question'. This had been one of the most heavily-litigated provisions of the convention and gave rise to a great deal of uncertainty. However, in the case of the sale of goods and the provision of services, the regulation defines the place of performance of the obligation in question. For the sale of goods, it will be the place where the goods were or should have been delivered. In the case of the provision of services it will be the place where under the contract the services were or should have been provided.

This proposed article 5(1) is greatly preferable to the original proposal. That would have narrowed the scope of this provision to contracts for the sale of goods. All other contractual cases would have fallen under article 2.

Tort. There is one small change to article 5(3). This currently provides that in tortious cases jurisdiction is given to the court of the place where the harmful event occurred. The regulation provides that it will cover cases not only where the harmful event has occurred but also those where it may occur.

The original commission proposal had suggested changing article 5(3) to allow a defendant to be sued in the courts for the place where the event giving rise to the damage occurred or in the courts for the place where the damage or part thereof was sustained. This amendment would have reflected the interpretation of the original provision by the Court of Justice in Case 21/76 *Bier v Mines de Potasse* ([1976] ECR 1735). It is regrettable that this amendment does not appear in the regulation. However given the consistent manner in which the court has followed *Bier* through to the most recent decision of Case C-51/97 *Réunion Européenne Sa & Ors v Spliethoff's Bevrachtingskantoor BV and the Master of the vessel Alblasgracht V002* (judgment of 27 October 1998), article 5(3) will still have to be looked at in the light of *Bier*.

Multiple defendants. The regulation proposes a minor change to article 6. This currently allows a plaintiff to sue multiple defendants in the domestic jurisdiction of any one of them. The regulation repeats the wording of this article and then goes on to say: 'provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk to irreconcilable judgments resulting from separate proceedings'. This follows the consistent interpretation of the original article from Case 198/87 *Kalfelis v Schröder* ([1988] ECR 5565).

Insurance contracts. The scope of article 9 has been broadened. This allows a policyholder to sue an insurance company in the courts of the policyholder's domicile. The rationale behind this is to protect the weaker party. This right to sue an insurance company in one's own domicile is

now extended to the insured person and the beneficiary where they are the applicants. This extension is consistent with the purpose of the article.

Consumer contracts. The scope of the consumer contract provision has been extended to offer consumers better protection. Article 13 has been replaced by article 15. 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. The article 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*'.

This is a broader provision than in the original article. Article 13 requires an invitation to purchase addressed to the consumer and requires the consumer to take the necessary steps in his state to conclude the contract. It also confined the provision to contracts for the supply of goods or services. The new provision is designed to take into account consumer contracts concluded through an interactive website accessible in the state of the consumer's domicile. Knowledge of goods or services acquired by a consumer through a passive website accessible in his home state will not be sufficient.

The removal of the requirement that the consumer take the necessary steps to conclude the contract in his home state is also meant to take electronic commerce into account. In the case of contracts concluded through an interactive website, it may be difficult or impossible to determine where the steps necessary to conclude the contract were taken.

Some concern has been expressed over this proposed wording by those involved in electronic commerce. They argue that parties engaged in electronic commerce will be exposed to potential litigation in each Member State or they will have to specify that their products or services are not intended for consumers domiciled in certain Member States. The commission held a hearing of interested parties on this recently. However, no further amendment has yet been proposed.

Article 13 excluded transport contracts from its scope. The regulation retains this exclusion but makes it clear that package holidays do come within the scope of the consumer protection.

Employment contracts. These jurisdictional rules remain the same. However, they are taken from articles 5 and 17 and grouped together in articles 18-21 of the regulation.

Jurisdiction agreements. As with article 17 of the convention, article 23 of the regulation allows the parties to choose the jurisdiction of a certain court and then gives that court exclusive jurisdiction. However, the regulation allows parties to agree that a choice of forum clause will not be exclusive. It also takes account of electronic commerce and allows a jurisdiction clause agreed by means of electronic communication to be a durable record on the same basis as a written jurisdiction clause.

Lis pendens. The convention provided that in case where two courts were seised of the same cause of action, the court first seised had jurisdiction. This led to some uncertainty as the rules concerning courts being seised of an action differed between the common law and civil law jurisdictions. The regulation attempts to resolve this by providing a definition of the date when a court is seised of a matter. Article 30 provides that a court is seised either where the document instituting the proceedings is lodged with the court or if the document has to be first served before being lodged, when the server receives the document for service (that is, when a summons is issued).

Recognition and enforcement of judgments. The regulation attempts to make the recognition and enforcement mechanisms for foreign judgments faster. It provides for a uniform certificate containing certain basic information to accompany judgments. The court asked to enforce the judgment cannot entertain the grounds for non-enforcement of its own motion. The judgment debtor must raise these.

Defences to recognition and enforcement. The scope of the defences has been somewhat narrowed. A foreign judgment must now be 'manifestly' contrary to public policy rather than being contrary to it. This defence had been interpreted narrowly and is now likely to be even more narrowly interpreted.

Renumbering. As a consequence of the deletion of certain articles in the regulation and the addition of some new ones, there is some renumbering in the regulation. This is most significant in the recognition and enforcement provisions. G

TP Kennedy is the Law Society's Director of Education.

Recent developments in European law

CONSUMER PROTECTION

Package holidays

Case C-140/97 *Rechberger and Ors v Republic of Austria*, judgment of 15 June 1999. Mr Rechberger was a subscriber to the Austrian daily newspaper *Neu Kronenzeitung*. In November 1994, he received a letter from the publisher informing him of an offer from the travel organiser Arena-Club-Reisen of a 'free' four or seven-day trip to one of four European destinations. The offer was a loyalty reward for subscribers. Persons travelling with subscribers had to pay a price specified in the brochure and subscribers travelling alone had to pay a single room supplement of ATS 500. All subscribers accepting the offer had to pay a deposit and settle the balance before the departure date. The offer was far more successful than anticipated. The consequence of this was that the organiser applied in July 1995 for bankruptcy proceedings to be initiated. In addition, this advertising campaign was held by the Austrian Supreme Court to be incompatible with national competition laws. Bookings had been made between 19 November 1994 and 12 April 1995. In each case the travel costs had been paid in advance. The trips, which should have taken place between 10 April and 23 July 1995, were cancelled. Under the 1990 *Directive on package holidays*, every travel organiser must provide 'sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency' (article 7). Austria should have implemented the directive by 1 January 1995. In 1994, it adopted a decree introducing a requirement for travel organisers to obtain insurance cover or provide a bank guarantee. The value of the guarantee required was to be at least 5% of a reference turnover. The decree applied to all package holidays booked after 1 January 1995 with a departure date of 1 May 1995 or later. For three of the subscribers who booked their holidays in 1994, there was no guarantee since the decree only applied to package holidays booked after 1 January 1995. For another three who booked after 1 January 1995 and were to have taken their holidays after 1 May 1995, their payments were in principle covered by a guarantee issued in accordance with the decree. However, the bank guarantee was insufficient to reimburse the travel costs paid, as the final level of cover was only 25.38% of the amount paid. The six subscribers brought an action against Austria to recover the full amount they had paid, arguing that Austria was liable for its failure to implement the directive in good time and in full.

The ECJ held that the directive applied to the trips in question. The purpose of the directive is to protect consumers against the risks arising from the insolvency or bankruptcy of package travel organisers. These risks are inherent in package holiday contracts. They arise as the price of the package is paid in advance and from the spreading of responsibilities between the organiser and the various providers of the services comprising the package. The consumer enjoys rights guaranteeing him the reimbursement of money paid over and his repatriation in the event of the insolvency or bankruptcy of the organiser. The subscribers were exposed to precisely those risks against which the directive is designed to afford protection. The ECJ then moved on to examine the issue of state liability. It held that an implementing provision that afforded protection to holidaymakers departing on 1 May 1995 (rather than 1 January 1995 as required) was incompatible with the directive and was a sufficiently serious breach of EC law. However, the protection in the directive does not extend to travel agreements entered into before the date for implementation of the directive. The court also pointed out that the directive imposed an obligation to protect consumers against all risks mentioned and found that the Austrian arrangements limiting the amount of guarantee were inadequate. The directive seeks to guarantee package holidaymakers reimbursement of their money and repatriation in the event of the travel organiser's insolvency. Thus, a Member State cannot argue imprudent conduct on the part of the travel organiser or the occurrence of exceptional or unforeseeable events to avoid liability.

EMPLOYMENT

Equality

The commission is proposing new measures to fight discrimination. These proposals are due to be published next year. Their objective will be to outlaw discrimination in the workplace on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

ESTABLISHMENT

Case C-254/97 *Société Baxter and Ors v Premier Ministre*, judgment of 8 July 1999. Société Baxter and a number of other French undertakings exploit proprietary medicinal products. They are subsidiaries of companies whose seat is located in Member States other than France. On 24 January 1996, an order of the French Government introduced 'urgent measures for restoring financial stability in the social security system'. The order provided that pharmaceutical laboratories must pay a special levy based on the pre-tax turnover achieved in France between 1 January 1995 and 31 December 1995 in reimbursable proprietary medicinal products and medicinal products approved for use by public authorities. Article 12 of the order allowed the undertakings concerned to deduct from the amount of that levy the costs corresponding for the same period to expenditure on scientific and technical expenditure carried out in France. Baxter and the other undertakings challenged that provision before the *Conseil d'Etat*. It referred a question to the ECJ on the compatibility of such a provision with Community law.

The ECJ observed that the principles of freedom of establishment enables business to be carried on through branches, agencies or subsidiaries whose seats are located in other Member States. The court also referred to its own case law, which prohibits, in the name of equality of treatment, all forms of discrimination by reason of nationality, or in the case of a company, its seat. The particular allowance only took account of expenditure on research carried out in the Member State of taxation. The French government justified this as necessary to enable the tax authorities to ascertain the nature and genuineness of the research expenditure. The court held that in this case effectiveness of fiscal supervision was not capable of justifying a restriction on the exercise of fundamental freedoms. National legislation absolutely preventing the subsidiaries from submitting evidence that their research carried on in other Member States was actually undertaken, when doc-

umentary evidence could be produced, cannot be justified on the basis of effective fiscal supervision. Thus, the tax provision in question was not compatible with Community law.

FREE MOVEMENT OF GOODS

Case C-394/97 *Criminal Proceedings against Sami Heinonen*, judgment of 15 June 1999. Finland bans imports of alcohol on the part of Finnish residents who return from a state outside the European Economic Area where the journey has not lasted more than 20 hours and was by a means of transport other than air. These restrictions had been abolished. However, there was a sharp rise in alcohol consumption and the measures were re-introduced. Mr Heinonen, a Finnish resident, travelled to Tallinn (Estonia). On his return, customs authorities confiscated 19 cans of beer and imposed a fine. The ECJ pointed out that the treaty does allow prohibition or restriction of certain imports on grounds of public morality, public policy, public security or protection of the health and life of humans. The Finnish campaign against the rise in alcohol consumption came within the scope of these defences. The ECJ held that the Finnish measure was proportionate to the objective pursued.

Case C-412/97 *ED Srl v Italo Fenocchio*, judgment of 22 June 1999. ED Srl is an Italian company. It supplied goods to Mr Fenocchio, a resident of Berlin. He had paid a deposit but did not pay the balance remaining for the goods. ED applied to the Italian courts for a summary payment order in respect of the outstanding sum with interest and costs. Italian law prevents use of this process where a defendant lives abroad. This is justified to avoid default judgments of which a foreign defendant would be unaware. The ECJ held that such a measure was compatible with article 29. The possibility that vendors would be reluctant to sell goods to purchasers in other states was too uncertain and indirect for the measure to be regarded as liable to hinder trade between Member States.

INTELLECTUAL PROPERTY

Copyright

The commission has put forward an amended proposal for a directive on copyright and related rights. The directive would apply to copyright protection, in particular reproduction right, communication to the public right, distribution right and legal protection of anti-copying and rights management systems. The amended proposal includes the majority of the amendments proposed by the European Parliament.

Trademarks

Case C-342/97 *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, judgment of 22 June 1999. Lloyd has manufactured and distributed shoes since 1927 using the trademark 'Lloyd'. It owns a number of word and picture trademarks registered in Germany, incorporating the word 'Lloyd'. Klijsen also manufactures and distributes shoes, using the trademark 'Loint's' since 1970 in the Netherlands and since 1991 in Germany. Lloyd sought an order restraining Klijsen from using 'Loint's' for shoes and footwear in Germany as it could be confused with its trademark. It argued that this contravened article 5(1)(b) of Directive 89/104/EEC. This prohibits the use of trademarks, which can lead to the likelihood of confusion with another trademark. The ECJ held that there was a likelihood of confusion. The court held that it was difficult to establish binding rules for setting out situations likely to cause confusion. The likelihood of confusion has to be assessed taking into account all the circumstances of a particular case. A global assessment involves interdependence between relevant factors. These include similarity between goods or services or between their trademarks.

Marks with a highly distinctive character enjoy greater protection than those that are less distinctive. Global appreciation of the likelihood of confusion in relation to the visual, aural or conceptual similarity of the marks is based on the overall impression created by the marks. The likelihood of confusion is based on the impression on the average consumer of the category of products concerned.

TAXATION

VAT

Case C-158/98 *Staatssecretaris Van Financiën v Coffeeshop Siberie vof*, judgment of 29 June 1999. The Dutch tax authorities had sent a demand for payment of VAT to a proprietor of a coffeshop in Amsterdam who rented a table to a dealer who sold soft drugs.

He argued that renting a table to a supplier involved complicity in a criminal offence and was thus not subject to VAT. The Dutch tax authorities argued that making available a place of sale was a supply of services within the scope of article 2 of the sixth directive and was subject to turnover tax. The ECJ held that the principle of fiscal neutrality prevents any general distinction in the levying of VAT as between lawful and unlawful transactions. The fact that conduct amounted to an offence was not sufficient to justify exemption from VAT.

The exemption only applies where, owing to the special characteristics of certain products or certain services, any competition between a lawful economic sector and an unlawful sector is precluded.

The unlawful nature of the activities does not alter the economic character of the renting and does not prevent competition between lawful and unlawful activities. However, its earlier decision in Case 289/86 *Happy Family v Inspecteur Der Omzetbelasting* ([1988] ECR 3655) still stands. In that case, the court had held that VAT could not be collected on the sale of narcotic substances as because of their very nature they are subject to a total prohibition on marketing in all Member States. G

Council of the Law Society of Ireland 1999/2000

(*Front row*) Elma Lynch, Past President Francis D Daly, Immediate Past President Patrick O'Connor, Director General Ken Murphy, President Anthony Ensor, Senior Vice-President Ward McEllin, Geraldine Clarke, Past President Laurence K Shields, Past President Moya Quinlan, and Gerard Griffin; (*second row*) Niall Farrell, Anne Colley, John P Shaw, Orla Coyne, Sean Durcan, Patrick Casey, Maeve O'Driscoll, Brian Sheridan, John Costello, and Peter Allen; (*third row*) Donald Binchy, Kevin O'Higgins, John Harte, Philip Joyce, John Fish, Hugh O'Neill, David Bergin, Walter Beatty, Simon Murphy, James MacGuill, Keenan Johnson, and John D Shaw; (*back row*) Michael Irvine, David Martin, Michael Peart, Tom Murran, James McCourt, Stuart Gilhooly, and John O'Connor

Lady Solicitors' Golf Society

Over 60 members of the Lady Solicitors' Golf Society teed off at the society's autumn outing, held at Kilkea Castle Golf Club last September. The results were as follows: first, Pauline Burke, H/C 27, 39 points (on back 9); second, Breda O'Malley, H/C 37, 39 points; gross, Elaine Anthony, H/C 12, 24 gross points; third, Mary Ronayne, H/C 20, 37 points; visitor's prize, Brenda Gearty, H/C 14, 31 points; *Sheila O'Gorman Trophy*, Yvonne O'Gara, H/C 37, 34 points (on back 9); first 9, Eimear Cowhey, H/C 24, 22 points; second 9, Mary Molloy, H/C 13, 20 points. The incoming lady captain for the year 2000 is Geraldine Lynch Burke, who can be contacted at AC Forde & Co on 01 660 7522. Details of the society's spring outing will be circulated shortly.

Showing off their sheepskins: Graduates display the fruits of their labours after the recent parchment ceremony

A SADSI kind of day: Pictured at the SADSI education day *Bridging the gap* event held in Blackhall Place last November are (*left to right*) Ethna McDonald, Judge John Blayney, Eugene McCague, Louise Gallagher, Barry Lyons and Jane Farren

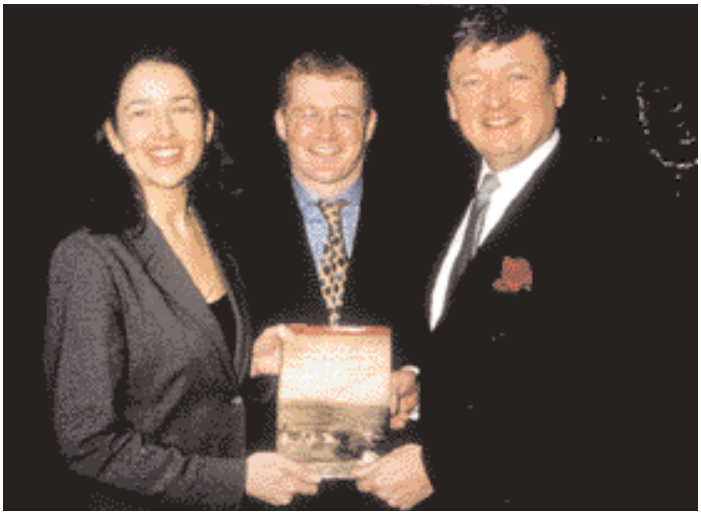
New Deputy DPP named

Barry Donoghue, Chairman of the Law Society's Criminal Law Committee, has been appointed Deputy Director of Public Prosecutions. Donoghue has been a senior officer in the DPP's Office since 1992. Prior to that, he worked in the Chief State Solicitor's Office, where he was head of the District Court section for four years. He has served on the Criminal Law Committee since its establishment in 1991 and is also vice-president of the Corporate and Public Services Solicitors' Association.

Outgoing President's Dinner

The measure of a man: Immediate Past President Pat O'Connor sizes up Hugh O'Neill and Gerry Doherty at his Outgoing President's Dinner at the Law Society in December

Game for a laugh: Law Society President Anthony Ensor amuses Andrew F Smyth, Gerald Hickey and Don Binchy at the Outgoing President's Dinner for Patrick O'Connor



Honouring their own: Suzanne Johnston of Osborne Recruitment and Keith Walsh, chairman of the NUI Galway Law alumni, present past graduate Patrick O'Connor with an award marking his achievements as the President of the Law Society 1999. The occasion was a reception commemorating the 150th anniversary of the enrolment of the first law student in what was then Queen's College Galway

Calcutta Run 2000

On a bright and sunny afternoon last May, over 500 runners and walkers gathered at Blackhall Place for the inaugural Calcutta Run over a 10-kilometre course. Solicitors and staff from many of Dublin's best-known firms took part in the run, together with their friends, clients and anyone else who could be persuaded to tackle the course. The proceeds raised went to help homeless children at home and abroad.

Thanks to the efforts of the many volunteers who helped with the preparation and on the day – and, of course, the great work of all the participants who took part and raised the sponsorship – more than £60,000 was raised, which was a fantastic achievement. The money went to help fund GOAL's project for street children in Calcutta and Fr Peter McVerry's Aruppe Society, which provides accommodation for homeless teenagers here in Ireland.

The day itself was a great success. The starting pistol was fired by Mr Justice Feargus Flood and the runners were cheered on by former world snooker champion Ken Doherty. After starting strongly and opening up a lead, Pat O'Connor, then-President of the Law Society, was reeled in by the chasing pack as he turned into Benburb Street. The first runners arrived home in a fantastic time of just over 32 minutes, and over the next 45 minutes or so a procession of tired limbs and smiling faces continued through the finish line at Blackhall Place. Most runners proceeded to undo their good work at a most enjoyable post-run barbecue in the Law Society grounds.

This year's run will take place in the Law Society on Sunday 21 May. We are hoping for an even bigger and better event, with lots more runners and lots more money raised for charity. If you took part last year, run again – and this year recruit a new participant. We are also looking for people who will organise and recruit within their own firms or perhaps among firms in their local area. We would love to have solicitors from all over the country take part and not just Dublin. The run is not confined to those from the Dublin area and groups from non-law firms will also be heartily welcomed. For further information, contact Alan Roberts, tel: 01 649 2000, e-mail: run@algoodbody.ie.

Off to a good start: Tanya Sheridan accepts the 1999 Tormey & Co Scholarship from Denis Naughten TD as Tormey principal Barra Flynn looks on. Each year the prize goes to an outstanding post-primary student who plans to pursue a career in law

Law school prizes

There are a number of prizes available for the top performers in subjects on the professional and advanced courses. Some of these prizes have a long history, while others are of more recent vintage. Over the last year, there have been a number of prize awards.

Law Society President Anthony Ensor addresses the apprentices gathered in the Presidents' Hall for the parchment ceremony last December

AIB Conveyancing Prize

AIB Bank, which has been sponsoring Law Society examinations since the early 1980s, makes an award to the student who achieves the highest mark in applied land law on a professional practice course in any calendar year. For courses which took place during 1998, the prize was awarded to Noreen O'Neill.

The Law Society makes two awards to the students who achieve the second and third-highest marks in applied land law on a professional practice course in a calendar year. For courses which took place during 1998, awards were made to Victoria Cheung, who was placed second, and to Maria Hurley, who came third.

Guinness & Mahon Tax Prize

Guinness & Mahon Bank, which has an association with the Law Society going back to the late 1970s, makes an award to the student who achieves the highest mark in capital acquisitions tax on each professional practice course. Recent prize winners have been Sarah Beckett, Jane Farren, Rowena Fitzsimons and Catherine Pierse.

John B Jermyn Prize

The *John B Jermyn Prize* was set up in 1981 by the then-president Moya Quinlan and solicitor John B Jermyn. The *John B Jermyn Prize* is awarded on each professional practice course to the student who achieves the highest result in the wills, probate and administration of estates examination. Recent winners of this prize have been:
Sinead McNamara (44th course)
Maria O'Brien (45th course)
Kathryn Campbell (46th course)
Elaine Gorman (47th course)
Sarah Harte (48th course)
Veronica Kelleher and Deirdre McBennett (49th course).

Gallagher Shatter Prize

Gallagher Shatter, Solicitors, sponsor an award for the student who achieves the highest mark in family law on an advanced course in a calendar year. This prize was first awarded in 1998 to Josephine Deasy who attended the 41st course.

Ulster Bank Civil Litigation Prize

Ulster Bank is the latest financial institution to become involved in sponsoring Law Society prizes.

AIB Bank Youth Market Co-ordinator Shane O'Neill congratulates Maria Hurley, who won a Law Society conveyancing prize for her outstanding grades in applied land law

It's a cracker: Second-place finalist Gerard Ryan with Helen Harnett, first-place winner of the *Findlater Scholarship*. The scholarship is given for the best overall performance on the professional practice and advanced courses

It will make an award to the student who achieves the highest mark in the civil litigation examination on the professional practice course.

Findlater Scholarship

This is one of the oldest prizes and was first awarded in 1888. The *Findlater Scholarship* is awarded for the best overall performance on the professional practice and advanced courses. The following is a list of some of the *Findlater Scholarship* recipients:
Sally De Foubert (19th course)
John Bourke (20th course)
Joseph Fahy (21st course)
Declan O'Connell (22nd course)
Liam Butler (23rd course)
Bryan Bourke (24th course)
Margaret McKeogh (25th course)
Bridin O'Donoghue (26th course)
Sean Barton (27th course)
Sinead Glasgow (28th course)
Patrick Cronin & Frances Leahy (jointly) (29th course)
Marie Barry (30th course)
Bronagh Heverin (31st course)
Kenneth Egan (32nd course)
Grace O'Mahony (33rd course)
Ann Marie Bohan (34th course)
Chelita Healy (35th course)
Laura Delaney (36th course)
Michelle Doyle (37th course)
Grainne Butler & Maeve Lynch (jointly) (38th course)
Nicola (Helen) McGrath (38th PC & 39th AC)
Tara Doyle (39th course)
Karen Gibbons (40th course)
Deirdre Ann McCarthy (41st course)
Conor Keaveny (42nd course)
Una Woods (43rd course)
Michelle McLoughlin (44th course)
Helen Harnett (45th course). G

SADSI in the year 2000

The Solicitors' Apprentices Debating Society of Ireland (SADSI) enters its 116th session as we recover from our own entry into the new millennium. Like most societies, SADSI's fortunes have ebbed and flowed depending on the times, its members and its committee.

Despite its name, it is more than a debating society; it is the apprentices' society. Apprentices have successfully used it as a vehicle for change in such areas as the Law Society's educational system and apprentice wages. SADSI has also organised many balls, career fairs and social events.

The SADSI committee with Director of Education TP Kennedy, following their first meeting to discuss the year ahead. *(Front row, l-r)* Rachel Minch, Ann Brennan; *(middle row, l-r)* Anthony Coomey, Gareth Bourke, Eva Lalor; *(back row, l-r)* Patrick Bardon, Keith Walsh, TP Kennedy, David Ryan, David Higgins

As the new auditor of SADSI, I have been presented with the opportunity to reshape the society into a more open, active and representative body. This can only be achieved with the assistance of my committee and the enthusiasm and participation of apprentices all over the country.

Apprentice feedback is essential. A major welfare survey has been prepared by the vice-auditor and welfare officer, Gareth Bourke, and questionnaires will be circulated to all apprentices in February. Another forum for feedback is the SADSI website, which should be on-line by mid-February.

SADSI is not just a society for apprentices in Dublin; it is a society for apprentices all over the country. SADSI regional events, sponsored by the Ulster Bank, are planned for Galway, Cork, Limerick, the midlands and north-east and west during the year. As 67% of apprentices are indentured here, Dublin will not be neglected. There will be ample social provision for the capital as well as – but not at the expense of – the regional centres.

A cornerstone of the SADSI plan for the coming year is to re-establish SADSI as the pre-eminent debating society in this jurisdiction. A debating task force has been set up under the guidance of Clodagh Beresford and will set down a strategy for the coming and future years. It is intended to revive the fierce King's Inns debates of years gone by and to challenge the Northern apprentices. Moot trials and international debates will also take place. The debating year begins with the maiden speakers' debate on 24 February. This event is open to all apprentices who have not previously debated in the Law Society, not just those on the professional courses.

I would like to welcome each and every apprentice to the 116th session of SADSI and look forward to meeting you at the various events around the city and country.

Keith Walsh

Interviewing competition

The final rounds of the interviewing competition were held just before Christmas. The interviewing team were very impressed with the quality of interviewing skills displayed by the students. Unfortunately, this made choosing the top three an onerous task.

After much soul-searching, three winners suggested themselves: Clodagh Beresford, Gareth Bourke and Emer O'Sullivan. They'll go forward to represent the Law Society in the *International client counselling competition* to be held in Queen's University Belfast between 5 and 8 April.

SADSI events: February 2000

Monday 14	'Welcome to the professional course' drinks reception at Griffith College for the 53rd, 54th and 55th courses
Thursday 17	Reception and promotion for in-office apprentices in Dublin; secret venue (not Chief O'Neills), to be revealed early February
Thursday 24	Drinks reception and SADSI maiden speakers' debate, the Presidents' Hall, Blackhall Place
Friday 25	Western apprentices social gathering in Galway City (venue to be announced)

SADSI Committee 2000

Auditor: Keith Walsh, Anthony Harris & Co, Dublin
Vice-auditor & welfare officer: Gareth Bourke, Patrick J Durcan & Co, Mayo
Honorary secretary: Eva Lalor, Orpen Franks, Dublin
Honorary treasurer: Patrick Bardon, Black & Co, Dublin
Public relations officer: Ann Brennan, Crowley Millar & Co, Dublin
Western representative: David Higgins, Geoffrey Browne & Co, Galway
Southern representative: Anthony Coomey, PJ O'Driscoll & Sons, Cork
Limerick & Midland representative: David Ryan, Breen Geary McCarthy & Shee, Limerick
Dublin representatives: Rachel Minch, McCann FitzGerald, Dublin
Keith Smith, Arthur Cox, Dublin

***Ex-officio* members**
Debating task force co-ordinator: Clodagh Beresford, Actons, Dublin
Drama co-ordinator: Ronan O'Brien, Garrett Sheehan & Co, Dublin

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 4 February 2000)

Regd owner: John Tobin (deceased); Folio: 7065F, 7063F and 7070F; Lands: Seskinnamadra and Barony of Idrone East; **Co Carlow**

Regd owner: Patrick Gibney, Springhall, Oldcastle, Co Meath and Bahernagh, Ryefield, Virginia, Co Cavan; Folio: 12872; Lands: Behernagh; Area: 15.118 acres; **Co Cavan**

Regd owner: Thomas Tully, Castleterra, Ballyhaise, Co Cavan; Folio: 25630; Lands: Castletiterra and Drumohan; Area: 26.919 acres; **Co Cavan**

Regd owner: John Masterson, Coragh Glebe, Killeshandra, Co Cavan; Folio: 20971; Lands: Coragh Glebe; Area: 36.06 acres; **Co Cavan**

Regd owner: Patrick Gerard Hillery, Main Street, Miltown Malbay, Co Clare; Folio: 12532; **Co Clare**

Regd owner: Joseph B Halpin, Ballinooskny; Folio: 8044; Lands: Townland of Ballinooskny and Barony of Bunratty Lower; Area: 0.785 hectares; **Co Clare**

Regd owner: Kathleen O'Connell; Folio: 49947; Lands: Known as a plot of ground situate in the Townland of Ballycurreen and the Barony of Cork; **Co Cork**

Regd owner: William Twomey; Folio: 47612; Lands: Known as a plot of ground situate in the Townland of Ballinaspig Beg and the Barony of Cork; **Co Cork**

Regd owner: Daniel Carroll and Elizabeth Carroll; Folio: 34730F; Lands: Known as a plot of ground situate in the Townland of Carrigrohane and the Barony of Cork; **Co Cork**

Regd owner: Michael Malone; Folio: 44672; Lands: Known as a plot of ground situate in the Townland of Farran and the Barony of East Muskery in the County of Cork; **Co Cork**

Regd owner: Thomas Cavanagh; Folio: 29726F; Lands: Known as a plot of ground situate in the Townland of Lissanisky and the Barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Thomas Doherty, Toulett, Speenogue, Burt, Co Donegal; Folio: 8135; Lands: Toulett; Area: 61.238 acres; **Co Donegal**

Regd owner: St Columba's Diocesan Trust, Ard Adhamhnain, Letterkenny, Co Donegal; Folio: 3646F; Lands: Ballybofey; Area: 0.163 acres; **Co Donegal**

Regd owner: Margaret Murtagh (deceased), 57 Glencloy Road, Whitehall, Dublin 9; Folio: 29535L; Lands: Glencloy Road and situate in the county borough of Dublin; **Co Dublin**

Regd owner: John and Anne Fallon; Folio: 41742L; Lands: Property situate in the Townland of Templeogue and Barony of Uppercross; **Co Dublin**

Regd owner: Una Lawless; Folio: 12926; Lands: Townland of Oldcourt and Barony of Uppercross; **Co Dublin**

Regd owner: Aidan McCaffrey and Teresa McCaffrey, c/o MacDermot and Allen, Solrs, 10 St Francis St, Galway; Folio: 1662L; **Co Galway**

Regd owner: Frances Noone, Devon Park, Salthill, Galway; Folio: 42434; Lands: Townland of Clogatisky and Barony of Galway; Area: 0a 1r 0p; **Co Galway**

Regd owner: William O'Sullivan; Folio: 11974F; Lands: Townland of Ranalough and Barony of Trughanacmy; **Co Kerry**

Regd owner: Patrick and Patricia Lynch; Folio: 32126; Lands: Townland of Shanakill and Barony of Trughanacmy; **Co Kerry**

Regd owner: T Horan and Sons Ltd; Folio: 21415 and 31893; Lands: Townland of Castleview and Barony of Trughanacmy; Area: 25 perches (21415); 2 acres 1 rood 7 perches (21893); **Co Kerry**

Regd owner: Michael Scanlon; Folio: 5322F; Lands: Townland of Ballynabrennagh Lower and Barony of Trughanacmy; **Co Kerry**

Regd owner: Bridget Dullard; Folio: 1415; Lands: Ullid and Barony of Iverk; **Co Kilkenny**

Regd owner: Thomas Madigan; Folio: 9805F; Lands: Jerpoint Abbey and Barony of Gowran; **Co Kilkenny**

Regd owner: Nicholas Mulhall (deceased); Folio: 1858; Lands: Balllehane Lower and Barony of Ballyadams; **Co Laois**

Regd owner: Margaret McGrath; Folio: 2737; Lands: Closeland or Cloneen and Barony of Portnahinch; **Co Laois**

Regd owner: Michelle Hartigan; Folio: 3689L; Lands: Townland of Sluggary and Barony of Pubblebrien; **Co Limerick**

Regd owner: Dermot and Thomas Howard; Folio: 22271; Lands: Townland of Ballinvreena and Barony of Coshlea; **Co Limerick**

Regd owner: Irish Shell Limited; Folio: 22393; Lands: Townland of Courtbrack and Barony of Pubblebrien; **Co Limerick**

Regd owner: John Mulvihill, Cornadough, Newtowncashel, Co Longford; Folio: 12406; Lands: Carrow More, Carrow Beg; Area: 81.644 acres; **Co Longford**

Regd owner: Matthew C Mullen; Park Street, Dundalk, Co Louth; Folio: 11973; Lands: Haggardstown; Area: 0.425 acres; **Co Louth**

Regd owner: Patrick McCormack, 98 Creeneen (Craobhin) Park, Balbriggan, County Dublin; Folio: 11759; Lands: Sarsfieldstown; Area: 23.056 acres; **Co Meath**

Regd owner: Bernard and Eileen Downes, Bogganstown, Drumree, Co Meath; Folio: 2747; Lands: Bogganstown; Area: 1.860 acres; **Co Meath**

Regd owner: Patrick Togher, Drum, Binghanstown, Co Mayo, and Berrillstown, Tara, Co Meath; Folio: 20317; Lands: Berrillstown, Branstown; Area: 36.469 acres; **Co Meath**

Regd owner: Joseph Clinton, Drakerath, Kells, Co Meath; Folio: 17467F; Lands: Drakerath; Area: 50.381 hectares; **Co Meath**

Regd owner: Patrick Creavin, 5 O'Growney Terrace, Navan, Co Meath; Folio: 13032F; Lands: Abbeylands; **Co Meath**

Regd owner: Eamonn McGovern (deceased), Grangebeg, Skreen, Co Sligo; Folio: 17701; **Co Sligo**

Regd owner: Michael Deane; Folio: 33253; Lands: Caherhoereigh and Faddan More and Barony of Ormond Lower; **Co Tipperary**

Regd owner: Martin Kearney (deceased) and Evelyn Kearny; Folio: 12501; Lands: Cloran Old and Barony of Middlethird; **Co Tipperary**

Regd owner: William and Breda

Delahunty; Folio: 40415; Lands: Loughlohery and Barony of Iffa and Offa West; **Co Tipperary**

Regd owner: Rory Kirwan (otherwise Roger Kirwan); Folio: 3104F; Lands: Townland of Kilnafrehan Middle and Barony of Decies without Drum; **Co Waterford**

Regd owner: Edmund Power; Folio: 1871; Lands: Townland of Lisselty and Barony of Gaultiere; **Co Waterford**

Regd owner: Michael Aherne; Folio: 12145F; Lands: Townland of Kilmore West and Barony of Coshmore and Coshbride; **Co Waterford**

Regd owner: James Moran, Bunavalley, Athlone, Co Westmeath; Folio: 19811; Lands: Magher-Anerla; Area: 0.219 acres; **Co Westmeath**

Regd owner: Thomas Butler, Cornamaddy, Athlone, Co Westmeath; Folio: 5037; Lands: Cornamaddy; Area: 3.306 acres; **Co Westmeath**

Regd owner: William Corish (deceased); Folio: 19647; Lands: Ballymoney Lower and Barony of Ballaghkeen North; **Co Wexford**

Regd owner: Anastasia and Thomas O'Loughlin; Folio: 20053; Lands: Parknacross and Barony of Ballaghkeen North; **Co Wexford**

Regd owner: Mary Nolan; Folio: 1523; Lands: Oulartard and Barony of Scarawalsh; **Co Wexford**

Regd owner: Henry Thackaberry; Folio: 3479F; Lands: Scarawalsh and Barony of Ballysimon; **Co Wexford**

Regd owner: Angela Molloy; Folio: 2176F, 12839, 12840; Lands: Grange and Barony of Shelburne; **Co Wexford**

Regd owner: William and Irene O'Connor; Folio: 568F; Lands: Ballyregan and Barony of Scarawalsh; **Co Wexford**

Regd owner: Patrick and Rita Gavan; Folio: 18165F; Lands: Borleagh and Barony of Gorey; **Co Wexford**

WILLS

Bardsley, Kevin (deceased), late of 3 Dargle Lodge, Knocklyon, Tempelogue, Dublin 16, and 4a Ashfield, Templeogue Road, Dublin 6W. Would any person having knowledge of a will executed by the above named deceased who died on 11 February 1999, please contact Cogan-Daly & Company, Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6, tel: 01 4903394, fax: 01 4903190

Bolger, Edward James of Knockgreaney, Coolgreaney, Gorey, Co Wexford, otherwise James Edward, otherwise Eamon and otherwise of Ferrybank, Arklow, Co Wicklow and otherwise of 7 Scotthall Row, Leeds, England. Would any person having knowledge of a will executed by the above named deceased who died on 28 September 1999, please contact CJ Louth & Son, Solicitors, Ferrybank, Arklow, tel: 0402 32809, reference: Cathal Louth

Donnellan, Mary (deceased) (née Keenan), late of 21 Sherlock Terrace, Skerries, Co Dublin. Would any person having knowledge of an original will of the above named deceased who died on 20 August 1999, please contact MA Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath, tel: 046 31202, fax: 046 31932

Dunne, Vincent (deceased), late of 42 Santry Close, Santry, Dublin 9. Would any person having knowledge of an original will of the above named deceased who died on 25 November 1999, please contact Vivien Haverty, Irishtown, Mountmellick, Co Laois

Kennelly, Niall (deceased), late of 94 New Ireland Road, Rialto, Dublin 8, and formerly of Home Cottage, Redstone Hill, Surrey RH1 4AW, England. Would any person with any knowledge of a will executed by the above named deceased who died on 16 May 1999, please contact Ferrys, Solicitors, of 443 South Circular Road, Rialto, Dublin 8, tel: 01 4544275, fax: 01 4536911

Malone, Catherine (otherwise Kitty), late of 25 John Street, Kilkenny. Would any person with any knowledge of a will executed by the above named deceased who died on 23 May 1999 at St Columba's Hospital, Thomastown, Co Kilkenny, please contact Kearney Roche & McGuinn, Solicitors, 9 The Parade, Kilkenny, tel: 056 22270, fax: 056 63298

Murphy, Michael Jnr (deceased), late of Rearour, Aherla, Co Cork. Would any person having knowledge of a will executed by the above named deceased who died on 16 October 1999, please contact M/s Collins, Brooks & Associates, Solicitors, 7 Rossa Street, Clonakilty, Co Cork, tel: 023 33332 (REF: RC)

O'Flaherty, Thomas (deceased), late of Mansize Kennels Limited, Seatown Road, Swords, Co Dublin. Would any person having knowledge of a will of the above named deceased who died on 25 November 1999, please contact Niall Corr & Company, Solicitors, 32 Malahide Road, Artane, Dublin 5, tel: 01 8312838, fax: 01 8316320

O'Sullivan, Peter (deceased), formerly of 1 Johnstown, Walkinstown, and late of Rosario Nursing Home, Ferrybank, Waterford. Would any person having knowledge of the whereabouts of a will dated 7 January 1992 with codicil dated 3 March 1992 executed by the above named deceased who died on 27 October 1997, please contact M/s T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366

Vernon, John (deceased), late of 1 Elm Court, Merrion Road, Dublin. Would any person having knowledge of the administration of the estate of the above named deceased who died circa 1998, please contact McEntee & O'Doherty, Solicitors, 20 North Road, Monaghan, tel: 047 82088, fax: 047 83486

EMPLOYMENT

Solicitor seeks flexible (possibly part-time) hours preferred in Dublin City. Two years' PQE, wide variety of legal experience, computer literate. Will work flexible hours depending on work demand. Please contact **Box No 10** for a CV

PA secretary required for sole practitioner in Fitzwilliam area. Microsoft Word experience and some legal experience essential. Excellent salary for suitable candidate. Commencement date for employment is flexible. **Reply to Box No 11**

Newly or recently-qualified solicitor with ability to work on own initiative required for busy general practice. Applications to John V Glynn, Principal, M/s Patrick Hogan & Co, Ballinasloe, Co Galway

Recently-qualified solicitor required for practice in County Limerick. **Reply to Box No 12**

Assistant solicitor required for North County Dublin practice. Please send CV to Patrick W McGonagle & Co, Solicitor, North Street, Swords, Co Dublin

Assistant solicitor required for vibrant, technologically-efficient general practice in Mullingar, Co Westmeath. Might suit newly or recently-qualified solicitor who has dealt with all aspects of general practice to include conveyancing, litigation, probate, family law etc. Immediate position available. Apply to **Box No 13** with full details and CV

Solicitor required for busy Ennis practice. Two to four years' PQE – must have experience in conveyancing, probate, taxation. Modern office, attractive terms for suitable candidate. Apply in confidence to M Cashin of M Cashin & Associates, 3 Francis Street, Ennis, Co Clare

Solicitor required for West Cork practice – salary in accordance with experience. **Reply to Box No 14**

Solicitor South County Dublin seeks merger or other arrangement. Might suit young solicitor or firm wishing to expand**. Reply to Box No 15**

Experienced solicitor seeks part-time position in north side of Dublin or city centre – conveyancing/probate. **Reply to Box No 16**

Solicitor, recently qualified, seeks work, two to three days a week; North Dublin/South Meath. **Reply to Box No 17**

Litigation solicitor required immediately for South Dublin office. Must have experience in plaintiff/defence work; excellent salary and benefits. Apply in strictest confidence with full CV to Brenson Lawlor & Co, Argyle Square, Morehampton Road, Dublin 4. REF: PF

Solicitor required with experience in conveyancing/probate; attractive salary package and opportunities for successful candidate. Reply in strictest confidence to Delahunty O'Connor & Co, Solicitors, 179 Crumlin Road, Dublin 12

MISCELLANEOUS

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

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

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

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

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

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

TITLE DEEDS

Notice seeking information
To: person with information in relation to the ownership of the lessor's interests in the premises hereinafter described.

Description of premises to which this notice refers: all that and those the premises known as 2 Fitzwilliam Terrace and 3 Fitzwilliam Terrace, situate in the Parish of Bray, half Barony of Rathdown and County of Wicklow.

Particulars of leases: lease for lives dated 10 May 1851 and made between John Archer of the one part and Stephen Raverty of the other part; lease dated 28 November 1861 and made between Adam Seaton Findlater, Andrew Armstrong, George Farquhason, William Todd, Henry Walker Todd, George Scott of the one part and Edward Breslin and of the other part.

Signed: Hugh J Campbell & Co, Solicitors, Shannon House, Custume Place, Athlone, County Westmeath.
25 November 1999

***Landlord and Tenants Acts, 1967-1984* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Mary O'Brien of Ballymount Road, Dublin 12**
Take notice that any person having an interest in the freehold estate of the following property: all that and those a portion of the leasehold premises comprising part of the lands of Walkinstown, Barony of Upper Cross and County of Dublin, together with a right of way, as more particularly set out and described in the indenture lease dated 17 August 1934 between Thomas Doyle of the one part Michael O'Brien of the other part, being for a term of 99 years from 17 August 1934 and subject to an annual rent of £8, subject to the exceptions and reservations and the covenants and conditions therein set out.

Take notice that Mary O'Brien intends to submit an application to the county registrar for the County/City of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any notice being received, Mary O'Brien 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/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Signed: Thomas Byrne & Company, Solicitors, 5 Greenhills Road, Walkinstown, Dublin 12.
21 January 2000

***Landlord and Tenants Acts, 1967-1984* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: Guiney and Company Limited (applicant) and persons unknown (respondents)**
Take notice that the applicant intends to submit an application to the county registrar, Dublin metropolitan, for the acquisition of the freehold interest in the premises described in the schedule hereto ('the property') and any persons having any interest in the freehold estate or any intermediate estate between the freehold and the leasehold interests 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 of the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests, including the freehold reversions in the property are unknown or unascertained.

Schedule
Part 1: premises known as 79 Talbot Street, in the parish of St Thomas and City of Dublin held under indenture of lease made 14 September 1908 made between Suzanne Harte, Henry Harkness Streeten, Suzanna Davis, Thomas Alma Brunker, Edward Carolin Harte, Elizabeth Grace Hayes, Edith Harte and Elizabeth Ennis of the one part and Henry Bryan of the other part.

Part 2: all that and those the premises now known as 80 and formerly known as 80 and 80a Talbot Street in the parish of St Thomas and City of Dublin held under indenture of lease made 30 August 1929 made between Rev Henry H Streeten, Edward Carolin Harte, Thomas Alma Brunker, Suzanna Davis, Martha Harte and Elizabeth Grace of the one part and Henry Bryan of the other part.
Signed: O'Connor, solicitors for the applicant, 8 Clare Street, Dublin 2.
4 February 2000

The man who could have saved the Beatles

'A lawyer with a reasonably sympathetic ear can help others in their difficulties'

John Fish, a senior partner in the law firm Arthur Cox and member of the Law Society Council, has been elected First Vice-President of the Council of European Bars and Law Societies (CCBE), the body that represents the interests of the European legal professions before the EU institutions. He is due to serve as president for the year 2001/02, only the second-ever Irishman to hold that post.

Born in Dublin in 1938, he went to Sandford National School in Ranelagh, and then the High School in Dublin's Harcourt Street. He studied the Law Society's legal professional courses in Trinity College, and was apprenticed to Rowan Blakeney of A&L Goodbody. Following qualification in 1960, he spent two years working in the firm as assistant to George Overend (who was at that time President of the Law Society). He joined Arthur Cox in 1968.

What attracted you to a career in the law?
I rather liked the idea of becoming a lawyer from my early days in school, partly due to an interest in the organisation of and participation in meetings, and partly to a belief (which I still continue to hold) that a lawyer with a reasonably sympathetic ear can help others in their difficulties.

Which living person do you most admire, and why?
There are many people from all walks of life whom I greatly admire, but my short list would include Robert Fisk for the courage of his convictions and his journalistic integrity.

Another would be Gianni Manca, an Italian lawyer who spends most of his time in Scotland. I met him many years ago, and he epitomises everything I admire in a lawyer, combined with an extraordinary sense of humour. Gianni was also a past president of the CCBE.

What is the best piece of advice you ever got?
From Archie Overend (past president of the Law Society and contemporary of Arthur Cox) who told me that, whilst a good memory is a very useful tool in the practice of law, no matter how well you may remember a legal point, always check it by reference to 'the books'.

Which case do you wish you had been involved in?
To have acted on behalf of The Beatles, and possibly advised them not to break up.

John Fish: First Vice-President of the Council of European Bars and Law Societies (CCBE)

Best decision you ever made?
To have had the good fortune of joining Arthur Cox in 1968 at a time when commercial lawyers were in relatively short supply.

Worst decision you ever made?
As a young solicitor, not to have spent a few years gaining experience in the City of London.

How do you cope with stress?
To discuss the cause of the problem with friends and associates and to listen to their advice.

If you could make one change to the legal system, what would it be?
To have the power to release public funds in order to develop the legal aid system, thus enabling greater access to justice than is available at present.

Time management tips?
The only papers on your desk should be those relating to the case you are working on.

Pet hate?
A cluttered desk. G