Law Society Gazette

Regulars

COVER PICTURE:
ROSLYN BYRNE

Cover Story

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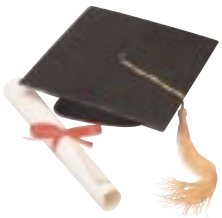

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New website gives lawyers free access to legislation and case law on-line

Solicitors can now access Irish and British legislation and case law free of charge following the recent launch of a new legal website. The British and Irish Legal Information Institute (BAILII) project aims to make primary legal information available on-line and its website, http://www.bailii.org, is already registering 100,000 hits a week.

The BAILII concept is based on the extremely successful service that has been provided for a number of years by the Australasian Legal Information Institute (AustLII) for the Australian, New Zealand and Pacific island jurisdictions. The Law Faculty at University College Cork, through its dean, Dr John Mee, has been co-ordinating the Irish contribution to the BAILII project, which has received enormous help from its AustLII counterparts, particularly from Professor Andrew Mowbray.

Among the information included on the BAILII site is the full text of Irish statutes from 1922-1998, supplied by the Attorney General's Office, which will be supplemented over the coming weeks by Irish statutory instruments from 1922-1998. The electronic publisher *FirstLaw* has agreed to supply BAILII with the post-1998 statutes and statutory instruments free of charge. These will made available one month after they appear on the *FirstLaw* service.

A Corking good launch: Pictured at the recent launch of the British and Irish Legal Information Institute (BAILII) were (*left to right*) Professor Andrew Mowbray of the Australasian Legal Information Institute, Dr John Mee, Dean of the Law Faculty at University College Cork, and Mr Justice Iarfhlaith O'Neill of the High Court, who officially launched the new information service

The website now contains 50 High Court cases and a dozen Supreme Court cases from 1999 and 2000, provided by the Courts Service, which has said that it will make available the full text of all judgments as soon as possible (probably in the autumn). The BAILII site also includes the decisions of the information commissioner and the Competition Authority. All the cases include hyperlinks allowing the user to move from a reference in a case to a statutory provision directly to the text of that provision.

The contribution from Northern Ireland has been particularly impressive and the site now includes the consolidated Northern Irish statutes from 1495-1982 – a huge body of data which was never previously available to the public in electronic format. Much of the earlier legislation on this database (such as the *Bills of Exchange Act 1882*) still applies in the same form in this jurisdiction. BAILII also includes the decisions of the House of Lords, the UK Court of Appeal and the High Court in England from 1996, the Northern Irish decisions from 1999 and the Scottish decisions from 1998.

According to UCC's John Mee, the costs of maintaining the BAILII site are substantial, even though £100,000 has already been pledged from the UK (including £25,000 from the Law Society of England and Wales and substantial sums from leading law firms). Any Irish solicitors' firms that would be interested in contributing to the maintenance of BAILII can contact Dr John Mee at j.mee@ucc.ie.

Criminal Law Committee

DRUG COURTS SEMINAR
and
RECEPTION FOR JUDGES OF THE DISTRICT COURT

22 June 2000

BOOKING FORM

Name: _____

Practice Name & Address: _____

_____

Please reserve _____ place(s)

Booking forms should be returned to Colette Carey, Solicitor, Criminal Law Committee, Law Society, Blackhall Place, Dublin 7, to be received no later than 19 June 2000.

Speakers: Judge Gerard Haughton (Vice-Chairman, Planning Committee)
Michael E Hanahoe, Solicitor (Member, Planning Committee)
Registration: 6.30pm
Seminar: 6.45pm

Attendance at both the seminar and reception is free of charge.

The first report of the Drug Courts Planning Committee Pilot Project on the establishment of a drug court on a pilot basis in Dublin has been published. The implications and operation of the new system will be of interest to all those practising in the area of criminal law.

No solicitors' advertising bill this session, says minister

The bill designed to curb personal injury advertising by solicitors is unlikely to pass through the Dáil before the end of the current session, according to the Minister for Justice John O'Donoghue. In an interview with the *Law Society Gazette*, O'Donoghue confirmed that passage of the *Solicitors (Amendment) Bill*, introduced in the wake of numerous army deafness cases, was 'looking very doubtful at the moment'.

'There are only four or five weeks left in the Dáil session and there's an awful pile of legislation backed up', he said. 'Our department has about 17 other pieces of legislation before the House at the present time. We've five or six others in the course of drafting, and it's doubtful at this stage that it will go through in the current session but I am anxious that we would get it through with some suitable amendments this year'.

In the interview, O'Donoghue also strongly defended the government's policies on asylum seekers and rejected allegations from some quarters that his attitude is racist.

O'Donoghue: 'I'm anything but racist'

'I take great offence at any such allegation or accusation', he said, 'because in point of fact I'm anything but racist. It is a matter of no moment at all to me if people come into this country legally, and I don't care where they come from, provided that they are here legally. I want to stress that refugees are welcome, but illegal immigrants will have to leave. I cannot have a disproportionate number of illegal immigrants coming into the state.

'All of the measures which I am proposing now, be it in relation to finger-printing or deportation, are all measures which are features of immigration law across Europe. So those people who are making criticisms of that policy are doing so on a most ill-informed basis and they are not actually looking at this matter with any degree of logic but are in fact acting out of emotion. That is my opinion'.

The minister also rejected criticism from civil liberties groups that the raft of criminal legislation he has introduced since taking office had tipped the scales of justice in favour of the prosecution.

'Whilst I have introduced certain measures which would, if you like, recalibrate the scales of justice, I deny vehemently that I have allowed the scales down in favour of one as opposed to the other. All I've done is give an even break to the prosecution', he said. 'Sometimes I think that these groups feel that they must oppose measures which are brought forward, irrespective of how sensible they are, because not to do so would mean that they would lose their badges of honour'.

(See also page 8 for the full interview.)

Law Society launches new diploma course

The Law Society is to introduce a new *Commercial law diploma* from this November. The diploma is intended to appeal to both solicitors and barristers and features a total of 12 modules: sale of goods/consumer law; credit and payment; commercial credit and security; insurance; insolvency; partnership; intellectual property; international trade; introduction to competition; competition; and e-commerce.

The Law Society's well-established diplomas in property tax, legal French and legal German will also be run again shortly:
Diploma in property tax – September
Diploma in legal German – October
Diploma in legal French – January, 2001.

Anyone interested in having their names included on a database for receiving information on diplomas should contact Michele Nolan in the Law School, tel: 01 672 4902.

THE YANKS ARE COMING
Dublin solicitors' firm Brian O'Donnell & Partners has linked up with international US law firm Squire, Sanders & Dempsey. Both firms say that the 'exclusive association' agreement means that Irish clients will benefit from the global strength of one of the largest international law firms. According to managing partner Brian O'Donnell: 'Many of our clients are developing global franchises on the back of the booming Irish economy and require legal services that can facilitate the development of their global reach'.

DOUBLE TAKE FOR NEW NOTARY
Bill Holohan, principal of Bill Holohan & Associates, has been appointed notary public for both Dublin and Cork, apparently the first time that a notary has been appointed for both cities. Holohan, a native of Cork and graduate of UCC, qualified as a solicitor in 1983 and operates offices in Cork and Dublin.

***EQUAL STATUS BILL* SIGNED**
The *Equal Status Bill, 1999* has been signed into law and is expected to come into effect by early autumn. According to Minister for Justice John O'Donoghue, the act will have 'a profound impact on Irish society, and, together with the *Employment Equality Act, 1998*, puts in place a comprehensive anti-discrimination code'.

LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME
Unit prices: 1 May 2000:
- **Managed fund: 363.501p**
- **All-equity fund: 111.630p**
- **Cash fund: 178.193p**
- **Pension protector fund: –**

Refugee law and practice seminar

Blackhall Place: 28 June
Please note that the time of the above seminar has been changed. It will now start at 9.30am and finish at 1pm. The CLE department regrets any inconvenience caused by the time change.

When is a shop not a shop?

A recent decision by An Bord Pleanála will have given shop-keepers food for thought, writes Ainsley Heffernan

The word 'shop' is given a very broad definition under article 8 of the *Local Government (Planning and Development) Regulations 1994*. It includes, among other things, use for the sale of sandwiches or other cold food for consumption off the premises. However, the sale of hot food for consumption off the premises is specifically excluded. Most grocery shops, such as Spar and Centra, now sell hot food such as sausage rolls and chicken wings. Is this a material change of use which would require planning permission? This is the question which An Bord Pleanála had to decide in a recent case concerning a Spar convenience store on Dame Street in Dublin (reference no 29S RF 0807, decided on 6 April 2000).

Heffernan: shops have had to change to meet demand

Warning notice

Dublin Corporation served a warning notice on the applicant pursuant to section 26 of the *Local Government (Planning and Development) Act, 1976*, as amended. This notice called on the applicant to discontinue the sale of hot food for take-away, which is not permitted under the definition of 'shop' in the 1994 regulations. The applicant submitted that the sale of small quantities of items such as hot bread and sausage rolls did not require planning permission, as it is incidental to the principal use of the premises as a shop. Dublin Corporation did not agree and the applicant referred the dispute to An Bord Pleanála under section 5 of the *Local Government (Planning and Development) Act, 1963*.

A question then arose as to the board's jurisdiction to consider the interpretation of a planning permission on foot of a section 5 reference. The board decided it had no power to deal with this matter, as the sale of hot food had begun with the opening of the shop and so the dispute concerned whether the shop was operating within the parameters of its planning permission. The board felt its powers under section 5 of the *Local Government (Planning and Development) Act, 1963* were confined to what in any particular case is or is not development or exempted development. The applicant sought judicial review of this decision.

In *Palmerlane Limited v An Bord Pleanála* (unreported, High Court, 28 January 1999), McGuinness J held that in a situation where a very large number of convenience stores operate in the same way as the applicant, it seems in accordance with reason and common sense that questions such as this should be determined by those with expertise in the planning area, namely An Bord Pleanála. McGuinness J expressly approved the decision of Barron J in *McMahon v Dublin Corporation* ([1997] 1 ILRM 227) and directed the board to determine the issue.

The applicant's case before the board ultimately failed on a technical point relating to the planning history of the premises. Essentially, the existing layout of the shop differed materially from the plans and particulars in respect of which permission was granted. Therefore, the board held that the offending use constituted part of a development which was not authorised. However, the board's findings on the question of whether a shop is permitted to sell hot food for consumption off the premises are very interesting. It concluded as follows: 'a) the use of part of the premises for the sale of hot food for consumption off the premises in this particular case is incidental to the principal use; b) the sale of hot food for consumption off the premises to the limited extent which occurs at no 32 Dame Street would not on that account result in a material change of use from the use of this shop for the retail sale of groceries without the element of hot food for consumption off the premises'.

This would appear to be good news for the retail sector and, in particular, those shops which sell small quantities of hot take-away food.

An Bord Pleanála has in fact continue in the public domain.

Recently, on purchasing a second-hand property on behalf of a client, I sought confirmation from the vendor's solicitors that the bond lodged with the local authority was still in being. The reply furnished read: 'we enclose herewith copy letter of Ennis UDC with regard to bonding'.

Perhaps this is one solution which will help cement a council's relationship with the public!

DUMB AND DUMBER

From: Patrick McMahon, Newcastle West, Co Limerick
Place: West Limerick District Court; **date:** 1950s
Solicitor: And you say you were seriously assaulted?
Injured party: I was, sir.
Solicitor: Tell the court your injuries.
Injured party: I had two black eyes, my nose was bleeding, my lip was split and my knees were all scrope *(sic)*.
Solicitor: Tell us, did you go to see a doctor with these complaints?
Injured party: I did not.
Solicitor: Do you mean to have the audacity to come in here to court and tell us you were brutally and savagely assaulted and you did not go to see a doctor?
Injured party: I did not, sir.
Solicitor: *(voice rising to a crescendo)* And will you tell the court why you did not go to see the doctor?
Injured party: Because, sir, the doctor came to see me!

Game, set and match.

From: Feargal Ó Dulaing, Marian Petty & Co, Ennis, Co Clare
We note the contentious matters that urban district councils (and, of course, county councils) have had to deal with from time to time. Many of these issues

considered this issue before. The case concerned a supermarket in Co Cork where the sale of hot food for consumption off the premises had begun prior to the coming into operation of the 1994 regulations. The *Local Government (Planning and Development) Regulations 1977* contain a similar provision prohibiting shops from selling hot food. The board in this case concluded that the limited sale of hot take-away food did not constitute a material change of use in planning terms.

A matter of degree

Following the board's reasoning, a premises principally used as a shop is entitled to sell small quantities of hot food for consumption off the premises, as this use is incidental and would not result in a material change of use requiring planning permission. However, it is clearly a matter of degree. In the *Palmerlane* case, the evidence given to the board was that the sale of hot food amounted to no more than 2% of the total floor area of the building and that in terms of turnover amounted to less than 2% of the total sales. On the same day as the *Palmerlane* decision, the board decided a separate case concerning a premises in Temple Bar known as Rasher Byrnes. In this case, the sale of hot food constituted a 'significant element' in the use of the retail outlet. For that reason, the board held that the sale of hot food for consumption off the premises amounted to a material change of use which requires planning permission.

The exclusion of the sale of hot take-away food from the definition of shop in the 1994 regulations is in accordance with the general policy of discouraging certain types of use which are more likely to be inconsistent with the proper planning and development of an area. This would also explain why one can change from use as a take-away to a shop without planning permission, but not the other way around.

Consumers' tastes and requirements have changed over the years

Changing tastes

Consumers' tastes and requirements have changed a lot over the past number of years. People want to be able to buy a newspaper, a hot sandwich or some coffee and return to their office or canteen. Shops have had to change to meet this demand. The decision of An Bord Pleanála in the *Palmerlane* case is to be welcomed in its application to small shops and convenience stores. One would hope that this case will be followed in the future, and enforcement proceedings will only be taken where there is a clear breach of planning law. G

Ainsley Heffernan is a solicitor in the environmental law unit of the Dublin firm Beauchamps. He is one of the main contributors to Irish planning law and practice *(Butterworths).*

DUMB AND DUMBER

From: Ruairí Ó Baoill, Béal Feirste

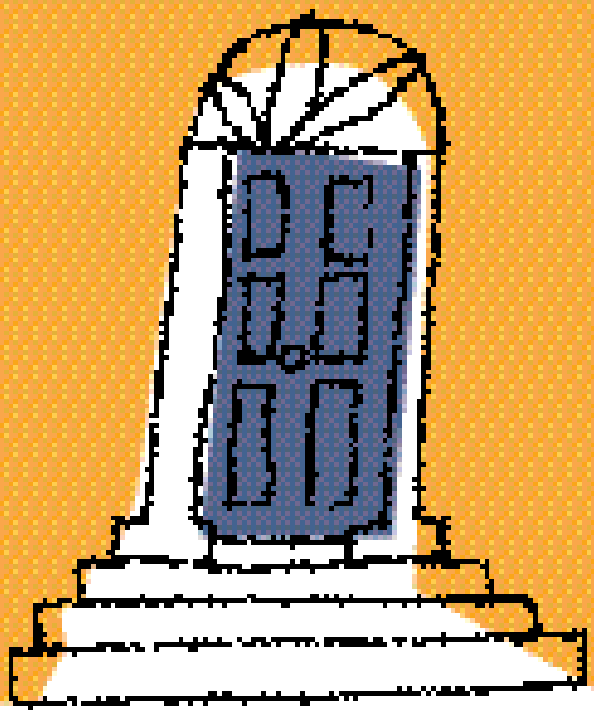
The following accounts are from an Internet contest to ascertain which individual, through isolation by incarceration, has done the most to remove undesirable elements from the human gene pool:

Runner-up no 7: A guy walked into a corner store in Colorado Springs with a shot gun and demanded all the cash from the cash drawer. After the cashier put the cash in a bag, the robber saw a bottle of Scotch behind the counter and told the cashier to put it in the bag as well. The cashier refused, saying he didn't believe the gunman was over 21. The robber said he was, but the clerk still refused to give him the Scotch because he didn't believe him. At this point, the robber produced his driver's license. The clerk looked it over, agreed that the man was in fact over 21 and put the Scotch in the bag. The robber then ran from the store with his loot. The cashier promptly called the police and passed along the name and address that he had gotten from the license. They arrested the robber two hours later.

Runner-up no 6: When reporting a stolen car, a woman mentioned that there was a car phone in it. The police officer taking the report called the phone and told the guy who answered it that he had read an ad in the newspaper and wanted to buy the car. They arranged to meet, and the thief was arrested.

Runner-up no 5: A man, wanting to rob a Bank of America in downtown San Francisco, walked into the branch and wrote 'This is

(Continued overleaf) ➜



a stikkup. Put all your muny in this bag'. While standing in line, waiting to give his note to the teller, he began to worry that someone had seen him write the note and might call the police before he reached the teller window. So he left the Bank of America and crossed the street to Wells Fargo. After waiting a few minutes in line, he handed his note to the Wells Fargo teller. She read it and, surmising from his spelling errors that he was not the brightest light in the harbour, told him that she could not accept his stick-up note because it was written on a Bank of America deposit slip and that he would either have to fill out a Wells Fargo deposit slip or go back to Bank of America. Looking somewhat defeated, the man said 'OK' and left. The Wells Fargo teller then called the police who arrested the man a few minutes later as he was waiting in line back at the Bank of America.

Runner-up no 4: A motorist in England was unwittingly caught in a speed trap that photographed his car and measured its speed using radar. He later received a ticket for £40 in the post, along with a photo of his car. Instead of payment, he sent the police a photograph of £40. Several days later, he received a letter from the police containing another picture: this time, of handcuffs. The motorist promptly sent the money for the fine.

Runner-up no 3: Drug possession defendant Christopher Jansen, on trial in March in Pontiac, Michigan, said he had been searched without a warrant. The prosecutor said the officer didn't need a warrant because a bulge in Christopher's jacket could have been a gun. 'Nonsense', said Christopher, who happened to be wearing the same jacket in court that day. He handed it over so the judge could see it. The judge discovered a packet of cocaine in the pocket and laughed so hard he required a five-minute recess to compose himself.

Runner-up no 2: Dennis Newton was on trial in Oklahoma City for the armed robbery of a convenience store when he fired his lawyer to act as his own counsel. Assistant district attorney Larry Jones said Newton (47) was doing a fair job of defending himself until the store manager testified that Newton was the robber. Newton jumped up, accused the woman of lying and then said, 'I should have blown your (expletive) head off'. The defendant paused, then quickly added, 'If I'd been the one that was there'. The jury took 20 minutes to convict Newton and recommended a 30-year sentence.

Runner-up no 1: RC Gaitlan (21) walked up to two Detroit patrol officers who were showing their squad car's computerised felon-location equipment to local children. When Gaitlan asked how the system worked, the officers asked him for identification. He gave them his driver's license and they entered his details into the computer. Moments later they arrested Gaitlan because information on the screen showed that he was wanted for a two-year-old armed robbery in St Louis, Missouri.

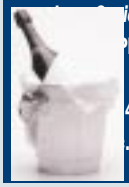
The winner: Another from Detroit. A pair of robbers entered a record shop, nervously waving revolvers. The first one shouted, 'Nobody move!' When his partner moved, the startled bandit shot him.

Patrick McMahon wins the bottle of champagne this month.

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, *...iety Gazette*, Blackhall ...lace, Dublin 7, or you can fax us on 01 672 4801, or e-mail us at ...oboyle@lawsociety.ie



The Bull's

Rarely a day goes by that Justice Minister John O'Donoghue isn't under attack from some quarter or another, whether because of his stance on refugees or his hard line on the rights of criminal suspects. Does it bother him? Not a bit, he tells Conal O'Boyle

Considering the kind of flak that John O'Donoghue has been getting recently, you might be forgiven for thinking that the minister for justice must wake up some mornings wishing he'd never quit the solicitors' profession to join that bunch of loveable rogues in Dáil Éireann. But you'd be wrong. The minister is bullish about his job and regards most of the criticisms as, well, bull.

'If the stage has been reached', he says, 'where the far left and the far right are all combined, very often on the one day, to launch scud missiles at you, the probability is that you're doing something right. I'm 13 years in public life and I'm used to being in the trenches. The bullets fly over'.

Island

The problem with his more vocal critics, he suggests, is that most of their broadsides against him are based on emotion, rather than logic. On that basis, he finds them quite easy to dismiss.

'I take it for granted that most of the criticism, for example, in relation to asylum policy, is founded on emotion not on fact and that very often analyses which are presented as such are quite facetious. So, much of the criticism – in fact, most of the criticism – regarding asylum-seekers policy I do not take seriously'.

The problem for O'Donoghue, of course, is that almost by definition the issues his department has to deal with are the ones that people feel most strongly about. Crime. Civil liberties. The refugee 'crisis'. These are hot buttons that, when pushed, will always get a reaction. It's hard to maintain a Spock-like logic in the face of such very human issues. Even the minister isn't immune: recent accusations of racism levelled against him bring a swift response.

'I take great offence at any such allegation or accusation', he says, 'because in point of fact I'm anything but racist. It is a matter of no moment at all to me if people come into this country legally, and I don't care where they come from, provided that they are here legally. I want to stress that refugees are welcome, but illegal immigrants will have to leave. I cannot have a disproportionate number of illegal immigrants coming into the state'.

He is proud of the fact that he set up a committee on racism and interculturalism, which is due to report back soon, and is planning a public awareness campaign on the back of that report. He also displays a touching conviction that Irish people don't have a bigoted bone in their bodies.

'I believe myself that racism exists amongst a very, very small minority of Irish people. It's not endemic in the people, of course it isn't. I think fears have been stirred up by some irresponsible statements at times but a lot of the fears that people express in relation to immigrants coming into their localities are not based on racism; they're based on fear of the unknown, which is different. And it's extraordinary but where people have objected to immigrants coming into their areas, we've had a great deal of tolerance once they've arrived'.

It's life, Jim, but not as we know it

Not surprisingly, he firmly regards the government's stance on asylum-seekers as perfectly logical and criticism of that policy as completely unfounded. 'My policy is quite simple', he says. 'If you are a refugee, you get sanctuary and if you are an illegal immigrant, you leave the country. None of the measures that I am introducing now are unusual in other jurisdictions'.

Up until recently, our immigration law was based on the *Aliens Act* of 1935, which said that any person entering the country from outside was 'an alien'. Deportation procedures for illegals were cumbersome and illogical, and having Scottie beam them up was not an option. O'Donoghue says he has boosted the number of immigration officials from 22 when he took office to 300, with more to come.

'All of the measures which I am proposing now, be it in relation to finger-printing or deportation, are all measures which are features of immigration law across Europe. So those people who are making criticisms of that policy are doing so on a most ill-


PICTURES: ROSLYN BYRNE

informed basis and they are not actually looking at this matter with any degree of logic but are in fact acting out of emotion. That is my opinion.

'No doubt, many of the good people concerned would have a different opinion. I'm not ascribing malice to anybody. I know that people who oppose me vehemently hold their views very strongly. But I would strongly argue that if I did not pursue the kind of policies which I have pursued, then certainly I might be a more popular man walking down O'Connell Street but the numbers coming into the country seeking asylum would be such that the system could not cope. It is sometimes forgotten, you see, that in Britain there are about 100,000 in the backlog of applicants there. There is a common travel area between Ireland and England: if my system is more attractive than the British system, it must stand to any kind of logical reasoning that I would have a disproportionate number coming here from Britain'.

Klingons on the starboard bow

There is, he adds, a degree of asylum-shopping going on. Under the *Dublin convention*, refugees are supposed to make their applications in the country in which they arrive, but many are moving on to third countries. O'Donoghue estimates that about 20% of such applicants are genuine; for the rest, there is due process.

'A person has the right to have his substantive case heard, has the right to appeal, and then the right to go to the courts, and then the right to make an application to the minister for justice to stay here on humanitarian grounds. So every possible avenue is exhausted and due process operates at all times and natural justice prevails. There is no unfairness in the system; it's open, it's transparent and it's fair. I cannot have an open door policy on immigration. I'm not saying that I'll be praised for my policy, but as a certain fact history will say that I was right'.

Boldly going where no minister has gone before

While history might yet be a harsh judge, at least the minister hasn't restricted his own right to silence. He is characteristically dismissive of the argument that the bulk of the legislation he has introduced – 27 acts in three years, the largest single bloc of legislation by any justice minister in the history of the state – tips the scales of justice in favour of the prosecution.

'Well, I believe that when I came into office that the opposite was the case and that we had reached the stage where the legislation on our statute books was not reflective of modern society. To take one example: the absolute right to silence. That dates from an age when people were not allowed to have representatives in court to speak on their behalf. It dates from an age where there was no free legal aid. And whilst I have introduced certain measures which would, if you like, recalibrate the scales of justice, I deny vehemently that I have allowed the scales down in favour of one as opposed to the other. All I've done is give an even break to the prosecution'.

Civil liberties groups and many defence lawyers don't quite see it that way, but the minister is undeterred.

'Sometimes I think that these groups feel that they must oppose measures which are brought forward, irrespective of how sensible they are, because not to do so would mean that they would lose their badges of honour. That's what I think'.

O'Donoghue points out that while he may have restricted a criminal suspect's right to silence, he counter-balanced that measure by introducing the video-taping of garda interviews. This £6 million project will be completed by the end of the year, by which time every garda station should be equipped with video facilities.

'We introduced that measure in order to make absolutely certain that there would be no injustice so, you know, the people on the civil liberties side who make criticisms have rarely given us any credit. There might be a perception that the scales have been tilted in favour of the prosecution, but I would strongly dispute that. All I've done is recalibrate them'.

Of all the many pieces of legislation that the minister has steered through the Oireachtas – and he currently has 17 more bills before the Dáil – there's absolutely no doubt which one he is most proud of: the *Proceeds of Crime Act, 1996*. This was O'Donoghue's brainchild when he was still languishing on the Opposition benches and giving the then justice minister, Nora Owen, a hard time.

MINISTER FOR JUSTICE JOHN O'DONOGHUE

Born: 1956
Educated: CBS Secondary School, Cahirciveen, Co Kerry; University College Cork (BCL, LLB)
1978: Qualified as a solicitor
1985-91: Member of Kerry County Council
1987: Elected Fianna Fáil TD for Kerry South
1991/92: Minister of State at Department of Finance (with responsibility for Office of Public Works)
1996: Minister for Justice
Hobbies: English literature, history, gaelic games, horse racing

O'DONOGHUE ON ...

ALLEGATIONS OF RACISM

'I take great offence at any such allegation or accusation because in point of fact I'm anything but racist. It is a matter of no moment at all to me if people come into this country legally, and I don't care where they come from, provided that they are here legally'.

HIS REFUGEE POLICIES

'If I did not pursue the kind of policies which I have pursued, then certainly I might be a more popular man walking down O'Connell Street but the numbers coming into the country seeking asylum would be such that the system could not cope'.

CIVIL LIBERTIES GROUPS

'I think that these groups feel that they must oppose measures which are brought forward, irrespective of how sensible they are, because not to do so would mean that they would lose their badges of honour'.

THE *PROCEEDS OF CRIME ACT, 1996*

'That single act, in my humble opinion, was one of the single most important pieces of criminal legislation introduced in the 20th century in Ireland. I've no doubt about that'.

ZERO TOLERANCE

'We've produced the legislation, we've produced the jail spaces, we've produced the guards, and we've shown the results. They're there for all to see. There's no question: the policies are working'.

The act provided for the freezing of assets even if no person had been charged or convicted of any crime and led directly to the formation of the Criminal Assets Bureau. To date, the CAB has frozen £13 million worth of assets and levied tax assessments of £32 million.

'That single act, in my humble opinion, was one of the single most important pieces of criminal legislation introduced in the 20th century in Ireland. I've no doubt about that', he says. 'We have had requests from other jurisdictions to look at it. I have absolutely no doubt that the British are going to follow suit soon. There are very clear indications of that.

'Of course, there's one other reason why I am very proud of the legislation, because at the time it was published Vincent Browne said it was "legal illiteracy". I'll see him about it one of these days and ask him if he has become more literate since I last met him'.

Before the asylum-seekers controversy hit the headlines, O'Donoghue was perhaps best known for espousing the policy of 'zero tolerance' towards crime. His fulminations on the subject from the Opposition benches earned him the sobriquet of 'the Bull'. While no-one actually knew what 'zero tolerance' meant, and many believe that the authorities continue to show undue tolerance to many forms of crime, particularly the white-collar variety, the minister says that the statistics speak for themselves.

'Crime has fallen by 21%. I said we'd produce the legislation: we produced the legislation. I said we'd increase the number of guards on the force: we increased them from 11,000 to 11,500, and we're setting sail for 12,000, as promised. I said we'd provide the prison spaces: by the end of this year we'll have provided an additional 1,277 spaces. We've allowed 700 more over the remaining life of the government. We've produced the legislation, we've produced the jail spaces, we've produced the guards, and we've shown the results. They're there for all to see. There's no question: the policies are working. And you have to remember that this is at a time when the population has increased by almost 200,000 and we have reduced crime by 21%.

'We're also, of course, responsible for doing one of my favourite things: we gave horses to the guards. We put them on horseback. It's proved to be a major attraction out amongst the public in that people relate to them. Some people said that fellas would be putting pen-knives in them. No, no, not at all. The most extraordinary thing is that no matter how depraved the criminal might be, he won't attack the horses'.

The final frontier

With the government continuing to ride high in the opinion polls, the stream of legislation from the Department of Justice shows no sign of running dry. Of course, some bills seem to have a smoother passage than others. The *Solicitors (Amendment) Bill*, which was originally introduced in 1998 to curb solicitor advertising in the wake of numerous army deafness cases, is still making its tortuous journey through the Oireachtas. Will it be on the statute books before the end of the current session?

'It's looking very doubtful at the moment', says O'Donoghue. 'There are only four or five weeks left in the Dáil session and there's an awful pile of legislation backed up. Our department has about 17 other pieces of legislation before the House at the present time. We've five or six others in the course of drafting, and it's doubtful at this stage that it will go through in the current session but I am anxious that we would get it through with some suitable amendments this year'.

By the time O'Donoghue leaves office, whenever that might be, it seems certain that he'll have left a legislative legacy that will put him up there with Frank Stapleton in terms of unbreakable records. Like him or loathe him – and it's all the one to him – you can't ignore the mark he's made as minister. And that's no bull. G

Professor James C Brady Memorial Trust

The life and work of one of this country's best-known legal scholars, Professor Jim Brady, has been honoured by the establishment of a memorial trust in his name. Dr Albert Power explains the scope and purpose of the trust

With the death of Professor James C Brady on 19 June 1998, the Irish legal community lost one of its most well-known and best-loved legal scholars. His premature passing quenched a light of legal learning in the Faculty of Law at University College Dublin, where for more than 25 years Professor Brady had imparted his great knowledge in the fields of equity and trust, land law and succession to generations of law students. In light of the affection in which Jim Brady was held by students, practitioners and academics alike, it has been decided to establish a memorial trust fund as a fitting tribute to his life and work. The objectives of the trust fund will include the award of an annual prize in the final equity examination at UCD, to be called the *Professor James C Brady Memorial Prize*, and the promotion of legal research by the award of scholarships, bursaries or maintenance allowances for the study of law to those needing them.

The trust deed, a copy of which is available for inspection on request, has been recognised by the Revenue Commissioners as a charity under reference no CHY 13572. The initial trustees are James Casey, Anne Corrigan, Tony Kerr and Oonagh Breen, all from the Faculty of Law, UCD, and Dr Albert Power of the Institute of Chartered Accountants in Ireland.

As a first tribute to the memory and career of Jim Brady, the trustees aim to publish a collection of commemorative essays on themes dear to his academic interests, written by current and former colleagues, both in academic life, in legal practice and on the bench. It is intended to bring out this *liber memorialis* before the end of this year.

A graduate of University College Dublin (obtaining the BCL in 1961 and the LLB in 1963), Professor Jim Brady was awarded a PhD by the Queen's University, Belfast in 1970 for his thesis *The law relating to religious charities in Northern Ireland*, which subsequently formed the subject matter for his first book *Religion and the law of charities in Ireland*, published in 1975. His career as an academic began in the University of Hull, where he lectured from 1966 to 1969. He returned to UCD in 1969 to take up a post in the Faculty of Law, where he lectured in land law, succession and equity and the law of trusts for the remainder of his academic career. Throughout this time, apart from his many learned articles, Jim Brady published *Succession law in Ireland* (1989, with a second edition in 1995) and co-wrote *Limitation of actions* (1984, with a second edition in 1994) with his colleague Anthony Kerr. Appointed to the Chair of Real Property and Equity in 1979, Jim served as Dean of the Law Faculty between 1978 and 1981 and again between 1986 and 1989. In 1995, he was awarded an LLD by the National University of Ireland for his outstanding contribution to legal learning in Ireland.

The late Professor Jim Brady

Jim's involvement with the law extended far beyond the boundaries of UCD. For 25 years he was external examiner in real property for the Law Society's final examination (first part) and, indeed, he had participated in a meeting of that examination's board of examiners only two days before his sudden death. He also acted as external examiner in equity for the King's Inns diploma. He was also a valued member of the Law Reform Commission's working group on conveyancing and land law since its establishment in 1987.

Above all, Jim Brady was a scholar in the true sense of the word in his unwavering quest for new insights into both traditional and emerging legal problems and in his constant encouragement to those around him regarding the value of research. A great believer in the adage that one will be remembered by what one leaves behind, Jim's legal legacy richly befits him in terms of its breadth and scope. It is hoped that by the establishment of this memorial trust, law students of the future will continue to experience that motivation towards the constant search for excellence which Jim so ably exemplified and inspired during his distinguished career in legal learning. G

Dr Albert Power is director of education at the Institute of Chartered Accountants in Ireland, a position he formerly held at the Law Society.

Contribution to the Professor James C Brady Memorial Trust Fund

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I enclose a cheque payable to the 'Professor James C Brady Memorial Trust Fund' for

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Please charge £ _____ **to my credit card:** Visa ☐ MasterCard ☐ American Express ☐

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Please return the completed form to: the Professor James C Brady Memorial Trust Fund, Faculty of Law, University College Dublin, Roebuck Castle, Belfield, Dublin 4, tel: 01 706 8739, fax: 01 269 2655.

How does your firm measure up?

David Rowe discusses the use of benchmarking as a technique for assessing your firm's profitability and management

Legal benchmarking compares a firm's business practices to profitability and practice-management information published within the profession. The results of this comparison are then used to improve the efficiency and, ultimately, the profitability of a firm by implementing the best industry practices.

There are a number of sources of information available for benchmarking among law firms. The technique has been used in the UK for many years, and the Law Society of Ireland recently completed a survey which provides the first benchmarking data for comparisons with Irish law firms.

Each of these headings are sub-divided into several components, allowing a more detailed analysis of each firm. Each firm then compares its own data to the measures of best industry practice. Variances are then considered in detail to see how the firm can be brought up to the standard, or whether there are good reasons why it does not make sense to do so.

As an example, the standard ratio for legal secretaries to fee-earners at the moment is somewhere in the range of 1.7-2 fee-earners per secretary. Many Irish firms still operate on the basis of one secretary to each fee-earner. Having too many secretaries results in additional expenditure for your firm, particularly in the current salary market where the cost of an experienced legal secretary can range from the mid to-high-teens in rural practices to the mid-20s in the Dublin market.

A higher than normal secretarial ratio may indicate under-investment in IT, inefficient use of the technology available or inadequate training. However, it may arise simply because the firm operates in an area where traditionally a higher level of secretarial input is required (for instance, conveyancing and litigation require ratios of 1.4-1.6 fee-earners to each secretary). In other words, it could be dangerous to simply compare your own situation to standard ratios. This needs to be done in the context of the areas of work in which you are operating.

Used properly, benchmarking is a powerful tool which highlights variances between your financial performance and the financial performance of other firms with similar profiles. By focusing on the areas of under-performance, a benchmark survey can identify inefficiencies and so highlight areas where improvement can be made throughout your firm.

Having benchmarked your firm, you need to take the results and consider them within the context of your operations and decide how best to achieve your goals. This may mean looking at the different areas of work, targeting alternative types of work, or even dropping some work. It may mean looking at how your practice is staffed, reviewing the number of secretaries or non-partners within the firm, and reviewing whether you are doing work at the correct level of seniority (and expense) within the practice.

Components of benchmarking:

- profitability
- fees per partner
- fees per fee-earner
- overheads
- staff ratios
- training
- use of space
- partner remuneration
- staff remuneration
- management accounting information
- tax and pensions policy
- partners' capital retention
- financing the partnership
- IT systems
- IT spending
- level of debtors
- level of bad debts
- risk management, and
- staff turnover.

The legal marketplace

In today's increasingly competitive environment, it is clear that those firms that are well managed financially are pulling ahead of the others. This is happening regardless of size or location. In recent years, escalating overheads – in particular salary, office costs and IT spending – have put increasing financial burdens on firms. Many practices are beginning to incur pressure on their margins, and while profits continue to increase in many firms, the rate of increase is lower than the rate of increase in their overheads. While this may be tolerable in a rising economy, there are obvious threats if the economy enters a downturn.

There are undoubtedly significant efficiencies to be achieved within Irish law firms at the moment. In many cases, however, these are not achieved because the partners have insufficient time to devote to financial and practice management.

Comparing your firm to best industry practice by benchmarking is one important step to good financial management. The exercise will offer an overview of your practice and its components. But implementation is the key, and you will not achieve everything overnight. This is particularly important in the current financial environment, as an increasingly competitive legal marketplace and spiralling overheads will lead those firms which are properly managed to pull further ahead of the others. G

David Rowe is the managing director of Outsource, a Dublin-based company that specialises in the financial and practice management of law firms.

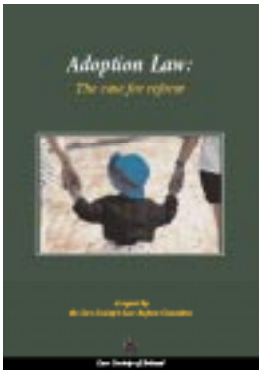
Adoption law: the

A recent report from the Law Society's Law Reform Committee has identified a number of areas where our adoption legislation needs to be reformed. The committee examined adoption legislation both in Ireland and abroad. This edited version of the report concentrates on the committee's recommendations

Despite the enactment of six pieces of amending legislation, the *Adoption Act, 1952* remains the principal source of Irish adoption law. This legislation inevitably 'reflected the attitudes, social circumstances and prejudices of Irish society in the 1950s … and fails to embrace today's understanding of the rights of the child, of adopted persons, and of birth parents, both mothers and fathers', according to Shatter's *Family law* (Butterworths, 1997). A number of particular shortcomings have been highlighted by events and developments in recent years. For example, the Supreme Court ruled in *IO'T v B* (unreported, 3 April 1998) that the right to know the identity of one's natural mother is a basic constitutional right, though not an absolute or unqualified right, as its exercise could be restricted by the constitutional rights of others and by the requirements of the common good.

Similarly, the nature of the institution of adoption is changing fundamentally with fewer and fewer Irish children now being placed for adoption. In 1997, the Adoption Board received 108 applications for domestic adoption orders in respect of children placed by registered adoption societies and health boards, compared to 127 in 1996 and 143 in 1995. In 1998, this figure had fallen to 93. The majority of Irish adoptions now taking place are 'family adoptions' – where a mother has a child outside marriage and then applies with her husband, who is not the father of the child – with approximately 60% of orders being made in favour of relatives of the child. The board received a total of 368 applications for adoption of Irish children in 1998, of which 241 were in respect of family adoptions. In 1997, the outgoing Adoption Board reported that a total of four registered adoption societies had de-registered during its lifetime as a consequence of the declining numbers of children being placed for adoption by birth mothers. Meanwhile, interest in overseas adoption continues to grow. In 1997, the board recognised 148 foreign adoption orders compared to 117 in 1996. In 1998, this figure increased to 259. During 1997, the board received over 3,500 telephone enquiries and 96 written enquiries from people expressing an interest in adopting overseas.

case for reform



MAIN POINTS

- Seven pieces of legislation currently govern adoption law in Ireland
- The rights of people seeking information must be balanced against individuals' right to privacy
- Adoption legislation should be consolidated into a single comprehensive *Adoption Act*

The number of people seeking information, either adoptees wishing to trace their birth parents or *vice versa*, is steadily increasing with the board receiving a total of 711 tracing enquiries during 1997 and 1,049 during 1998. Both the Adoption Board and adoption societies have reported increased demand for a comprehensive tracing service. Interestingly, the board notes that, though one registered adoption society de-registered and two others decided to cease placing children for adoption in 1996 alone, all three societies continue to provide a tracing service for their clients. The issue of adoptees, birth mothers and siblings seeking access to birth or adoption records or seeking to make contact is fraught with difficulties and conflicting interests.

In addition, the procedures set down under current legislation on domestic adoption create a number of specific anomalies which have led to distress and injustice for those involved or seeking to become involved in adoption arrangements. Any reform of adoption law should seek to remove these from the adoption code. Also, there is ready agreement on the need for consolidation of the current legislation on adoption. Since enactment of the *Adoption Act, 1998*, current adoption law consists of seven separate pieces of legislation, and this would increase to eight on enactment of the proposed *Adoption Contact Register Bill*. It would be desirable if reform of the law on adoption were to be accompanied by its consolidation into a single, comprehensive and up-to-date *Adoption Act*.

Generally, the outgoing Adoption Board concluded in 1997 that: 'In the five years of its existence, this board has witnessed dramatic changes in adoption practice and trends, changes which are reflective of the rapid pace of developments in Irish social life over the period. Despite these changes, the board is obliged to continue to operate within a legislative framework which is ill-equipped to cater for current adoption needs'.

Access to birth information and post-adoption contact

Probably the single greatest deficiency in current Irish adoption law is the lack of any legislative provision dealing with access to birth and adoption information. Despite the fact that there has been a substantial increase in the number of adopted persons seeking information about their birth parents and in the number of birth parents seeking to trace children given up for adoption, neither enjoy any statutory right of access to the relevant information. It must be remembered that the tendency towards secrecy in the adoption process cannot be attributed to any specific statutory provision, but rather to established practice among adoption agencies and other professionals.

However, section 22(5) of the *Adoption Act, 1952* provides that the adoption index 'shall not be open to public inspection' and that no information from it 'shall be given to any person' except by order of a court or An Bord Uchtála. Section 8 of the *Adoption (Amendment) Act, 1976* prohibits a court from requiring that any such information be given to any person unless the court is satisfied that it is 'in the best interests of the child' concerned to do so. In the government's current legislative programme, reference is made to an *Adoption Contact Register Bill* for which heads are currently being prepared in the wake of a comprehensive consultation process begun by the Department of Health and Children in March 1999. Obviously, any change in the law relating to access to information raises a number of sensitive issues.

First of all, those involved in the practice of adoption have traditionally regarded the preservation of anonymity and confidentiality as a priority and both adoptive and birth parents have always been given assurances that their anonymity will be protected. In particular, adoption agencies have given assurances that the identity of birth parents will not be revealed to an adopted child nor the identity of adopters revealed to birth parents. Of course, many birth mothers who gave children up for adoption as well as many adult adoptees will not wish to be traced under any circumstances. This may help to explain the well-documented reluctance of some adoption agencies to assist adopted people seeking access to their original birth records. The frustration of adopted people who, in the absence of any statutory right to such information, depend on the co-operation of adoption agencies is equally well documented. Therefore, the question arises whether a right to information should only be conferred in respect of future adoption arrangements.

Examination of comparable neighbouring jurisdictions suggests that there can be little justification for denying a right of access to birth information to adoptees under existing adoption arrangements. In Scotland, adopted persons attaining 17 years of age have, since the introduction of legal adoption in 1930, enjoyed a right of full access to their original birth records. Since November 1976, adopted persons in England and Wales attaining 18 years of age have enjoyed the same right. However, those adopted prior to the enactment of the relevant legislation, such as the *Children Act 1975*, are first required to undergo a counselling process. Similarly, though the same right was not extended to adult adoptees in Northern Ireland until 1987, those adopted prior to enactment of the relevant legislation, the *Adoption (Northern Ireland) Order 1987*, are required to undergo counselling before being granted

MAIN RECOMMENDATIONS IN THE REPORT

- That adult adopted people, their adult siblings and birth parents should be granted, by means of legislation, a qualified right to adoption information subject to the exercise of a veto relating to identifying information. Applications for such information should initially be made to the Adoption Board
- That adult adopted people and birth parents should be granted an absolute right to available non-identifying information relating both to the adoption and to the current welfare of the subject of the enquiry
- That adopted people, and where appropriate, adoptive parents, should have an absolute right to available information to be prescribed by statute to include, as a minimum, information relating to health and medical history
- That an information veto register be established and administered by the Adoption Board whereby adult adopted people and birth parents can prevent the disclosure of identifying information
- That a voluntary contact register be established and administered by the Adoption Board
- That optional counselling be made available by the state both prior to the initial grant of adoption information and prior to initial contact. Optional post-contact counselling should also be made available by the state
- That rigorous record-retention requirements be introduced by legislation and underpinned by criminal sanctions in relation to all adoption records
- That appeals against any decision of the Adoption Board regarding disclosure of information should be heard by the High Court in the absence of regional family courts and should be legally-aided
- That detailed guidelines or a code of conduct be developed in relation to tracing and reunion services, and that such services be funded by the state where necessary
- That a programme of post-adoption services be devised and provided by the Adoption Board
- That the exclusion of unmarried couples from adopting – as opposed to married couples and single or widowed persons – be removed
- That the general prohibition on the adoption of marital children be removed so as to permit, in appropriate circumstances, adoption of marital children in long-term care or fostering arrangements and of marital children where one parent is deceased and the surviving parent has remarried
- That measures be introduced to allow the Adoption Board to process adoption applications on behalf of the birth mother's husband, not being the natural father, while retaining the birth mother's parental rights and without the birth mother being required to go through the adoption process
- That measures be introduced to empower the Adoption Board to attach conditions, where appropriate, in the case of adoption by a spouse of a birth mother, not being the natural father, to ensure that the natural father's relationship with his child will be recognised in law
- That measures be introduced to provide for legally-aided representation for all parties to adoption disputes
- That a system of regional family courts be established with jurisdiction to determine all appeals from the Adoption Board
- That measures be introduced to facilitate and encourage the use of appropriate open adoption practices
- That current adoption legislation be consolidated into a single comprehensive *Adoption Act* at the earliest opportunity

access to their original birth records. In Canada, where adoption legislation comes under provincial jurisdiction, the general trend has also been towards establishing an individual right of access to birth information. Since 1994, the Ontario government's Standing Committee on Social Development has proposed new legislation permitting disclosure of information to adoptees and natural parents seeking reunion. In Alberta, the government amended the *Child Welfare Act* in 1995 making it easier for people adopted at birth to search for their birth parents. However, the new provisions still do not permit birth parents to initiate an active search. Saskatchewan began to provide adult adoptees with non-identifying background information in the early 1980s and has since made arrangements to facilitate applicants' search and reunion efforts. In British Columbia, the *Adoption Act* was amended in 1988 to permit creation of a passive registry and again in 1991 to create an active registry, run by a private agency with government funding. The registry acts as an intermediary and searches on behalf of both adoptees and birth parents and facilitates reunions between consenting parties.

The Black Committee, which in 1982 prepared the report recommending that restrictions on the disclosure of birth records in Northern Ireland should be lifted, was deeply divided on the question of retrospective application of a legislative right of access. The Irish Review Committee on Adoption Services was similarly divided in 1984. It acknowledged that retrospective grant of a right of access could create hazards for a natural mother's subsequent family relationships and fears among adoptive parents that any resulting contact might lead to divided loyalties and confusion for their children. The committee recognised that such a move would be regarded by many natural and adoptive parents as a breach of faith.

In a case relating to people informally adopted, the Supreme Court has recently declared that the right of a child to know the identity of his or her natural mother is an unenumerated constitutional right which flows from the natural and special relationship existing between a mother and her child. However, it held that this is not an absolute or unqualified right, but one the exercise of which may be restricted by the constitutional rights of others or by the requirement of the common good (*IO'T v B*). The conflicting constitutional right of relevance in the context of adoption is the right to privacy and confidentiality of the natural mother.

The courts appear to have been moving towards recognition of a child's constitutional right to know the identity of his or her natural mother for some time. Judge Esmond Smyth, in the Circuit Court proceedings of this case, relied on the Supreme Court judgment in *G v An Bord Uchtála* ([1980] IR 32) and the High Court judgment in the case of *GN (a minor) v KK* (unreported, 21 December 1993) in reaching his mistaken conclusion that this was one of the unenumerated rights which had actually been ascertained and declared to exist by the superior courts. Similarly, in *CR v An Bórd Uchtála* ([1994] 1 IRLM 217), Morris J refused to allow the Adoption Board to impose an absolute rule that information held by it might never be released. It is worth noting that the concept of a right to one's identity or to knowledge of one's origins has been gaining currency in international law. Article 8 of the 1989 United

Nations *Convention on the rights of the child*, the most widely ratified human rights instrument in history and one to which Ireland is a party, requires the state to 'respect the right of the child to preserve his or her identity' and Shatter concludes that: 'In order to comply with this obligation, it is clear that legislation is required … giving adult adoptees a right of access to their birth records'.

The existence of an individual's right to privacy under the constitution has been acknowledged by the courts in a number of contexts. In the present case, having regard to the definition of the right provided by Henchy J in *Norris v Attorney General*, Keane J found it 'difficult to imagine an aspect of human experience which falls more clearly into the constitutional area of privacy, as thus defined, than the circumstances of the natural mothers in the present case'. Comparing the competing rights, he states that, unlike the right to know the identity of one's natural mother asserted by the applicants, the right to privacy 'has at least a secure anchorage in our law having regard to the relevant decisions'. Hamilton CJ, referring to his own judgment in *Kennedy v Ireland*, acknowledges the right to privacy as 'one of the fundamental personal rights of the citizen' but one which is not unqualified and the exercise of which 'may be restricted by the constitutional rights of others'.

Therefore, while Hamilton CJ's majority judgment is prepared to declare the existence of an informally adopted person's qualified constitutional right to birth information, that right may be restricted by a natural mother's qualified right to privacy. As any determination will inevitably involve a balancing of these conflicting rights, Hamilton CJ helpfully provides an instructive, non-exhaustive list of criteria which the Circuit Court judge in the present case is entitled to consider:

- the circumstances giving rise to the natural mother relinquishing custody of her child
- the present circumstances of the natural mother and the effect thereon (if any) of the disclosure of her identity to her child
- the attitude of the natural mother to the disclosure of her identity to her natural child, and the reasons for that attitude
- the respective ages of the natural mother and her child
- the reasons for the natural child's wish to know the identity of her natural mother and to meet her
- the present circumstances of the natural child, and
- the views of the foster parents, if alive.

However, it is obvious from elsewhere in the judgment that the former chief justice views the natural mother's wishes as the paramount consideration. For example, he emphasises the fact that, in the present case, the natural mothers relinquished their rights and duties as parents 'on the understanding that their identities would be kept confidential and that their identities would not be disclosed without their express consent'. He further states flatly that whether the applicants are restricted in the exercise of their constitutional right to know the identity of their respective natural mothers 'depends on the circumstances of the case and whether they [the natural parents] … wish to exercise this right to privacy'. Similarly, Barron J states that secrecy 'has always been a paramount consideration in adoption law' and though 'the public attitude to absolute secrecy has been weakened ... there does not appear to have been any cases where communication has taken place against the wishes of the mother'. It would appear therefore that the Supreme Court has within its contemplation some mechanism, such as an 'information veto system', whereby the consent or refusal of the natural mother can be sought and recorded.

Law Society President Anthony Ensor at the launch of *Adoption law: the case for reform*

'It is of great concern that the former chief justice appears to take the view that lawfully-adopted children will not, under any circumstances, be able to assert the right to know the identity of their birth mothers'

It is of great concern that the former chief justice appears to take the view that lawfully-adopted children will not, under any circumstances, be able to assert the right to know the identity of their birth mothers. He points out that: 'Its exercise is restricted in the case of children who have been lawfully adopted in accordance with the provisions of the *Adoption Act, 1952* as the effect of an adoption order is that all parental rights and duties of the natural parents are ended, while the child becomes a member of the family of the adoptive parents as if he or she had been their natural child'.

He appears to take a very strict and legalistic view of formal adoption, holding that no familial relationship can survive between a legally-adopted person and his or her natural mother. This view is quite out of step with developments in comparable jurisdictions. It seems anomalous that children informally adopted prior to 1952, as were the applicants in this case, should enjoy substantially greater rights in this regard than those adopted under the 1952 legislation. In relation to formal adoption, it must be remembered that the complete severance of the legal ties between the adopted child and the birth parent is a statutory requirement and that rules introduced by statute can be altered by statute. Also, though natural parents relinquished all parental rights and duties under the adoption legislation, the unenumerated right declared in the present case would vest in the adopted person, who could not have consciously relinquished such a right.

Therefore, the Supreme Court decision in *IO'T v B* appears to establish that an informally-adopted person enjoys an unenumerated constitutional right to know the identity of his or her natural mother which is qualified by the mother's right to privacy. This right to privacy would generally take precedence over the former right. Also, since the right to know the identity of one's natural mother flows from the special relationship which exists between a mother and her child, its exercise is restricted in the case of children who have been lawfully adopted in accordance with the provisions of the *Adoption Act, 1952*, as this special relationship will have ceased to exist. However, the right of adopted people to such birth information has been restricted by means of legislation. Therefore, legislation may be enacted to recognise the survival of the special relationship between a natural mother and an adopted child and thus to restore this right. However, the exercise by an adopted person of this right would remain qualified by the natural mother's right to privacy.

Right to information

The Supreme Court has identified a qualified constitutional right to information in respect of the informally-adopted person alone. Indeed, in stating the majority view, the former chief justice found that 'the effect of an adoption order is that all parental rights and duties of the natural parents are ended'. This would appear to deny the possibility of such a right vesting in natural mothers. However, the judgment does not preclude the creation of a qualified right under legislation and, in view of the increasing numbers seeking information and the general trend towards greater openness, it seems appropriate that such a right should be created. Generally, the right of access to information should survive where it is found that the birth mother or adoptee is deceased. Of course, as with adoptees, the exercise of any right granted to a natural mother or siblings should be restricted by an adopted person's corresponding right to privacy, asserted by means of an information or contact veto register. In common with other jurisdictions, the constitutional right to identifying information should only vest in adopted people on reaching the age of majority, when they are in a position to make a mature decision as to whether or not to proceed to establish contact, having regard to the sensitivities of all concerned. Of course, the majority of adopted people should be informed of the fact of their adoption at a much earlier age. Similarly, only adult siblings should be granted any right and it should only vest in birth parents once the adopted person has reached majority. Obviously, any statutory right to birth information conferred upon adopted people should also be conferred upon those informally adopted.

Where a right to information can be asserted, it seems appropriate that an adopted person should have access, at a minimum, to the names and addresses of both birth parents, if available, and to information on the existence of any siblings. Even where there is a veto in operation, they should be entitled to a copy of their birth and adoption certificates, though some identifying information might be required to be 'blanked out' or otherwise concealed. Birth parents should have access to the name and address of an adopted person. Ideally, applicants would want to have access to all available personal information on the subject of their application, such as age, marital status, occupation, health and well-being, but subjects should have discretion as to what personal information to lodge on a register. Also, where available, photographs and correspondence should be disclosed. There can be no reason why applicants should be denied an automatic right of access to non-identifying information, even where the subject has lodged a veto. Such information could include age, occupation, region, well-being and, most important, any information relating to health or inherited illness that might be required by insurers or employers. All prospective subjects, including those lodging a veto, should be encouraged to leave such information with the holder of the register.

Information veto register

The majority Supreme Court judgment in *IO'T v B* implies the need for some kind of mechanism whereby the natural mother's consent or refusal to have her identity revealed (and/or to be contacted) can be sought and recorded. Such a mechanism could similarly record the wishes of adopted people in relation to the provision of personal information to natural parents or siblings. Adopted people, and where appropriate, adoptive parents, should have a statutory right to 'prescribed information' where it is available from adoption records. This information would be confined to non-identifying information where a veto has been lodged and would include, as a minimum, information relating to health and medical history.

As the conflicting rights identified by the Supreme Court only vest in the adopted person and the natural mother, there is no requirement to establish information rights for siblings of the adopted person in legislation. Where the adopted person lodges a veto on the release of information, that veto should apply equally to siblings. Similarly, where adult children are aware of the existence of an adopted sibling, they should be bound by their mother's right to privacy and confidentiality if she asserts that right. Any attempt to trace the adoptee could compromise her confidentiality. However, where no veto has been

TRACING AND REUNION SERVICES

Though state bodies should be permitted to contract out tracing services, tracing practices should be standardised and subjected to detailed guidelines or a code of conduct prepared by the Adoption Board or Department of Health and Children. Reunions should be mediated by counsellors approved by the health boards or other appropriate state agencies. Though many adoption agencies would possess suitably qualified people to act as mediators, many adopted people and birth parents may be reluctant to trust these agencies. The costs involved in the provision of these services should be funded by the state from central funds.

lodged, there can be no objective reason to deny siblings such information. Where the natural mother or adoptee is deceased, any veto lodged by the deceased on the release of information should lapse.

An information veto register could only be managed effectively by a central state agency, ideally the Adoption Board, where officials should be trained to deal with applicants and subjects in a skilful and sensitive manner. These officials would have responsibility for encouraging those lodging a veto to supply appropriate non-identifying information. The introduction of a veto system should be preceded by an extensive media campaign to publicise its existence and operation. This is particularly important as not registering a veto would imply a willingness to be traced. Also, a media campaign could encourage the provision of non-identifying information. The media campaign run by New South Wales in relation to that state's veto system, which proved to be very effective, might provide a suitable model.

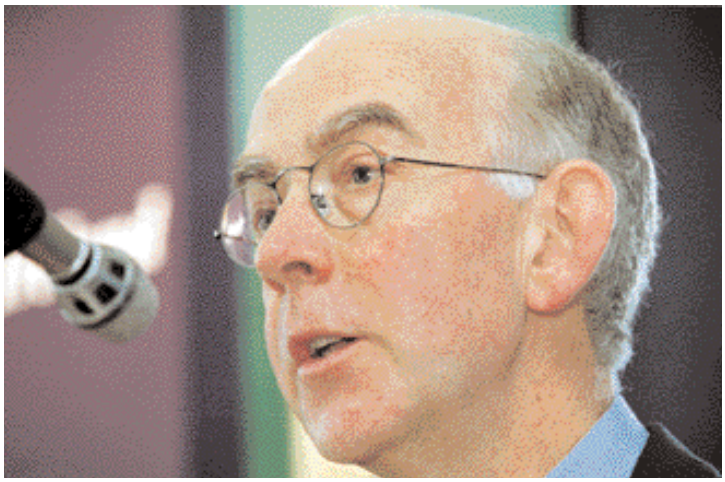
Ideally, the Law Reform Committee would favour a general and absolute right of access to birth information for adopted people with a veto system in respect of contact only. Also, it would favour a qualified right of access to identifying adoption information for birth parents, itself subject to a veto by the relevant adopted people. However, the Supreme Court judgment in *IO'T v B* would appear to preclude such a solution. A veto with regard to contact would be easily enforceable, as breach would ultimately result in commission of an offence of 'stalking' under the *Non-Fatal Offences Against the Person Act, 1997*.

Voluntary contact register

It must be assumed that any person who, aware of the existence of an information veto system, neglects to lodge a veto is willing to be traced and contacted. However, an active voluntary contact register would greatly assist those wishing to make contact by providing a structured mechanism to facilitate such contact. Birth parents, adult adoptees, adoptive parents and siblings of adopted people should all be entitled to enter contact information. The voluntary contact register should be administered by the Adoption Board, which could assist in mediating contact and with the provision of counselling for both parties before contact is made.

Retention of records

In order to facilitate the qualified right of adopted people to know the identity of their natural mothers, as well as to enable access to important non-identifying information, it is vital that minimum record-retention requirements for all adoption and institutional-care records be set down in legislation. These requirements would apply to all bodies which have had an involvement in the adoption process, including adoption agencies and health boards. Legislation should require that all original adoption records be produced to the Adoption Board and that a copy of all such records be lodged with the board. Legislation should make it an offence to destroy a record or to fail to make it available to the Adoption Board when requested. Legislation should confer upon adopted people and, where appropriate, adoptive parents, a right, exercisable against all adoption bodies, to 'prescribed information' where it is available from adoption records.



Eamonn O'Connor of the Law Reform Committee

Appeals mechanism

Where a party wishes to appeal any decision of the Adoption Board regarding disclosure of information, for example, in relation to access to non-identifying 'prescribed information', the High Court would be the most appropriate forum under the current court structure, as it would facilitate the development of coherent jurisprudence in the area. However, were a system of regional family courts to be established, this would be the preferred forum. In either case, an accessible system of civil legal aid would be necessary. A limitations period of six months to the taking of appeals would be adequate.

Eligibility to adopt (adopters)

The 1952 *Adoption Act* clearly discriminated against unmarried applicants and this situation continues with the amendments introduced under the *Adoption Act, 1991*. Section 11(1)(a) of the 1952 act explicitly provided that, where an applicant is not the mother or natural father or a relative of the child, 'an adoption order shall not be made unless the applicants are a married couple who are living together'. Section 11(2) further provides that, except in the case of such a married couple, an adoption order may not be made for the adoption of a child by more than one person. It appears unduly conservative and restrictive that this blanket ban on unmarried adopters should be restated in sections 10(1)(a) and 10(3) of the *Adoption Act, 1991*. This rule must now be read subject to the Adoption Board's new discretionary power under section 10(2) of the 1991 act to make an order, notwithstanding the status of the applicant, where 'in the particular circumstances of the case it is desirable'. However, upon close inspection, this section does not give the Adoption Board discretion to grant an order to an unmarried couple. It is anomalous that the 1991 act allows for

single persons unrelated to the child, for one partner of a married but separated couple, and for widowed people to adopt but excludes unmarried couples in stable cohabitation from eligibility. Of course, an application for adoption can be made by one of the couple, but the other partner would not automatically obtain parental responsibility.

Eligibility for adoption (marital children)

Section 10(c) of the 1952 act provides that, in order to be eligible for adoption, a child must either be 'illegitimate or an orphan'. However, section 3 of the 1988 *Adoption Act* introduced a limited exception whereby adoption of marital children can be permitted in certain restricted circumstances where the parents have failed in their parental duties towards them. Therefore, children born within marriage are not normally eligible for adoption. This rule can run counter to the best interests of the child, for example, where deeply committed foster parents are prevented from adopting. It must be remembered that there is a sizeable reservoir of Irish children in long-term care or fostering arrangements who would benefit from living in a stable family environment. The general ineligibility of marital children for adoption can be even more inappropriate where fostered marital children are of an age when they could themselves be consulted.

This rule can give rise to another unfair anomaly. Where a married parent is widowed and remarries, the new spouse will be unable to adopt his or her step-child, as that child would have been born within marriage. Not alone can this situation be hurtful for the step-parent but it can also have implications for the child, for example, in relation to succession rights.

Clearly, constitutional difficulties in permitting the adoption of marital children can arise under articles 41 and 42 and the inalienable and imprescriptible rights of the family recognised therein. However, the constitutionality of the limited exception contained in the 1988 act was upheld by the Supreme Court before the legislation was signed. The court dismissed the argument that the bill amounted to an attack on the inalienable and imprescriptible rights of the original family, stating that: 'The guarantees afforded to the institution of the family by the constitution, with their consequent benefit to the children of a family, should not be construed so that upon the failure of that benefit it cannot be replaced where the circumstances demand it by incorporation of the child into an alternative family'.

The court justified this decision on the basis of a liberal construction of article 42.5, permitting the state to intervene to supply, not only the parental duty to educate, but also the duty to cater for the other personal rights of the child, and on the state's obligations under article 40.3. The court emphasised that the state was obliged to have due regard for the natural and imprescriptible rights of the child. Also, to safeguard the integrity of the natural family, the court noted approvingly the stringent requirements for the making of an order under the act, requiring a total failure of duty by parents towards children, and held these to be 'essential proofs'.

'Where a married parent is widowed and remarries, the new spouse will be unable to adopt his or her step-child. Not alone can this situation be hurtful for the step-parent but it can also have implications for the child'

This decision was only concerned with situations involving abandonment of parental rights and failure of parental duties and the vindication of the rights of many hundreds of abandoned children in long-term care or fostering arrangements by making them eligible for adoption. However, it effectively confirmed the *dicta* of Walsh J in *G v An Bord Uchtála*, where he saw no objection in principle 'to a child's passing out of one family and becoming a member of another family in particular circumstances'.

Also, the court emphasised that an order could be made under the 1988 act where the court was satisfied that such would be in the best interests of the child. It stated that, while the judge must have due regard for the rights of the 'persons concerned', such obligation is 'firmly enjoined in the context of ascertaining the best interests of the child'. Therefore, there can be no apparent justification for prohibiting adoption of a marital child who has lost one parent by that child's step-parent. The 'persons concerned' would normally be expected to approve of such an arrangement and it could easily be argued to be in the best interests of the child. The Adoption Board reports that it has received a number of enquiries in connection with the proposed adoption of marital children where one parent is deceased and the other parent has remarried, and that it is aware of calls for legislative reform to allow a widow or widower who remarries to adopt the child of their previous marriage with their new spouse.

Birth parent adoption

A steadily increasing number of adoption orders are being made in favour of birth mothers and their husbands, where the latter is not the natural father of the child adopted. In 1998, a majority (61.14%) of the adoption orders made by the Adoption Board were in favour of natural mothers and their husbands. The current, anomalous position requires a birth mother to apply along with her spouse in order that the spouse can establish some legal rights over the child. Under the current procedure, the mother has to relinquish her sole parental rights and duties in respect of the child and take on joint parental rights and duties with her husband on the making of the adoption order. Many find this to be offensive and unnecessary and the Adoption Board reported that it 'continued to receive complaints during 1998 from birth mothers who apply to adopt their own child'. The board has consistently called upon the minister of justice, equality and law reform to explore the possibility of introducing amending legislation which would recognise the continuing relationship between the birth mother and her child.

The Adoption Board also calls on the minister to explore the possibility of introducing amending legislation which would empower it to attach conditions, where appropriate, to the making of an adoption order to ensure that the birth father's relationship with his child will be recognised in law

following adoption by the birth mother and/or her husband. At present, the relationship between the birth father and his child is ended by the adoption, and this may not always be in the best interests of the child.

Role of Adoption Board

In its 1984 report, the Review Committee on Adoption Services expressed concern that a non-judicial body 'should be given power involving such a fundamental issue as the legal and permanent transfer of parental rights' and recommended that the Adoption Board be replaced by a specialist Adoption Court. The committee recommended that this court should have High Court status, nationwide jurisdiction and sufficient autonomy within the legal system to develop its own special style and procedures. It was proposed that it would not only make adoption orders but should also determine all contested court proceedings arising out of the adoption process. Shatter, however, believes that this proposal is misconceived and points out that the Adoption Board, in its current form, 'has developed considerable expertise in the adoption area and can make adoption orders without undue formality or the necessity for adopters to incur the expense of legal representation' (in *Family law*, Butterworths, 1997). He suggests that 'the better approach is to reserve to the Adoption Board its current functions whilst vesting in the Circuit Regional Family Court jurisdiction to determine adoption disputes as recommended by the Law Reform Commission in its report on family courts'. Also, as the Adoption Board is to become the central authority under the *Hague convention on intercountry adoption*, it seems appropriate that its role should be enhanced to enable it to act as the central co-ordinating body for all activities connected with adoption, foreign and domestic.

Law Reform Committee member Rosemary Horgan

The Adoption Board has made a total of 40,998 adoption orders in respect of children placed for adoption in the state since the introduction of adoption legislation in January 1953 and has been an outspoken commentator on adoption and a progressive force for change. It performs a number of very important roles, including the registration and deregistration of adoption societies, the compilation of detailed adoption statistics and monitoring of ever-changing trends in adoption practice, the provision of advice and guidelines to registered societies and health boards, and the monitoring of individual placements. In 1998 alone, the board received 1,049 tracing enquiries. It has experienced administrative staff and a complement of qualified and experienced welfare officers. However, the operation of every aspect of the adoption process could be improved by the establishment of regional family courts. The Law Society has consistently called for the establishment of regional family courts, to which lawyers with considerable experience of family law could be appointed as judges. Similar recommendations have been made by the Law Reform Commission and by the Working Group on a Courts Commission.

Consolidation of adoption legislation

The Adoption Board has consistently expressed concern that any new legislation be enacted as part of a programme of consolidation of the adoption code. The need for consolidation of Irish adoption legislation is universally recognised. According to Shatter, 'it should be unequivocally acknowledged that there is a need not only to reform various aspects of adoption law but also to incorporate adoption legislation into one consolidated act'.

The last Adoption Board, with its accumulated practical experience of applying legislation, made an even stronger case for consolidation in its final report: 'The board calls for the modernisation of adoption legislation and an amalgamation of the adoption code. It notes that current law consists of six separate pieces of legislation and … considers that there is an urgent need to consolidate the adoption code into one comprehensive piece of legislation to bring adoption law into the 21st century'.

The enactment of the *Adoption Act, 1998* which, among other things, addresses the rights of natural fathers having regard to the judgment of the European Court of Human Rights in *Keegan v Ireland* and provides for certain amendments in relation to the recognition of adoptions effected outside the state, as well as the introduction and enactment of the proposed *Adoption Contact Register Bill*, can only exacerbate the present unsatisfactory situation. G

The full text of this report can be obtained from the Law Society's website at www.lawsociety.ie.

CIVIL LEGAL AID

In the mid-1970s, the attorney general's Legal Aid Scheme, which had covered criminal and some civil matters, was extended to cover adoption-related applications made by birth mothers. Some time later, the scheme was extended to cover adopters. However, it only ever covered individuals, and so adoption agencies could not benefit. This scheme ceased to be of relevance in the late 1980s with the introduction of civil legal aid. However, as eligibility under this scheme is means-tested, adopters will rarely qualify whereas birth mothers will very often be eligible. Also, adoption agencies, as institutions, will again be excluded. According to practitioners with experience in the area, this situation often results in vexatious litigation where adoption would clearly be in the best interests of the child. Such litigation tends to prove very expensive for adopters and, occasionally, charitable adoption agencies.

Practitioners advise that a straightforward application to dispense with a birth mother's consent under section 3 of the *Adoption Act, 1974* would involve a minimum cost of £12-15,000. The application can only be heard in the High Court and must actually go to court (it cannot be settled before the hearing). Also, the use of expert witnesses will contribute to costs. However, applications would usually involve a two-to-five-day hearing and will often involve an appeal to the Supreme Court before the case is returned to the High Court for determination. In such cases, costs may amount to as much as £100,000. Reflecting on the current situation, O'Halloran (in *Adoption law and practice*, Butterworths, 1992) concludes: 'It may be that in some instances a right of access is negated or restricted by an inadequate free legal aid scheme'.

There has been a radical change in the legal marketplace in the last ten years. In the first instance, the size of the profession has expanded considerably: in 1990, there were just over 4,000 solicitors on the roll; now there are over 7,000. As a result, there is far greater competition for work and today's clients are arguably more demanding and discerning than in the past. They require greater value for money, which sometimes translates into diminished client loyalty and wanting to pay lower fees.

A further dimension is the globalisation of the commercial and industrial worlds. Increasingly, business transactions have an international flavour. The full effect of Ireland's membership of the European Union and its impact on the nature of the advice and service given to clients is self-evident. It is no longer possible for solicitors to confine their advice and expertise to a single legal system or jurisdiction. The area of private international law is now central to any commercial legal practice where once it was peripheral, while the all-pervasive effect of European law has far-reaching implications for the nature of the advice given in many areas of practice.

In Ireland, some 48% of the profession are sole practitioners and the Law Society believes it has a fundamental obligation to provide for their educational needs through its continuing legal education (CLE) programme.

The benefits of CLE

The benefits of continuing legal education are best expressed in qualitative rather than quantitative terms. Training supplements practical experience. It has a positive effect in maintaining and improving professional competence. It leads to a reduction in the instance of complaints and in claims for negligence. It also helps the risk-management process.

Of course, CLE cannot make you a perfect lawyer, nor can it eliminate the 'human factor', but it can certainly help you to identify and meet client needs. It provides for a superior quality of advice and decision-making and allows you to develop an integrated approach to problem-solving. It also helps you to provide a service which is anticipatory of client needs rather than wholly reactive.

One further benefit is market differentiation. As well as consolidating your existing knowledge, CLE allows you to develop expertise in new areas of law. It can help you to develop a client service which is essentially distinct from that offered by other practices, giving you a competitive advantage over other firms in the marketplace.

Perhaps the most tangible effect of CLE is its potential benefit to individual solicitors in enhancing their career opportunities. Professional practice is now more transitory and solicitors move between firms with greater frequency than ever before. Continuing legal education will obviously help this mobility in the employment market.

Learnin

It is clear that the education and practical training received by solicitors in the Law School is not intended to sustain them for the duration of their professional careers. As members of a self-regulating profession, solicitors have a duty to maintain their knowledge and skill at a level required to ensure that clients receive a professional service based on up-to-date developments in legislation and practice.

The purpose of the Law Society's CLE programme is to provide, in so far as is practicable, a post-qualification programme to the profession as a whole. It recognises the diverse educational requirements of the profession and responds to the varying needs of practitioners in a changing and competitive market.

Results of the recent CLE survey

The questionnaire published in the December 1999 and January 2000 issues of the CLE brochure was completed by 98 practitioners. The respondents were split 50:50 between principals or partners and assistant solicitors.

Given that the greater number of solicitors' practices are located in Dublin and Cork, it is hardly surprising that 28% of replies were received from Dublin practitioners, with 10% coming from Cork. The highest number of seminars attended was 13 (attended by a Dublin solicitor), while the average number was three.

Ease of access to Dublin, Cork and Galway, the main seminar venues, would suggest that the average attendance would be significantly higher by practitioners in these areas. But the survey found that Dublin and Galway practitioners attended only marginally above three seminars in the year, while Cork practitioners averaged 4.5. By contrast, solicitors from Clare and Tipperary attended five or more seminars last year.

Practitioners were asked to suggest seminars which they would like to see held this year and also their preferred venue. In the main, the seminars requested were already covered by the general CLE programme. The main area of interest was conveyancing, which totalled 15% when combined with landlord and tenant (4%), acting for a builder (2%) and commercial leases. Next in demand were litigation (11%), tax (9%), family law (7%), and effective costing (4%).

The 'preferred venue' replies held very few surprises. Dublin remains the most popular location for 39%, followed by Cork with 13%, then Galway and Limerick, both at 9%. Kilkenny fared well, with 7% deeming it to be their preferred choice, against 6% for Athlone and Sligo and 4% for Waterford. All of these are existing CLE venues.

Ballina, Carlow, Castlebar, Cavan, Donegal, Dundalk, Ennis, Longford, Midlands, Thurles, Tralee and Wexford were each the first choice of 1% of respondents. Ballina has, in fact, hosted a number of seminars in recent years, including the *Diploma in property tax*.

While a response of 98 to the questionnaire was disappointing and

ng to be the best

In an increasingly competitive market, continuing legal education can pay big dividends for you and your firm, writes Barbara Joyce

Although alternative providers exist, the Law Society remains the main provider of continuing legal education in this country.

The courses on offer are designed to contain an appropriate balance of theory and practicality. The overriding consideration is that they are directly relevant to the day-to-day needs of the profession. The types of seminars presented include: generalist courses on subjects such as litigation, conveyancing and probate; specialist courses on employment law, family law and commercial law; and skills-based and management courses.

The skills-based courses are a unique feature of the programme. The advocacy course has been modelled on the comparable course run in the USA by the National Institute for Trial Advocacy (NITA). The negotiations course is modelled on comparable courses run by the Harvard Law School and Minnesota CLE. It also draws on systems developed by the National Institute for Trial Advocacy and on similar courses held in Scotland, Northern Ireland and England. The presentation skills course is specifically designed for practising solicitors.

The management module includes seminars on selected topics such as time management, human resource management and stress management. Management seminars are held in workshops, and this format is central to their success. In addition, practice-based courses have dealt with setting up in practice, solicitors' partnerships and acquisitions and mergers of solicitors' practices.

Given the pace of legislative change and the ever-increasing complexity of the law, the primary focus of the programme will, of necessity, continue to concentrate on substantive legal matters.

New developments

An important development over the last few years has been the introduction of series of seminars. These are a means of providing a comprehensive overview of a particular subject area, and have proved highly successful. Series of seminars have been held on commercial lending, planning law, conveyancing, family law, litigation, taxation and employment law.

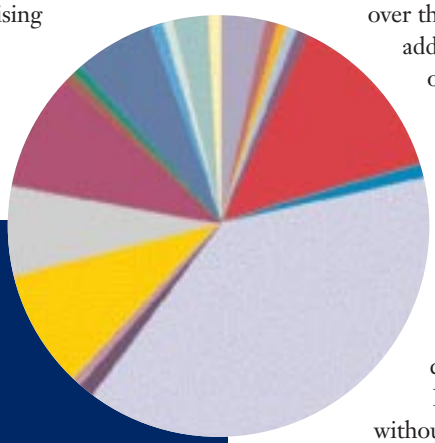
Joint seminars are frequently held with other professional bodies. The most recent joint seminar was that held with the Irish Medical Organisation on the new rules of disclosure in personal injuries litigation.

The CLE programme has expanded considerably over the last number of years. As a result of additional resources, it has been possible to offer an increased number of seminars in major regional centres with greater frequency. The Law Society is currently monitoring the potential use of video-conferencing as an educational aid to the running of seminars. It is hoped that, when perfected, this technology will make the seminars more accessible for country practitioners.

None of the seminars could proceed without the generous co-operation of the consultant speakers. The Law Society would like to acknowledge their substantial contribution to the CLE programme. It is gratifying that so many of them continue to serve the profession with such distinction.

The continuing legal education programme is designed to meet the immediate and long-term needs of practitioners. In view of the constant changes in the law and the social and economic circumstances surrounding it, the continuing challenge for the Law Society is to design courses of sufficient diversity to accommodate the individual needs of practitioners. G

Barbara Joyce is the Law Society's CLE Co-ordinator.



PREFERRED VENUE

Athlone	Galway
Ballina	Kilkenny
Carlow	Limerick
Castlebar	Longford
Cavan	Midlands
Cork	Sligo
Donegal	Thurles
Dublin	Tralee
Dundalk	Waterford
Ennis	Wexford

not in any way representative of the 7,000 members of the profession, the results are encouraging for CLE. The seminars requested by practitioners are those being provided in the CLE programme and the preferred venues are those currently being used.

But the CLE programme is under constant review and suggestions for topics (and indeed additional or alternative venues) are always welcome. The advent of video-conferencing will hopefully make seminars more accessible to wider audiences. The first such seminar to be broadcast will be held in the Silversprings Hotel in Cork on 22 June. Its title is *Children and the law* and it will be chaired by Mrs Justice Catherine McGuinness. G

Sarah O'Reilly is the Law Society's CLE Executive.

Seville 2000

Sport and the law

Seville in Spain hosted this year's annual conference. Conal O'Boyle reports on the business session, where the theme was *Sport and the law*

Everyone knows that playing sport can be a risky pastime, but apparently watching a game can be just as hazardous. According to Dundalk solicitor James MacGuill, it's virtually impossible to have an innocent day out without criminalising yourself. With his tongue lodged firmly in his cheek, MacGuill explained to delegates at the annual conference's business session the numerous ways in which spectators could fall foul of the law.

First, there is the tricky business of getting your hands on a ticket to the all-important match. An opposition bill currently before the Dáil will make it a criminal offence to sell tickets to sporting events above their face value. A logical extension of this, suggested MacGuill, would be to criminalise the receiver of such

Speakers' corner: *(from left)* Richard Burrows, Mark Cunningham, Anthony Ensor and Mr Justice Moriarty

tickets too: at least that way sporting events would remain the preserve of genuine sports fans.

True fans, of course, will turn out to support their teams in any weather, and you might think they would be justified in comforting themselves on a cold day with a nip from a hip-flask. Think again. Under the *Public Order Act, 1994*, they would be carrying a criminalised item into the sports ground.

And if you decide to warm yourself in the traditional way, by vocally questioning the parentage of the referee, you could find yourself charged with incitement to hatred. Polite and sober spectators: is nothing sacred?

For the clubs themselves, the law is perhaps an even bigger minefield. They are responsible for the safety of crowds attending their matches and for the physical well-being of the players on the pitch. And while one might have thought that the main threat was to those practitioners of the traditional Gaelic sport of stick-fighting, MacGuill pointed out that the bulk of convictions for on-field violence have taken place in soccer. The first convictions for manslaughter during a match had taken place over 100 years ago, he said.

Given the huge number of contact sports played around the country every week, it's rather surprising that so few cases of sporting violence come before the courts. The reason for this, says MacGuill, is that the bulk of such cases are 'squared' by the clubs involved.

Next up was Richard Burrows, chairman and chief executive of Irish Distillers Group, who explained the rather simple principles of sports sponsorship: brand image is everything. He suggested that the government could make the current tribunals of inquiry pay for themselves by selling the sponsorship rights to the highest bidder. The 'Nissan-Moriarty Tribunal' — you've got to admit it has a certain ring to it.

Bank of Ireland Asset Management's Mark Cunningham then discussed the rationale behind investing in sports. Not that there really seems to be one. Apparently, investment professionals are

President Anthony Ensor opens the business session

James MacGuill, putting the fear of God into sports fans

unanimous that sport is not a very clever area to get involved in, and most sporting investments fare pretty badly. Even the darling of such investors, Manchester United, is down 30% on its peak price. Cunningham reckoned that sports investment is only really viable in a monopolistic situation. Or, as he put it, 'you can make money until the lawyers get involved'.

The final speaker at the conference's business session was High Court Judge Michael Moriarty, who addressed the more serious topic of catastrophic sporting injuries. He highlighted two main issues: the actual standard of care that should apply, and the defence of consent.

Moriarty was quick to point out that if the courts imposed too high a duty of care in relation to sports injuries 'every coach might end up having to sell his house'. Consequently, they had tended to take a much more pragmatic approach.

On the question of consent, he said the courts still put a great emphasis on the voluntary nature of sporting activities and the inevitable risks attached to sports such as rugby or equestrianism. Historically, the common law had accepted that someone who had freely consented to conduct by another could not sue for damages resulting from that conduct. This was the principle of *volenti non fit injuria*. *Volenti* had once been a complete defence to an action but this was abolished by the *Civil Liability Act, 1961*.

Since consent was now a dead letter, said Moriarty, it would be better to agree the appropriate duty of care that should be applied to various sporting activities. One example might be the insistence on children wearing protective headgear when playing hurling.

'It seems to me that we are going to have to look at the type of sport, the degree of risk, the rules of the game and any expert research', he said. 'We will also have to consider foreseeability and any question of immediate warning'.

Judge Moriarty concluded that more extensive reporting of sporting negligence cases was needed so that judges would have a fine body of law to draw on. G

Book reviews

Working within the law: a practical guide for employers and employees (second edition)

Frances Meenan. Oak Tree Press (1999), Merrion Building, Lower Merrion St, Dublin 2. ISBN: 1-872853-15-3. Price: £29.95 (paperback).

In 1994, Frances Meenan published the first edition of her very helpful and practical book *Working within the law*. The subtitle, *A practical guide for employers and employees*, while accurate, understates the value of this book to lawyers. The purpose of this book is to give practical guidance on what is a very wide-ranging category of law.

Employment has become one of the most comprehensively regulated areas in modern Irish society, probably because it is one of the easiest areas to regulate and the legislature can burden employers with as much regulation as they choose without having to expend any significant resources in ensuring compliance. That is not intended as a cynical comment on the legislature, but it is certainly a major contributory factor to the extraordinary growth in employment law since the early 1970s. That extraordinary growth – and the complexity of many of the laws enacted and decisions given – has made it difficult for practitioners to keep abreast of what is happening so they can be in a position to give the best possible advice to their clients.

While employment law has seen significant growth in its bibliography and practitioners now have considerable source material available to them, there remain two problems. The first is to recognise the exact nature of the problem, and the second is expending the time and energy necessary to search out the information to provide the solution. Frances Meenan's book is an invaluable help to practitioners in overcoming these two problems.

Because of its complexity and wide range, employment law is difficult to categorise in one volume, yet the author has succeeded in doing just that. In order to do so, she could not be expected to give an in-depth analysis of each and every topic covered, but to give concise yet comprehensive summaries of the various areas of law. She has succeeded admirably in this regard, and her summaries are excellent. The most relevant of case law is referred to and readers are provided with a summary of general references at the end of each chapter, which allows for more in-depth research, if such be necessary.

An additional problem with employment law issues – and advising on them – is that while the employment relationship will be governed by legal provisions which might be self-evident, the actual work done by the employee may be governed by laws and regulations which may not be as evident or obvious, and which may yet be relevant to the advice to be given to clients. This revised and expanded edition consists of over 200 extra pages to the first edition and incorporates a wide range of topics which will be very valuable to practitioners. As an example, Mr Justice Hugh Geoghegan in his appropriately fulsome foreword refers to allegations of sexual abuse and the *Protections for Persons Reporting Child Abuse Act, 1998*, which is dealt with, again in an admirably comprehensive yet concise way, by the author in this book.

As with the first edition, the book is divided into four sections, covering recruitment and the contract of employment, terms and conditions of employment, termination, and industrial relations and adjudicating bodies. The section on the contract of employment is very comprehensive, covering the recruitment process with particular emphasis on the equality aspects and in particular the provisions of the *Employment Equality Act, 1998*, which came into force a couple of months after the book was published. The author nevertheless gives the act's requirements the prominence and coverage they require. She follows the recruitment process through written statements of

Quantum of damages for p

Robert Pierse. Round Hall Sweet & Maxwell (1999), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-97-5. Price: £69.

The illustration of *quantum* is one which should be approached with caution. There is no such thing as a price for a particular injury, but rather a range of damages for such injury.

This second edition of Mr Pierse's book on the *quantum* of damages in personal injury cases deserves a warm welcome. It is, however, for use by the practising lawyer and the law student. Most intending claimants should be kept as far away from it as possible.

In his foreword to the first edition, Mr Justice O'Higgins described the book as dangerous 'unless used under the direction of a qualified legal practitioner'. In this respect, the second edition is no different. Any knowledge of the substantial damages awarded in so many of the cases referred to must inevitably whet the monetary appetite, causing an already unreasonable plaintiff to become even more so. Better to keep the book away from the hands of such persons than to have to resort to the tactics of the practitioner whose habit it was to attend pre-trial consultations armed with a sheaf of press reports on litigation which had ended in disaster – which on occasions he required the client to read.

A feature of this second edition is its practical approach. An example is the manner in which Mr Pierse has dealt with the assessment of damages for loss of hearing. Those who have not had to grapple with the many difficulties attendant on the preparation and presentation of such claims will find the author's treatment of the subject of immense value. The history of these claims in the courts, the intervention of the legislature by way of the *Civil Liability (Assessment of Hearing Injury) Act, 1998* and the subsequent judicial response make for fascinating reading.

terms and conditions, setting out a very helpful list of key clauses that should be contained in a written contract of employment, with a short explanation of each. There follows a chapter on temporary and part-time employment, which in turn is followed by a very helpful exposition on annual leave, public holidays and jury service. The first two topics are covered in the *Organisation of Working Time Act, 1997*, a tortuous piece of legislation which is very well analysed in this text.

Equality is dealt with again in the second section, continuing its analysis of terms and conditions of employment along with such issues as trade disputes, collective bargaining, transfer of a business, pensions, and health and safety. The section on termination of employment starts with a chapter on the giving of notice and is followed by a particularly helpful chapter on unfair dismissal which highlights the difficulty of successfully cross-referencing a range of issues that might arise in advising on an employment issue. Section 15 of the *Unfair Dismissals (Amendment) Act, 1993* provides that in certain circumstances where an employee receives and retains a redundancy payment and transfers into the employment of a new employer, his or her continuity of service is broken in circumstances where it would otherwise be considered to be preserved. Section 15 is not dealt with in the section on unfair dismissal, where it might be expected to appear, nor is it dealt with in the section on redundancy. Instead, it is addressed in the earlier section on transfer of a business, and again in the chapter on notice. So while the book provides all of the relevant information, the reader must research the contents comprehensively and diligently to ensure the information sought is not missed.

Bullying and harassment are current topics of interest in employment law, but the issue of harassment is not particularly well dealt with by the author, especially given the significant increase in the grounds upon which harassment may occur. There is a small section on harassment in chapter 10 which is entitled *Other grounds of discrimination*, and the issue of bullying is dealt with later in the book in the section on health and safety in the workplace. The issue of sexual harassment is much more comprehensively dealt with in the earlier section on equality between women and men. The general headings are therefore useful as a guideline, but no substitute for the index and a comprehensive scan of all the contents or headings in seeking out information. The sections on bullying and harassment should be incorporated or at least set out sequentially to aid the reader to a better understanding of the topic and, in turn, cross-referenced to the section on sexual harassment (although this is done in the subject index at the back of the book). These are relatively minor problems with an otherwise excellent practical guide to Irish employment law which I strongly recommend to practitioners. G

Gary Byrne is a partner in the Dublin firm BCM Hanby Wallace.

ersonal injuries 1999 (second edition)

As a result, the *Green book*, the *Blue book* and the *Hanley* formula need no longer remain just vaguely familiar terms.

One suspects that over the years the author may have been the victim of medical reports which for their full understanding required more than a smattering of medical knowledge, coupled with an honours grade in the leaving certificate examination. Whether this be so, Mr Pierse deserves the thanks of those colleagues who have had such experiences. He has included an excellent medical glossary and numerous explanatory sketches of the human anatomy. When used together, arcane medical reports become far more comprehensible.

The assessment of damages in fatal injury cases is dealt with in comprehensive detail. Similar remarks apply to the case of the unfortunate paraplegic, with all the heads in respect of which the court may award damages fully set out.

Students will find this book a mine of information. Indeed, perhaps it should be compulsory reading for them. Insofar as practitioners are concerned, the book must surely be worth a place on the library shelf. Our thanks are due to the author for having found time to produce this second edition. G

David Martin is a partner in the Dublin firm Gore & Grimes.

Hibernian law journal Volume 1, number 1, spring 2000

Law School, Law Society of Ireland, Blackhall Place, Dublin 7. Annual subscription: £50.

In the Harvard Law School, a place on the *Harvard law review* is a distinguished honour. Those chosen frequently have the opportunity to serve as researchers to justices of the US Supreme Court and other prominent judges. Subsequently, they have the opportunity of working in the most prestigious government and private law firms. This is so in many law schools in the United States.

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The editor-in-chief is TP Kennedy, the Law Society's director of education, who must be commended for his inspiring work in relation to the journal. Other members of the editorial committee include Marsha Coghlan, Shay Lydon, John Meade, Geoff Moore and Philip Nolan.

The *Hibernian law journal* contains insightful, informative and critical pieces on the legal issues of the day by writers and lawyers of promise. The journal is welcome and represents an important contribution to our legal literature. The curtain has been successfully raised: may the journal become a powerhouse of intellectual endeavour by our young and gifted lawyers. G

Dr Eamonn Hall is company solicitor of Eircom plc.

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Dangerous driving cases

Gerard O'Keeffe and Niall Hill. Round Hall Sweet & Maxwell (1999), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-44-4. Price £75.

All practising lawyers must be pleased at the range of subjects and quantity of production of Irish law books in the last quarter of the last century of the second millennium. The first quarter of the new millennium will undoubtedly expand on the range of specialised subjects on which commentary will have to be prepared to meet the complexity of the multi-layered legal system that now exists in this small island of ours. We will need quick and precise access to these layers of law if we have to work them into the lives and problems of our clients.

It is a pity that its title apparently narrows this book to dangerous driving, so that the reader might expect just cases on section 53 of the *Road Traffic Act, 1961* (as amended). That section would, of course, merit a whole book of case law on its own. In this particular volume, section 53 gets attention in the form of 120 pages of case law, whereas the book has over 600 pages in all. There are six other chapters in the book. Chapter one deals with cases on careless driving; chapter two focuses on driving without reasonable consideration; chapter three is devoted to dangerous driving; chapter four to disqualification (a curious inclusion); chapter five is headed 'drunken driving offences' (surely in modern times 'intoxicants' would be more appropriate); chapter six is headed 'procedural cases', but in reality now relates to part III of the 1994 *Road Traffic Act*, that is, to intoxicants; and chapter seven is entitled 'specimen and breath test cases'.

The authors boast in the preface that they have 35 years' experience in the courts. So be it, but where is this practicality applied in the form of detailed analysis of the complex Irish provisions? Such analysis from such experience would certainly be of immense practical benefit in relation to the first three chapters, which focus on what might loosely be termed the three main 'bad driving' offences. The first of these, careless driving, is a most common offence in the District Court, though it is dealt with by an all-too-brief summary of the nine cases reproduced in the chapter. Of these cases, only one is Irish, seven are English (1938-87 vintage) and one is Scottish. The full text of the Irish, English and Scottish sections are not reproduced or analysed. Neither do we get any analysis of the different criteria which distinguish between section 52 (careless driving), section 51A (driving without reasonable consideration) and section 53 (dangerous driving) offences. Such an analysis is of critical importance in view of the broad language of the respective sections. In this chapter, the single Irish case referred to (*DPP v O'Brien*) deals with the endorsement question, not the nature of criminal driving as such.

In reproducing English cases in the book, especially many from the *Criminal law review*, the compilers lost an opportunity for commentary in the Irish context. An Irish-produced commentary and analysis would be much more relevant than the slavish reproduction of English commentary. In saying that, of course, one has to acknowledge that the selection of cases and their presentation is very much a matter of perspective and of individual choice. This choice is all the more difficult in view of the volume of law the *Road Traffic Acts* are producing here, on our neighbouring island and, indeed, in Northern Ireland.

Chapter two quotes no Irish case; chapter three has seven Irish and five UK cases. On page 86, the text reproduces the law report of *People (AG) v Dunleavy*, probably the most important case on *mens rea* in the Irish context, but I believe it should have been followed by commentary. It is dealt with briefly and well on page 41, but I feel it needs more explanation: for instance, how the case created a pyramid of *mens rea* or gravity of a criminal nature. It is such a pity that the term 'negligence' is so loosely used in criminal law in cases such as *Dunleavy*.

The three chapters on intoxicants reproduce a useful collection of the main Irish cases and some English ones, but their utility in practice may be diminished by two factors.

The first is the decision referred to in the rather curious preface to the book, as follows: 'The Supreme Court recently indicated that charges of drunken driving are notorious for throwing up not only theoretical points, but very often spurious theoretical points'. That judgment, which may have far-reaching effects in areas where technology has aided law enforcement, needs much more detailed commentary than it got. This 'purposive approach' to acts may limit the defence lawyer in many ways. (See 'Drunken driving: is the Supreme Court rewriting the rules?' on page 14 of the April 1999 *Gazette*.)

Second, breath-test equipment is now becoming available in garda stations and in mobile vehicles throughout the country. The days of blood and urine tests are probably numbered. No doubt we will have a new crop of cases on the new system of analysis.

All in all, therefore, I regard this book of cases as something of a missed opportunity. I am sure we could have learnt much more from the 35 years of the compilers' experience. We may get this in a second edition – hopefully at a lesser price, even though the book is well produced. G

Robert Pierse is a Kerry-based solicitor and the author of Road traffic law in Ireland *(2nd edition, Butterworths, 1995).*

Tech trends

Compiled by Maria Behan

WAPing it up

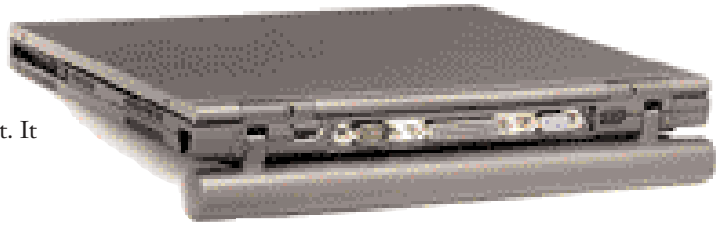
The latest contender in Ireland's wireless application protocol (WAP) phone market packs a full graphics display, yet weighs in at less than 100 grams, with a mere 15mm girth. Ericsson's R320 offers the access to text-based Internet content that's the *raison d'être* for WAP phones, as well as extras such as an infrared eye for instant data communication with a laptop or a compatible WAP mobile (handy for swapping electronic business cards). Another function stores up to 20 voice memos, and the calendar keeps track of appointments and important events. Power-hungry types may appreciate the phone's 3-volt power source, which draws less current for longer stints between charges. *Available directly from Ericsson now, or from mobile phone retailers from mid-June.*

Coming to a small screen near you

Pioneer's portable DVD player, the PDV-LC10, packs considerable digital sound and image technology into a tiny package. The unit weighs just 690 grams and its seven-inch wide LCD screen is designed to deliver crisp pictures and cut down on reflection, so you don't necessarily have to lower your window shades to enjoy a movie on the plane. It also boasts built-in stereo speakers and a battery that lasts for about three-and-a-half hours – almost long enough for a double feature. *Available at electronics outlets and Brown Thomas in Dublin, priced around £1,299.*

Return of the Armada

Compaq claims that the Armada M300 with Pentium III 500 MHz processor is 'probably the most powerful pound-for-pound ultra portable on the planet'. Like other Armada models, it features a docking station, which means that you only need to lug around the essentials when you're out and about. It also includes a roomy 12 gigabyte hard drive and an 11.3-inch TFT SVGA display generating 16 million colours (though most of us are content with just 15 million). *Available at computer outlets, priced around £1,700.*



Toss aside your shackles

If you're feeling tangled up in your PC cables, you might want to look into Logitech's iTouch cordless keyboard and mouse. The system lets you set up your workspace any way that suits you, without worrying about whether the cords will stretch over to the window or your comfy chair. Because the battery-powered components use radio technology rather than the infrared employed by TV remotes, you can communicate with your computer even if you don't have a clear path between you and the receiver that plugs into your IBM-compatible PC. *Available for around £90 at computer outlets.*

Mobile health insurance?

Worried about frying your brain while nattering away on your mobile? British company Ismo has developed a new device that cuts off the radiation travelling up personal hands-free (PHF) cables. The simple wind-up device acts as a clamp, and the company claims that it blocks up to 90% of the radiation going to the brain through PHF cables. *Available for stg£6 from* http://www.ismo.co.uk.

Sites to see

Harvard business review (*http://www.hbsp.harvard.edu/products/hbr/index.html*). The on-line version of the world-renowned business publication from the Harvard Business School.

Office library (*http://www.twobirds.com/library/index.htm*). Offers over 50 legal articles written by lawyers from the international law firm Bird & Bird. Topics include everything from the Internet and intellectual property to employment and finance.

Centre for International Legal Studies (*http://www.telecom.at/cils*). Highlights the activities of the centre, which is based in Salzburg, Austria, and offers links to other academic and legal sites.

Weddings online (*http://www.weddingsonline.ie*). It may be too late for this year's crop of June brides, but this site offers almost everything a prospective bride or groom might need, including a link to get a papal blessing for the big day. In addition to links to vendors selling dresses, rings and all things nuptial, this site has expert advice on wedding etiquette, speeches, and even how much wine to serve when many of your guests are big drinkers.

Faith in Schools (*http://www.faithinschools.org*). Launched by Ireland's four main churches and the Jewish community, this site offers an opportunity to learn about the traditions, holidays and customs of a variety of faiths. It also features information on topics such as racism, equality, bullying and even a section on 'teaching tolerance'.

Report of Law Society Council meeting held on 12 May

Motion: *Guide to professional conduct*

'That this Council approves the draft second edition of the Guide to professional conduct of solicitors in Ireland.'

Proposed: Keenan Johnson
Seconded: John P Shaw

Following discussion, the Council approved the draft second edition of the guide, with the exception of the chapter relating to privilege and confidentiality, which will be considered as a specific item at an extended meeting of the Council to be held on 23 June.

Land Registry

The director general briefed the Council on a meeting which had been held with the minister for justice, equality and law reform on 13 April. The meeting had been attended by the president, the director general, Brian Gallagher and Orla Coyne to discuss the concerns of the society, the DSBA and the profession generally regarding the recent increases in fees and the crisis situation facing the Land Registry because of growing backlogs, which were impacting seriously on the profession and its clients. The minister had acknowledged the difficulties facing the registry, with in excess of 100,000 dealings in arrears. However, he had also identified considerable difficulties in recruiting the 66 additional staff being sought for the registry and he had expressed the view that matters would deteriorate further in the short term.

Orla Coyne noted that, while the delegation had accepted that the public service faced recruitment difficulties, the archaic nature of the recruitment system, the need to increase the salaries on offer and the need for proper training had all been emphasised to the minister. In relation to fees, he had conceded that the society would be consulted in relation to any future fees orders. John Harte said that the society should insist on an improved service being provided for high fees and that solicitors should ask clients to raise the delays with their local TDs.

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

Mary Keane reported that, following the minister's decision to put designation 'on hold' pending the new EU directive, the society had communicated its views on the draft directive to the department and, in particular, its continuing opposition to the concept of reporting obligations being placed on solicitors in relation to their clients. Geraldine Clarke said that, at European level, there was a divergence of views between the parliament and the commission and she suggested that the society should make contact with the Irish MEPs so that they would be aware of the society's concerns.

Apprentices' fees

Following consideration of a detailed report from the education committee, the Council unanimously approved a draft apprentices' fees order prescribing the fees payable for future professional practice and advanced courses. Michael Peart assured the Council that the proposed fees accurately reflected the cost of providing the courses. He confirmed that the fees order would now be forwarded, together with a detailed explanatory memorandum, to the president of the High Court, whose approval of the fees was required under statute.

E-commerce Bill

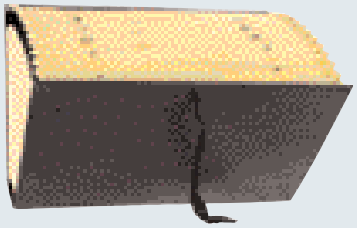
Donald Binchy briefed the Council in relation to the *E-commerce Bill*. In particular, he noted that there were grave concerns among conveyancers about the fact that the bill did not exclude property contracts from its ambit. The implications for the *Statute of Frauds* were considerable and the conveyancing committee was making representations to government on the matter.

Disciplinary Tribunal

The Council noted that a new Disciplinary Tribunal would be appointed by the president of the High Court with effect from 22 May. Following the decision by Walter Beatty to step down as chairman of the tribunal, Tom Shaw had agreed to act as chairman for a five-year term. The Council paid tribute to the outgoing tribunal members for their commitment and dedication in the performance of their duties.

Irish Takeover Panel

The Council approved the reappointment of Brian O'Connor as a director of the Irish Takeover Panel for a further three-year term, with Laurence K Shields as the alternate director. G



Committee reports

BUSINESS LAW

Vertical agreements

Commission Regulation (EC) No 2790/1999 of 22 December 1999 introduces a broad block exemption regulation covering vertical agreements. Vertical agreements are defined in article 1(2) of the regulation as those 'entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to conditions under which the parties may purchase, sell or resell certain goods or services'. The term 'vertical agreement' includes, among other things, exclusive purchasing agreements, exclusive distribution agreements and franchising agreements.

The new block exemption replaces earlier block exemptions provided for in Commission Regulation (EEC) No 1983/83 dealing with exclusive distribution agreements, Commission Regulation (EEC) No 1984/83 dealing with exclusive purchasing arrangements and Commission Regulation (EEC) No 4087/88 dealing with franchising agreements. The new commission regulation came into effect on 1 June. Agreements which were entered into prior to 31 May and which comply with the conditions for exemption set out in regulations (EEC) No 1983/83 or (EEC) No 1984/83 or (EEC) No 4087/88 but do not comply with Commission Regulation (EC) No 2790/1999 have until 31 December 2001 to comply with the new regulation.

Regulation (EC) No 2790/1999 has its origins in EC competition law. Article 81(1) (formerly article 85(1)) provides that 'all agreements between undertakings, decisions by associations of undertakings and concerted practices *which may affect trade between member states* and which have as their object or effect the prevention, restriction or distortion of competition within the common market' shall be prohibited. However, article 81(3) provides for exemptions from the prohibition contained in article 81(1) for agreements, which make a positive contribution to the market in some way and are not too restrictive. It is the commission's view that vertical agreements, such as exclusive distribution agreements and franchising agreements, generally comply with article 81(3) and it implemented Regulation (EC) No 2790/1999 to provide a block exemption for such agreements. It is important to note that the block exemption regulation is only relevant where the agreement may affect trade between member states.

The main features of block exemption regulation (EC) No 2790/1999 are set out below:

- the block exemption applies to agreements for the supply of goods and services
- it applies to both exclusive and non-exclusive agreements
- save in limited circumstances, the block exemption does not apply to vertical agreements between competing undertakings
- the block exemption applies provided the supplier's market share does not exceed 30%. In circumstances where the supplier is in an exclusive supply agreement with the buyer, then it is the buyer's market share which must not exceed 30%. The regulation and accompanying draft guidelines provide mechanisms for determining market share. If the relevant party is over the 30% threshold, this does not necessarily mean the agreement is illegal, but it is not covered by the block exemption regulation
- agreements which comply with the block exemption regulation do not have to be notified to the commission
- the block exemption regulation does not apply to agreements which:
  (a) restrict the buyer's ability to determine the resale price of goods and services
  (b) contain restrictions (other than those permitted in article 4 of the regulation) on the territory into which, or customers to whom, the buyer may sell the goods or services
- to avail of the block exemption, any non-compete clause must comply with article 5 of the regulation. In most cases, the block exemption allows a non-compete clause of up to five years' duration and a post-termination non-compete clause of up to one year's duration
- article 6 allows the commission to withdraw the benefit of the block exemption regulation in any case where competition or access to the relevant market is in fact significantly restricted even though the regulation applies to the agreement. Competent authorities in member states are given a similar power in relation to their own territories under article 7.

From an Irish competition law perspective, the Irish Competition Authority published its own category certificate/license which applies to agreements between suppliers and resellers (Decision No 528 of 1998). The Competition Authority's category certificate/license has been in force since 1 January 1999 and is not due to expire until 31 December 2003. It is important for practitioners to have regard to this certificate/license in drafting vertical agreements as well as the EU block exemption regulation. There is a degree of conflict between the EU provisions and the Irish certificate/license. The Irish certificate/license applies to a narrower range of agreements than are covered by the EU regulation. Furthermore, under the Irish system, where neither party has a share in excess of 20% of the relevant market, the agreement is considered not to contravene section 4(1) of the *Competition Act, 1991*. Where neither party has a share in excess of 40% of the relevant market, the agreement benefits from the category license. (For further details on the differences between the EU and Irish competition law perspectives, consult Denise Casey's article entitled 'Beware! Irish and EU rules on vertical agreements diverge', *Competition*, page 213, vol 8, edition 8.)

Business Law Committee

PRACTICE MANAGEMENT

Legal costs service

Is your firm in a position to provide legal costs drawing and taxation of costs services for other law firms? The Practice Management Committee plans to publish a list of such service providers in the next issue of the *Gazette*. If you would like your name, address, fax and phone numbers included on this list, please supply your details as soon as possible to Claire O'Sullivan, committee secretary, at the Law Society, Blackhall Place, Dublin 7.

Anthony Brady, Chairman G

Practice note

RSI NUMBERS

The following information has been provided by the Capital Taxes Division, Revenue Commissioners, with regard to the allocation of RSI numbers.

Capital acquisitions tax

The 1998 *Social Welfare Act*, which came into effect on 5 February 1999, provided for the introduction of the personal public service numbers (formerly RSI numbers).

The Department of Social, Community and Family Affairs is streamlining its procedures and this will affect the processing of forms and returns relating to capital acquisitions tax, including the Inland Revenue affidavit, the various returns and the certificates of discharge.

From 19 June 2000, PPS numbers will now be traced or allocated only through the Department of Social, Community and Family Affairs network of local or branch offices. Capital Taxes Division will no longer be in a position to obtain PPS numbers from the Department of Social, Community and Family Affairs.

The correct PPS numbers should be entered on all relevant capital acquisitions tax forms, otherwise the papers will have to be returned and the matter taken up with the Department of Social, Community and Family Affairs.

The new arrangements to apply from 19 June 2000 to any situation where a PPS number is required are:

1. clients requiring PPS numbers (either having an existing number traced or, if necessary, having a new number allocated) can personally call into their nearest/most convenient Department of Social Community and Family Affairs local or branch office. New PPS numbers will only be allocated on the basis of valid ID, such as long birth certificate, passport and other supporting documentation. PPS numbers will also be issued to third parties on receipt of written authorisation from the client and valid ID documentation
2. in order to facilitate the special needs of probate cases, solicitors or executors will be able to contact Client Identity Services directly in exceptional situations such as:
   i) a PPS number is required for a person who is deceased
   ii) if a beneficiary is overseas.

In these cases, solicitors or executors should provide Client Identity Services with as much identity information as is available to enable them to trace an existing PPS number. The basic identity information required is: surname, first name, date of birth, mother's birth surname, address. In the case of a deceased Irish person, the pension number (if applicable) and date of death should be supplied.

If a number needs to be allocated to a deceased person, it should be sufficient to provide the above information on the solicitor's headed notepaper.

In the case of a beneficiary living overseas, where a number cannot be traced, the form REG 1 will be issued on request to the solicitor or the executor. The form should be completed in so far as possible and returned to Client Identity Services with the solicitor's headed notepaper with copies of either a passport or national identity card to confirm:

i) the identity of the individual
ii) that the individual has been out of the state for some time.

The PPS numbers will be issued to both the solicitor and the beneficiary.

Client Identity Services is aware that some probate cases fall outside the normal procedures and will endeavour to facilitate solicitors or executors who contact them while also continuing to preserve the integrity of their data and PPS number allocation procedures.

Any correspondence from solicitors should be by fax on their headed notepaper. The fax number for Client Identity Services is (01) 704 3237 and the telephone number is (01) 704 3281.

Taxation Committee

LEGISLATION UPDATE: 21 MARCH – 15 MAY 2000

ACTS PASSED

Commission to Inquire into Child Abuse Act, 2000
Number: 7/2000
Contents note: Establishes a commission to be known as the Commission to Inquire into Child Abuse to investigate child abuse in institutions in the state, enables persons who have suffered such abuse to give evidence to committees of the commission, provides for the preparation and publication of a report by the commission containing the results of its investigation and any recommendations it considers appropriate for the prevention of child abuse, the protection of children from it and the actions to be taken to address any continuing effects of child abuse on those who have suffered it, and provides for related matters
Date enacted: 26/4/2000
Commencement date: 26/4/2000; establishment day order to be made for the purposes of the act (per s2 of the act)

Equal Status Act, 2000
Number: 8/2000
Contents note: Provides for the promotion of equality outside the context of employment; prohibits types of discrimination, harassment and related behaviour in connection with the provision of services, property and other opportunities to which the public generally or a section of the public has access; provides that complaints of discrimination will be dealt with by the director of equality investigations established under the *Employment Equality Act, 1998*. Under the act, the remit of the Equality Authority (formerly the Employment Equality Agency) will include equal status matters. Amends the *Employment Equality Act, 1998* in relation thereto
Date enacted: 26/4/2000
Commencement date: Commencement order/s to be made (per s48 of the act)

Finance Act, 2000
Number: 3/2000
Contents note: Charges and imposes certain duties of customs and inland revenues (including excise); amends the law relating to customs and inland revenue (including excise) and makes further provision in connection with finance
Date enacted: 23/3/2000
Commencement date: 23/3/2000 for all sections except: part I (ss1-89) which comes into force on 6/4/2000, except where otherwise expressly provided; in part III, ss107, 121 and 123(a) and 123(b) which shall be deemed to have come into force and take effect as on and from 1/7/1999 and ss111 and 113 which shall be deemed to have come into force and take effect as on and from 1/3/2000

Local Government (Financial Provisions) Act, 2000
Number: 6/2000
Contents note: Confirms the power of local authorities to make charges for services by virtue of the *Local Government (Financial Provisions) (No 2) Act, 1983*, and validates the position in regard to any such charges made to date
Date enacted: 20/4/2000
Commencement date: 20/4/2000

National Minimum Wage Act, 2000
Number: 5/2000

Contents note: Provides for the determination, declaration and review of a national minimum hourly rate of pay for employees, the entitlement of employees to remuneration for employment at a rate not less than or calculated by reference to that national minimum hourly rate, the calculation of employees' entitlements; the settlement of disputes relating to such entitlements; the enforcement and recovery of wages, the imposition of penalties for breaches of this act. Amends the *Terms of Employment (Information) Act, 1994*, the *Organisation of Working Time Act, 1997*, and the *Protection of Employees (Employers' Insolvency) Act, 1984*, and provides for related matters
Date enacted: 31/3/2000
Commencement date: 1/4/2000 (per SI 96/2000)

Social Welfare Act, 2000
Number: 4/2000
Contents note: Provides for increases in the rates of social insurance and social assistance payments and child benefit; improvements in the family income supplement scheme; introduces new schemes of carer's benefit, widowed parent grant and special contributory pensions for people with pre-1953 insurance. Also provides for increases in the rates of social insurance (PRSI) announced in the budget and other amendments to the social welfare code
Date enacted: 29/3/2000
Commencement date: Various – see act

SELECTED STATUTORY INSTRUMENTS

Bail Act, 1997 *(Commencement) Order 2000*
Number: SI 118/2000
Contents note: Appoints 15/5/2000 as the commencement date for all sections of the act not previously brought into operation

Capital Gains Tax (Multipliers) (2000-2001) Regulations 2000
Number: SI 76/2000
Contents note: Specify the multipliers for the purpose of computing the chargeable gain accruing to a person on the disposal of an asset in the year of assessment 2000-2001

Consumer Credit Act, 1995 *(Section 2) Regulations 2000*
Number: SI 113/2000
Contents note: Adds 'Tusa Financial Services Ltd' to the definition of 'credit institution' in s2(1) of the *Consumer Credit Act, 1995*
Commencement date: 20/4/2000

European Communities (Milk Quota) Regulations 2000
Number: SI 94/2000
Contents note: Replace the *European Communities (Milk Quota) Regulations 1995* (SI 266/1995), as amended. Put in place as from 1/4/2000 arrangements for the operation up to 31/3/2008 of the milk quota and super levy regime in Ireland in accordance with the provisions of council regulation 3950/92, as amended particularly by regulation 1256/99 and commission regulation 536/93, as amended. Introduce substantially new arrangements for the transfer of milk quotas and continue with some modifications the provisions of the 1995 regulations relative to the registration of milk purchasers and the establishment, collection and payment of super levy
Commencement date: 1/4/2000

European Communities (Telecommunications Licences) (Amendment) Regulations 2000
Number: SI 71/2000
Contents Note: Amend the *European Communities (Telecommunications Licences) Regulations 1998* (SI 96/1998) which give effect to directive 97/13/EC on a common framework for general authorisations and individual licences in the field of telecommunications services. Amend-ments relate to appeals against certain decisions made by the director of telecommunications regulation pursuant to the regulations
Commencement date: 16/3/2000

Freedom of Information Act, 1997 (*Prescribed Bodies) Regulations 2000*
Number: SI 67/2000
Contents note: Prescribe the Courts Service, the Equality Authority, the Ordnance Survey and the Area Health Boards and the Health Boards Executive established under the *Health (Eastern Regional Health Authority) Act, 1999* as public bodies under the *Freedom of Information Act*
Commencement date: 1/3/2000

Freedom of Information Act, 1997 *(Prescribed Bodies) (No 2) Regulations 2000*
Number: SI 115/2000
Contents note: Prescribe Radio Telefís Éireann and its subsidiaries, RTE Commercial Enterprises Ltd, RTE Music Ltd, DTT Network Company, and Seirbhísí Theilifís na Gaeilge Teoranta (the legal framework for TG4's activities) as separate public bodies for the purposes of the *Freedom of Information Act, 1997*. In accordance with s3(5) of the act, these regulations apply the act to non-programme related functions of these bodies only
Commencement date: 1/5/2000

Income Tax (Relevant Contracts) Regulations 2000
Number: SI 71/2000
Contents note: Consolidate and expand the existing provisions which prescribe the manner in which the scheme for deduction of tax from payments to sub-contractors in the construction, forestry and processing industries is to operate
Commencement date: 6/4/2000

National Minimum Wage Act, 2000 *(Commencement) Order 2000*
Number: SI 96/2000
Contents note: Appoints 1/4/2000 as the commencement date for the *National Minimum Wage Act, 2000*

National Minimum Wage Act, 2000 *(National Minimum Hourly Rate of Pay) Order 2000*
Number: SI 95/2000
Contents note: Sets the national minimum hourly rate of pay at £4.40 and also sets out the monetary allowances for (i) full board and lodgings, (ii) full board only and (iii) lodgings only, which may be included by an employer in calculating the national minimum hourly rate of pay of an employee, not exceeding those specified in the order
Commencement date: 31/3/2000

National Minimum Wage Act, 2000 (*Prescribed Courses of Study or Training) Regulations 2000*
Number: SI 99/2000
Contents note: Prescribe the criteria that a course of study or training must satisfy in order that an employee, undergoing such a course and who is aged 18 or over, shall be paid in accordance with s16(1) of the *National Minimum Wage Act, 2000*
Commencement date: 4/4/2000

Waste Management (Hazardous Waste) (Amendment) Regulations 2000
Number: SI 73/2000
Contents note: Amend the *Waste Management (Hazardous Waste) Regulations 1998* (SI 163/1998) for the purpose of implementing commission directive 98/101/ EC, which adapts to technical progress council directive 91/157/EEC on batteries and accumulators containing dangerous substances
Commencement date: 1/5/2000

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Circuit Court Rules (No 1) (Domestic Violence Act, 1996) 2000
Number: SI 104/2000
Contents note: Provide for procedures in relation to the making of applications to the Circuit Court under the *Domestic Violence Act, 1996*. These rules are in substitution for, and revoke, subject to transitional arrangements, *Circuit Court Rules (No 3) 1982*
Commencement date: 28/4/2000

Rules of the Superior Courts (No 2) (Courts-Martial Appeal Court Rules [Amendment]) 2000
Number: SI 105/2000
Contents note: Amend rule 4(1) and rule 8 of the *Courts-Martial Appeal Court Rules 1993* (SI 206/1993), and insert the 1993 rules, as amended, as order 86A into the *Rules of the Superior Courts*
Commencement date: 28/4/2000

Personal injury judgments

Negligence – motor traffic accident – physical and psychological injuries – assessment

CASE

***Seán Bán Breathnach v Richard Edge and MIBI*, High Court on circuit in Galway, before Mr Justice Hugh Geoghegan, judgment of 14 July 1999.**

THE FACTS

Seán Bán Breathnach has for some 25 to 30 years been a well-known broadcaster in Irish language programmes. He has been, and still is, a regular commentator in different sports and has also been a quiz master, which involves a considerable amount of travelling. He is the presenter of a popular weekend programme on holidays and key calendar events. He does considerable mileage while driving each year, estimated at between 40,000 and 60,000 miles a year.

On 19 June 1997, Mr Breathnach saw Richard Edge's car heading straight for him and knew there was going to be an impact. At the moment of the crash, the air bag was released. This appeared to give rise to a smell, like a smell of gas, while at the same time Mr Breathnach was initially unable to open the door of the car. He feared that the car was about to go on fire. Mr Breathnach sued for damages for personal injuries.

THE JUDGMENT

Having outlined the facts as set out above, Mr Justice Geoghegan described the accident as 'alarming'. Apart from the physical injuries which Mr Breathnach sustained, the judge was satisfied that he suffered severe personal trauma in the accident from which he had not yet recovered. The judge's impression of Mr Breathnach as a witness was in accord with the views of the psychiatrist Dr McLoughlin. The judge also accepted the evidence of Mrs Breathnach, 'a most impressive witness', who testified as to her husband's change in personality.

The judge accepted that Mr Breathnach, who had previously been a gregarious, open kind of person, had suffered from bouts of depression which he had never suffered prior to the accident. The judge noted that Mr Breathnach had been heavily and adversely affected by the revelation that, but for chance, his young son, whom he clearly idolised, would have been in the car with him. The judge fully accepted the evidence of continuing psychological overlay and stated that Mr Breathnach was entitled to damages for it. He also stated, however, that there would be a gradual improvement in psychological terms once the case had come to a conclusion.

In relation to the physical injuries, on the day after the accident Mr Breathnach was stated to be suffering from tenderness, disability of neck movement and in particular limitation of lateral flexion and rotation, and injury to the upper chest in keeping with the shape and size of the safety belt. He later incurred pain in his lower back. There was medical evidence that Mr Breathnach suffered a low-back soft-tissue injury and moderate whiplash injury to his neck.

There was also evidence that Mr Breathnach had certain arthritic changes radiologically. These were symptomatic before the accident but the judge accepted evidence that these symptoms had been considerably aggravated by the accident. There was expert medical evidence that Mr Breathnach would continue to experience pain in his neck from time to time for the future. The long distances which Mr Breathnach travels were a major risk factor in the context of ongoing back and neck pain. The judge noted that having regard to Mr Breathnach's lifestyle, it was quite likely that at some stage the symptoms would have become aggravated, even if he had no accident. Mr Justice Geoghegan stated he was taking this into account when assessing damages.

THE AWARD

Mr Justice Geoghegan assessed damages as follows: pain, suffering and stress to date, £30,000; pain, suffering and stress in the future, £15,000; and special damages of £740.58. Accordingly, Mr Justice Geoghegan gave judgment for £45,740.58.

Counsel for Mr Breathnach: Mr P O'Higgins SC, Mr McGrath and Mr Silke, instructed by Silke & Co, Solicitors.
Counsel for the defence: Henry Bourke SC and Gerry Keyes, instructed by Sandys & Brophy, Solicitors.

Negligence – road traffic accident – young man – back seat passenger in car – multiple fractures to ribs, pelvis, femur and right tibia – post-traumatic stress disorder – assessment

CASE

***Patrick O'Mahoney v Tadgh Buckley*, High Court on circuit in Cork, before Mr Justice Smith, judgment of 21 January 2000.**

THE FACTS

Patrick O'Mahoney was born on 14 October 1967. He left school in 1982, having completed his intermediate certificate. Subsequently, he did a FÁS course. From 1987, he had worked periodically as a builder's labourer in Cork. He resided with his girlfriend and had an interest in sport and played squash.

On 9 August 1996, he was a back seat passenger in a car which was in collision with a vehicle driven by Tadgh Buckley. Following the accident, Patrick O'Mahoney was trapped in the car. He had to be cut out. His friend, Pat Conlon, who was in the front seat in the car, died in the accident. Mr O'Mahoney was not aware at the time that his good friend had died in the accident, a fact that he learned some days later in the hospital. His friend's death greatly upset him. He spent several weeks in hospital.

The nature of the injuries which he sustained was outlined to the court by various medical witnesses. Mr O'Mahoney's right hip was badly fractured and was stated to be very painful; the pain could only be relieved by pain-killers. There was evidence that he would require an artificial hip within ten years and probably another artificial hip ten or 15 years later, leaving him with a limp. He had great difficulty coping with hills, steps and stairs. He could not lift or carry heavy weights and would never again be able to work as a builder's labourer.

A consultant orthopaedic surgeon from Cork gave evidence that Mr O'Mahoney suffered the following injuries: a blunt trauma to the abdomen requiring a laparotomy, multiple fracture of the ribs on the right side and chest trauma, a fracture of the pelvis and a fracture of the acetabulum, and a fracture of the femur and the right tibia, the patella, the right upper limb and a fracture of the right clavicle.

The right femur was reduced and a nail inserted. In relation to the fracture of the pelvis, the injuries were treated with a skeletal traction. There was evidence that, as a result of the hip injury, Mr O'Mahoney would develop arthritis in the right hip joint within five to ten years.

Evidence was given by a consultant neurologist who stated that Mr O'Mahoney had some difficulty with sexual relations with his girlfriend, but that matter seems to have resolved. Mr O'Mahoney also complained about having difficulty passing urine; the consultant urologist stated in evidence that this was consistent with urinal stricture, that is, a narrowing in the water passage as a result of the previous pelvic fracture. To remedy the situation, Mr O'Mahoney would have to undergo an endoscopy restructuring and, if this was not successful, he would have to undergo an open resection of the urethra. It was unlikely, however, that Mr O'Mahoney would have any lasting problems in that regard.

There was evidence that Mr O'Mahoney suffered from a post-traumatic stress disorder.

THE JUDGMENT

The judge accepted that Tadgh Buckley, the defendant, was entirely to blame for the accident. He outlined the physical injuries and stated that Mr O'Mahoney also suffered from a post-traumatic stress disorder. He had the classic symptoms of the disorder: he repeatedly relived the trauma and had flashbacks of the accident and the death of his friend Pat Conlon. He had a sense of emotional numbness and felt detached from other people. He was also depressed and had taken to excessive drinking. The judge noted that Mr O'Mahoney believed he was a different person from what he was before the accident. He was paranoid and had no confidence in himself. He had received counselling. The judge referred to Mr O'Mahoney's girlfriend, who gave evidence in relation to the changes she noticed in him since the accident; he had no confidence in himself; he was worrying about small matters, such as what people might be saying about him. He felt dirty and washed himself unnecessarily. His girlfriend stated that he was quite difficult to live with. She accepted, however, that the finality of the litigation should take some pressure off him.

Due to the injuries, the judge accepted that Mr O'Mahoney would not work again as a builder's labourer and would have to retrain himself for work. He could work as a salesman or do some factory work apart from heavy physical labour.

Mr Justice Smith referred to a consultant psychiatrist who gave evidence that she found Mr O'Mahoney at the time to be extremely unwell; he was distressed and had the classic symptoms of post-traumatic stress disorder. The psychiatrist painted a gloomy picture of Mr O'Mahoney. He was suffering from depression and was on a high dosage of anti-depressant medication. Mr O'Mahoney was unable to socialise except when he was drinking and this meant that he now had a dependency on alcohol, drinking at times as much as 15 pints a day. The psychiatrist considered that because of his alcohol dependency, his recovery from post-traumatic stress disorder and depression was less likely. She advised him to stop drinking. All Mr O'Mahoney had done was to cut back at times on his drinking. There was evidence given that the doctor had referred Mr O'Mahoney to a consultant clinical psychologist so that he might derive benefit from what is known as EMP. This is a treatment to tackle intrusive thoughts and memories. Assessment by the clinical psychologist revealed intrusive thoughts, sleep disturbance, dreams and flashbacks. On the clinical side, the psychologist noted that the prospects of success were fairly good. The judge accepted that the prognosis of Mr O'Mahoney from the psychiatric point of view was not as poor as a psychiatrist had testified.

One of the stress factors, according to the judge, which was affecting Mr O'Mahoney's recovery was the legal proceedings. When the case was over, he would be relieved of that stress. Another factor, according to the evidence, was that Mr O'Mahoney was now beginning to distance himself from the accident. The symptoms of post-traumatic stress disorder were less intense than they were a year previously. Mr O'Mahoney's drinking had been reduced and, according to the judge, must be stopped, and it was up to Mr O'Mahoney himself to see that it was stopped. The onus was on him to minimise the loss. All the medical witnesses agreed that work was therapeutic and idleness contributed to depression.

The judge noted that physically Mr O'Mahoney had the capacity for many forms of work, provided that the work was not too physical. He was satisfied that Mr O'Mahoney would never be able for the heavy physical work which he did before the accident. He would have to retrain himself for other work, and hopefully he should be able to obtain work which was suitable for him. The judge stated he was prepared to allow Mr O'Mahoney three years from the date of the trial to retrain and make himself available for other work. He accepted there would be a reduction in his earning capacity.

Mr O'Mahoney had earned about £450 gross a week. He was now capable of earning £200 gross a week, or £180 net. Actuarial evidence was considered in relation to future loss of earnings.

THE AWARD

Mr Justice Smith awarded general damages, including damages for post-traumatic stress disorder, of £60,000 to the date of the trial; general damages in the future of £145,000; and special damages of £220,943.

Special damages included loss of wages from the date of the accident to the date of the trial, 179 weeks, which came to £36,169; loss of wages for three years from the date of the trial at £302 a week, which came to £47,112; medical expenses, including hospital charges and the capital value of a hip replacement and urinary operation, at £16,250. The total sum awarded came to £425,943.

Counsel for Mr O'Mahoney: Mr Tynan SC, Michael Gleeson SC and Don McCarthy, instructed by Michael Powell, Solicitor.
Counsel for Mr Buckley: Mr Gaynor SC, and John Lucey, instructed by R Moylan & Co, Solicitors. G

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

First Law Update

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COMPANY

Insolvency and costs

Practice – security for costs – amount of security – receivership – order for costs made against first and second defendants – plaintiff company in liquidation – meaning of 'sufficient security' – whether discretion possessed by court in fixing amount of security – Companies Act, 1963, *section 390*

The plaintiff was a building company which had been developing a housing estate which ran into financial difficulties. As a consequence, the first defendant, who was financing the project, advanced further finance, but only on condition that certain parties be appointed to manage the project. The plaintiff primarily alleged that the people so appointed ran the project in a negligent fashion and issued proceedings in respect of their alleged negligence. In the present application, the court was being asked to fix the amount of security for costs to be given by the plaintiff in favour of the first two defendants. McCracken J held that the amount of costs per section 390 of the *Companies Act, 1963* would appear to be approximate to the probable costs of a defendant, should it succeed, and fixed the amount of security in this instance to be given in favour of the first and second defendant at £200,000 each.

***Lismore Homes Ltd v Bank of Ireland Finance Ltd*, High Court, McCracken J, 24/03/2000** [FL2579]

CONSTITUTIONAL

Property rights

Blasket Islands – equality – compulsory purchase of lands – whether legislation discriminated against certain individuals – An Blascaod Mór National Historic Park Act, 1989 – Bunreacht na hÉireann, 1937

The plaintiffs were a group of people who owned lands on the Blasket Islands. The government passed legislation dealing with ownership of the islands. The plaintiffs challenged the legislation on the basis that it was unconstitutional in the manner that it dealt with their property rights. Budd J accepted their arguments and held that the legislation was repugnant with regard to the constitution. The respondents appealed against the decision. The Supreme Court held that the legislation in question was discriminatory in the way in which it distinguished between people who held land on the Blaskets before 1953 and those who acquired landholdings after that date. To discriminate in such a fashion was not legitimate and was unconstitutional. Accordingly, the legislation was repugnant to the constitution, the decision of the High Court was affirmed and the appeal dismissed.

***An Blascaod Mór Teoranta (& Others) v Commissioner of Public Works (& Others)*, Supreme Court, 27/07/99** [FL1885]

CONTRACT

Land law

Breach of contract – specific performance – subject to contract – oral contract – gazumping – plaintiff seeking specific performance of contract for sale of land – exact boundaries not agreed – whether plaintiff's claim can succeed – whether amount of deposit a material term of contract – whether completed agreement evidenced in writing – Statute of Frauds 1695

The plaintiff had instituted proceedings for specific performance of an alleged agreement entered into by the parties relating to the sale of land. The defendant argued that no agreement had been concluded. Geoghegan J dismissed the claim of the plaintiff. The evidence had established that no agreement had been concluded between the parties. The agreement as reached was at all times subject to contract. In addition, the amount of deposit to be paid had not been agreed. In the circumstances, Geoghegan J held that the case appeared to be a straightforward one of gazumping and with regret dismissed the claim.

***Shirley Engineering Ltd v Irish Telecommunications*, High Court, Geoghegan J, 02/12/99** [FL1997]

Practice and procedure

Application to dismiss proceedings – subject to contract – specific performance – doctrine of part performance – plaintiff seeking specific performance of contract for sale of land – motion to strike out proceedings – whether plaintiff's claim can succeed – whether plaintiff's claim constituted an abuse of process – whether completed agreement evidenced in writing – Statute of Frauds 1695, *section 2* – Rules of the Superior Courts, 1986, *order 19, rule 28*

The plaintiff had instituted proceedings for specific performance of an alleged agreement entered into by the parties relating to the sale of land. The defendants successfully applied to have the proceedings dismissed on the grounds that they were an abuse of process of the courts. The plaintiff appealed. Held by the Supreme Court in allowing the appeal and setting the order of the High Court aside. On the basis of the disclosed facts, there were quite clearly issues disclosed which required determination in a plenary hearing.

***Jodifern Ltd v Fitzgerald*, Supreme Court, 21/12/99** [FL2611]

Unfair dismissal

Contract – equitable relief – whether employee precluded from seeking declaratory relief – Industrial Relations Act, 1990 – Code of Practice on Disciplinary Procedures (Declaration) Order, 1996 – Unfair Dismissals Act, 1977, *section 15*

The plaintiff had been employed as a creative director by the defendant. The defendant sought to terminate the employment of the plaintiff. The plaintiff applied for injunctive relief to restrain the purported dismissal. Held by Murphy J in refusing the relief sought. The plaintiff had not elected to pursue a remedy under the *Unfair Dismissals Act, 1977* and had not claimed damages for wrongful dismissal. In such circumstance the remedy of equitable relief had no independent existence from a claim for wrongful dismissal and was therefore not available.

***Philpott v O'Gilvy & Mather Ltd*, High Court, Murphy J, 21/03/2000** [FL2622]

CRIMINAL

Road traffic offence

Fair procedures – certiorari – audi alteram partem – *judicial review – natural and constitutional justice – road traffic offence* – autrefois acquit – Road Traffic Act, 1961

The applicant had been convicted of a road traffic offence in the District Court. The presiding judge subsequently imposed a further penalty in respect of remarks purportedly made by the applicant. The applicant claimed that there had been a denial of fair procedures in the manner that this matter had been dealt with. In the High Court, O'Sullivan J granted an order of *certiorari* and also held that the applicant would be entitled to plead *autrefois acquit* and declined to remit the matter to the District Court. The DPP appealed. In the Supreme Court, Murray J held that the High Court had correctly issued the order of *certiorari*. In addition, the fundamental breach of constitutional justice would entitle the applicant to plead *autrefois acquit*. Accordingly, all of the orders of the High Court were affirmed and the appeal was dismissed.

***Nevin v DPP*, Supreme Court, 17/02/2000** [FL2616]

Taxation

Revenue – inspector of taxes – chargeable persons – constitution – administration of justice – practice – summary judgment – remission to plenary hearing – whether bankrupt was a chargeable person – whether inspector of taxes involved in administration of justice – whether reliance on certificate or report of inspector of taxes unconstitutional – whether time limit for appeal of notice of assessment unconstitutional – whether real or bona fide *defence – whether presence of factual dispute precludes summary disposal of case* – Bankruptcy and Insolvency Act 1857 – Bankruptcy Act, 1988 – Income Tax Act, 1967 – Taxes Consolidation Act, 1997 – Rules of the Superior Courts, 1986, *order 37, rule 7*

The plaintiff instituted proceedings against the defendant seeking payment of unpaid tax liabilities and applied for summary judgment. The defendant sought to have the matter remitted for plenary hearing. The defendant argued that the presence of factual disputes in the matter precluded the summary disposal of the case. O'Higgins J held that in general the presence of a factual dispute did not preclude the summary disposal of a case. However, it seemed that in relation to the vesting of property in the official assignee, the defendant had raised issues which should be resolved by way of plenary hearing and accordingly O'Higgins J made an order to this effect.

***CAB v Kelly*, High Court, O'Higgins J, 04/06/99** [FL1978]

DAMAGES

Defence forces

Tort – negligence – special damages – future damages – army deafness claim – noise-induced hearing loss – quantum *– evidence presented to trial judge – whether trial judge correct in amount of future damages awarded – whether findings of trial judge could be disturbed*

The plaintiff had brought a claim in relation to hearing loss suffered as a result of the alleged negligence of the respondents. The trial judge (O'Donovan J) found in favour of the plaintiff and awarded £31,845. The respondents appealed against the amount awarded. The respondents contended that the £10,000 which was awarded for special damages in the future was too high. In delivering judgment, Lynch J held that there was ample evidence presented before the trial judge to support the award made. Accordingly, the findings of the trial judge would be upheld and the appeal dismissed.

***Barry v Ireland*, Supreme Court, 07/12/99** [FL2127]

Employment and negligence

Tort – personal injuries – negligence – assessment – evidence – plaintiff suffered accident at work – plaintiff suffered phobia regarding returning to work – depression – whether amount of future damages awarded was excessive – whether trial judge laid too much emphasis on evidence of career counsellor

The plaintiff had been injured at work. In the High Court, the plaintiff in addition to special damages was awarded future damages of £70,000. The defendants appealed against the amount of future damages and argued that the long-term consequences of the accident were in fact quite limited. Keane J allowed the appeal, holding that there appeared to be some confusion between the evidence tendered and the conclusions of the trial judge. The matter would be remitted to the High Court so the amount of damages could be re-assessed.

***O'Donohue v Deecan*, Supreme Court, 19/07/99** [FL2080]

Road traffic accident

Tort – personal injuries – negligence – road traffic accident – conflicting testimony – allegation of intoxication – exemplary damages – whether evidence of witnesses could be relied upon – whether false testimony justifies the award of exemplary damages

The plaintiff and defendant had collided in a road traffic accident. There was a complete conflict in the respective accounts of the collision. The plaintiff alleged that the defendant had crashed into him, while the defendant claimed that the plaintiff had reversed into him. Barr J accepted the testimony of the plaintiff and held the defendant responsible for the accident. Barr J awarded general damages of £30,000 and awarded £7,000 exemplary damages arising from the deliberate false testimony of the defendant.

***Crawford v Keane*, High Court, Barr J, 07/04/2000** [FL2621]

DEFAMATION

Practice and procedure

Discovery – defamation – appeal from master's order granting wide ranging discovery – libel – defence of fair comment – principles to be applied – whether discovery amounted to a fishing expedition

The plaintiff had issued libel proceedings against the defendants in respect of an article published in the *Sunday Business Post*. The defendants brought a motion for discovery against the plaintiff. The plaintiff claimed that the discovery was wide ranging and amounted to a fishing expedition. The Master of the High Court made an order for discovery in the terms sought. The plaintiff appealed. O'Sullivan J held that the absence of an affidavit setting out evidence supporting the fair comment plea by the defendants did not disentitle the defendants to the order sought. O'Sullivan J affirmed the order of discovery while imposing some limits in respect of the time period within which the relevant documents were discoverable.

***McDonnell v Sunday Business Post Ltd*, High Court, O'Sullivan J, 02/02/2000** [FL2315]

EDUCATION

Expulsion and fair procedures

Discipline – fair procedures – use of banned substances – natural justice – application for an interlocutory injunction – whether unfair procedures used – whether procedures contrary to the rules of natural and constitutional justice – whether headmaster's expulsion decision valid – whether penalty imposed disproportionate to severity of offence – whether the court can intervene in decision of school authorities

The applicants sought an interlocutory injunction prohibiting the defendant from proceeding with the expulsions of two boys from the defendant school for smoking cannabis. The two boys were due to sit their leaving certificate examination in June 2000. Kearns J adjourned the matter for one week to provide the plaintiffs and their parents with an opportunity of addressing the board of governors prior to the possibility of suspension or expulsion. However, he held that it would remain open to the defendant school to impose a

lengthy period of suspension or to order the expulsion of the plaintiffs if, having heard the submissions on behalf of the plaintiffs, the governors felt that this was the proper and appropriate course of action to adopt.

Note: at the adjourned hearing, the court was informed that the pupils were to be re-admitted on certain conditions and that the proceedings could be struck out with no order as to costs.

***Student A and Student B v a Secondary School*, High Court, Kearns J, 25/11/99** [FL1972]

ENVIRONMENTAL

Habitats directive

Planning – European law – environment – delay – whether respondents in breach of Habitats directive – *Wildlife Act, 1976* – European Communities (Natural Habitats) Regulations 1997 – European Communities (Natural Habitats) Regulations 1998

The plaintiff had taken proceedings claiming that the respondents failed to comply with the provisions of the *European Communities (Natural Habitats) Regulations 1997* and the *Habitats directive*. The plaintiff claimed that, by virtue of these regulations and the directive, the respondents had obligations towards the Glen of the Downs which they had not discharged. The High Court dismissed the proceedings and the plaintiff appealed. In the Supreme Court, Murray J held that the proposed road-widening scheme was not an activity to which the regulations applied. The respondents were not in breach of their obligations and accordingly the plaintiff's appeal was dismissed.

***Murphy v Wicklow County Council*, Supreme Court, 28/01/2000** [FL2428]

Injunction

Planning – European law – article 234 reference – injunctive relief – injunction refused – whether point of law should be referred to European Court of Justice – Bunreacht na hÉireann, 1937

The plaintiff had sought an interlocutory injunction restraining the respondent from carrying out road development works at the Glen of the Downs. In a judgment delivered on 13 December 1998, O'Sullivan J refused the relief sought. The plaintiff then sought to have the matters raised referred to the European Court of Justice under an article 234 reference. O'Sullivan J refused the relief sought, holding that as judgment had been delivered, it would now be impossible to refer preliminary questions to the Court of Justice.

***Murphy v Wicklow County Council*, High Court, O'Sullivan J, 15/12/99** [FL2030]

EVIDENCE

Negligence and torts

Personal injuries – conflict of evidence – negligence – contributory negligence – plaintiff involved in accident – whether plaintiff guilty of contributory negligence

The plaintiff had been injured in an accident whereby a bus ran over his foot. There had been a conflict of evidence in relation to the site of the accident. The trial judge accepted the account given by the plaintiff and awarded him a sum of approximately £446,000. The defendant appealed. Hardiman J (with Keane J concurring) held that there was an absence of findings of fact by the trial judge. In such circumstances, the appeal would be allowed and the action would be remitted to the High Court for re-trial. In a dissenting judgment, Murphy J held that the trial judge was entitled to come to the conclusions he had reached and the appeal as to liability should be dismissed.

***Kelly v Dublin Bus*, Supreme Court, 16/03/ 2000** [FL2602]

FREEDOM OF INFORMATION

Employment

Personnel records – right to privacy – onus upon public body to justify refusal of access – role of information commissioner – whether access to records should be allowed – Freedom of Information Act, 1997

An employee of the appellant made a request to the appellant for access to certain records contained in his personnel file. The request was made under section 7 of the *Freedom of Information Act, 1997*. The appellant granted access to certain records and withheld access to others. The employee appealed the decision to the information commissioner (the respondent) who found in favour of the employee and granted increased access. The appellant challenged the decision of the respondent in the High Court claiming that the employee was not entitled to access the said records. O'Donovan J upheld the decision of the respondent and dismissed the appeal.

***Minister for Agriculture v Information Commissioner*, High Court, O'Donovan J, 17/12/99** [FL2187]

LOCAL GOVERNMENT

Injunction

Competition law – waste disposal – refuse collection – restrictions imposed by local authority in relation to access to waste disposal site – distinction between commercial waste and domestic waste – injunction – fair issue to be tried – balance of convenience – whether restrictions in breach of competition law – whether injunction should be granted against local authority

The plaintiff was a limited liability company engaged in the collection and disposal of waste. The local authority responsible for the operation of the landfill site realised that there was a problem regarding capacity at the site and accordingly imposed restrictions on the plaintiff. The plaintiff claimed that the actions of the defendant were in breach of competition law and sought an injunction to prevent the imposition of the restrictions. In the High Court, Ó Caoimh J held that the plaintiff had raised a fair issue to be tried. However, as damages would adequately compensate the plaintiff and the balance of convenience lay in favour of the defendant, the court would decline to grant the relief sought.

***Wheelbin v Kildare County Council*, High Court, O'Caoimh J, 21/12/99** [FL2196]

MEDICAL

Inquests

Role of coroner – ascertaining cause of death – death certificate – pneumonia – cerebral palsy – vaccination – delay – judicial review – whether coroner empowered to commission independent report – whether coroner trespassing into the area of civil liability – whether coroner acted ultra vires *in commissioning independent report* – Coroner's Act, 1962, *section 30*

The respondent, in the course of an inquest, sought to commission an independent report into a possible link between the death of a deceased and the pertussis (the three-in-one) vaccination. It was common case that the cause of the death was aspirational pneumonia. The coroner originally proposed that this had been brought about by the deceased's cerebral palsy. However, the family of the deceased claimed that the pertussis vaccination had in fact brought about this condition. The Eastern Health Board brought judicial review proceedings to prohibit the coroner from proceeding with an independent investigation of a possible link. Geoghegan J granted the relief sought and held that the proposed course of action by the coroner was outside his official remit.

***Eastern Health Board v Farrell*, High Court, Geoghegan J, 14/12/99** [FL2031] G

The information contained here is taken from FirstLaw's Legal Current Awareness Service, published every day on the Internet at www.firstlaw.ie. *Full texts are available on-line. For more information, contact bartdaly@firstlaw.ie or tel: 01 809 0400, fax: 01 809 0409.*

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Eurlegal

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

Council of Europe proposals on protecting the mentally ill

In February, the Steering Committee on Bioethics (CBDI) of the Council of Europe published a *White paper on the protection of the human rights and dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric establishment*. The document is the work of a group of experts and is intended as a basis for public consultation and the drawing-up of guidelines. This new legal instrument will deal with involuntary placement and appropriate treatment in civil and criminal matters. The Council of Europe will consult those organisations represented at the European level, and national authorities are expected to organise consultation to reach the secretariat of the Council of Europe by October.

The white paper is drafted against the background of recommendation R(83)2 on the legal protection of persons suffering from mental disorders and placed as involuntary patients and recommendation 1235 (1994) on psychiatry and human rights. The working party took account of article 5(4) of the *European convention on human rights*, which states: 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful'.

The white paper is timely in view of the current legislative reforms in Ireland, and particular aspects of the document are addressed in this article against the background of the *Mental Health Bill, 1999*.

Mental disorder

According to the working party, the term 'mental disorder' cannot be precisely defined and could cover mental illness including severe neuroses and psychoses, mental handicaps and personality disorders. In the diagnosis of personality disorders, account should be taken of the 1979 *Winterwerp* decision, which states that 'article 5.1 obviously cannot be taken as permitting the detention of a person simply because his views or behaviour deviate from the norms prevailing in a particular society'.

There are no guidelines on the kinds of personality disorder envisaged, and this is an area of great difficulty for legislators and practitioners. While some jurisdictions permit the detention of those with personality disorders, the *Mental Health Bill, 1999* excludes the involuntary admission of those with a sole diagnosis of personality disorder. The mental disorder must represent a serious danger to the person and their health and/or a serious danger to others, with the additional requirement that the placement is likely to be beneficial. Concepts such as 'dangerousness', 'risks' and 'benefits' are contentious and have caused difficulties for legislative reform.

An alternative to the use of term 'mental disorder' is the proposal to use the concept of mental incapacity, whereby decisions are based on the ability of the individual, as determined by medical and other professional staff, to understand the nature of treatment or admission, weigh up the benefits of either, make a choice and communicate that choice. This issue is the subject of discussion in mental-health law reform in other jurisdictions.

The working party supports the separation of the legal ground for involuntary detention and involuntary treatment. An involuntary placement would not automatically mean that treatment may be enforced. The presumption of competence to decide one's own treatment remains, unless it was the reason for the detention in the first instance. Surprisingly, the report states that involuntary treatment should not inevitably involve involuntary placement. This suggestion is contradictory, as it indicates the possibility that treatment could be enforced against a voluntary patient.

Alternatives to detention

Detention should only take place where the person will not consent, is incapable of consenting and refuses treatment – and there is no alternative that is less restrictive. Interestingly, the working party lists possible alternatives, including day hospitalisation, daily nursing support in the home, effective psycho-social treatments and emphasises the need for member states to make alternatives to placement as widely available as possible. This is significant in view of the lack of alternatives to detention highlighted by the *Reports of the inspector of mental hospitals*. It is to be hoped that such a recommendation could lead to an enforceable right in the future.

Procedures

There is nothing novel in the white paper in relation to procedures for admission having regard to the provisions in the bill and the current practice of psychiatry. The only exception is the requirement that the 'social care aspects' must be taken into consideration. This role may be fulfilled by the proposed 'authorised officer' as an applicant in the bill even though no reference is made to the assessment of social factors. The government should take note of this requirement when addressing amendments to the bill.

On the basis of article 5(2) of the *European convention on human rights*, the experts considered that the decision confirming detention should be taken promptly, should be documented and that the duration should be included. Information on the reasons for placement should be given regularly and appropriately to the patient, and the views of the patient on the placement should be taken into consideration.

Therapeutic responsibility

The working party emphasised the responsibility of those therapists and professionals in direct contact with the patient and the ethical and legal responsibility that must accompany their work. Psychiatrists must be able to support their opinions concerning their approach through dialogue with peers, patients and the community at large.

Emergency procedures

In emergencies, it may not always be possible to wait for a decision on placement by the 'independent authority' (this could be a doctor independent of the original medical assessment, which is the current practice in this jurisdiction). This doctor should take a documented and formal decision as soon as possible, based on reliable psychiatric opinion and bearing in mind other possible alternatives to detention. The working party refers to *X v UK* (1981) in support: 'the *Winterwerp* judgment expressly identified "emergency cases" constituting an exception to the principle that the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of "unsound mind"'.

Involuntary treatment

Emphasis was placed on the principle that treatment must in all cases be administered exclusively for the treatment of a clinical symptom, rather than in response to a social, family or economic need, and it should entail real benefit to the patient. Where a person is in involuntary care, consent should be verified for every form and course of treatment. In contrast, the bill limits protections to electroconvulsive therapy (ECT) and psycho-surgery and for medication after three months have lapsed. The working party proposes that legislators of each member state should establish special protocols for the administration of psycho-surgery and there should be vigilance about the use of hormone implants to alter sexual drive.

Care plan

A written plan of involuntary treatment should be drawn up, if possible with the patient and/or a representative. If there is no representative, it should be submitted to an independent body for decision. The plan should be reviewed regularly and be open to modification where appropriate. If the patient does not consent to the plan, he should be able to appeal to a court or court-like body.

Only officially-recognised pharmaceutical products should be used involuntarily and, because of the frequent and excessive use of medication, the working party states that side effects and dosage regimes should be carefully monitored and doses reduced as soon as therapeutically appropriate. Provision of other therapies apart from medication is emphasised, such as group therapy and psychotherapy, as is the use of music, theatre, sport and opportunities for physical exercise. Education, in particular, was considered to be 'an important component of daily living'.

Children

There should be more stringent protection for minors than for adults, and protection applying to adults should also apply to minors to the same extent, at least. The assistance of a representative, who could be a family member or social worker, should be available from the beginning of the procedure. In keeping with the *Convention on human rights and biomedicine* on consent by minors, the opinion of the minor should be considered as a determining factor in proportion to age and degree of maturity. Minors should be treated in separate premises from adults unless this is contrary to their interests, and they should have access to education.

The police, courts and prison

In addition to the power to intervene, arrest or enter premises to deal with a mentally-disordered person, the police should co-ordinate interventions with other medical or social services. A prompt medical examination should be carried out to decide if the person can safely remain at the police station and has the capacity to reply to questions during investigation, or if the person needs psychiatric care. The police may be required to assist in conveying or returning the patient to hospital. Appropriate training should be given to the police to allow them to assess and manage the mentally disordered. This should be provided in consultation with local health services.

The working party believes the court should be able to impose placement and treatment based on medical opinion. When imposing a sentence, the courts should consider that persons need to be treated in a medically-appropriate place, and transfer between hospital and prison should occur where necessary. Prisoners who believe that the prison environment is unsuitable for their condition should be able to request an expert opinion and, if a more appropriate place is denied, there should be an effective appeal system.

Mentally-disordered people should not be detained in prison unless there are specially-designated hospital units separate from the prison and there is effective monitoring by a national body. There should be a range of secure hospital accommodation and community-based forensic services. It is acknowledged that many countries have prisoners who require treatment. Failure to transfer these patients may mean failure to identify them in the prison population due to insufficient secure hospital accommodation in prison and the reluctance of local mental health services to accept them. The working party recommends that mechanisms should be put in place to overcome these infringements of individuals' human rights. None of these issues are addressed in the bill, even though they had been addressed in the government's 1995 *White paper on mental health law*.

Human rights

Mentally-disordered people should retain civil and political rights, such as the right to vote and make a will and undertake legally-effective transactions of an everyday nature, where they have capacity. Suitable provision should be made for those without that capacity to have their affairs managed on a 'best interests' basis. National authorities should provide legislation aimed at guaranteeing and protecting the economic situation of people suffering from mental disorder in their employment and family life. Protection for the patient's social and economic affairs is omitted from the bill, though some protections were outlined in the 1995 *White paper on mental health law*.

The living environment should be as normal as possible, according to age and culture. The working party refers to the importance of privacy and confidentiality, as well as providing basic living conditions, many of which are included in the checklist in the inspector of mental hospital's *Annual report 1998*, appendix 2.

Infringement of procreation

This is an unusual provision for inclusion in mental health legislation: the working party states that mental disorder does not constitute a sufficient reason for permanent infringement of the capacity to procreate and any such decisions should be examined by a court or court-like body. It examines temporary and permanent incapacity to procreate and recommends that only in the most exceptional cases should there be a permanent infringement of capacity to procreate without consent, and it should only take place in the best interests of the person.

Right to correspond

The right to correspond with any appropriate authority, representative or lawyer cannot be restricted, and this includes correspondence with the European Court of Human Rights and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT). It might be necessary to restrict correspondence with others if it

would be harmful to the patient, his future, or the rights or freedom of others. Nothing should restrict communication from outside with the hospital, or with the patients' right to receive information.

Discrimination

Measures should be taken to eliminate discrimination, including any discrimination within the health services, and there should be campaigns to increase public awareness about discrimination against people suffering from mental disorders. The working party refers in particular to the incorrect and stigmatising use of terms such as 'schizophrenia' in the media, discriminatory practices concerning employment of patients or former patients, and discriminatory practices concerning poor financial and technical support for psychiatric services. States should draw the attention of governments and relevant public and state institutions to the role of the state in promoting mental health and improving and maintaining the treatment and quality of life of people suffering from mental disorders.

Review of the lawfulness of detention

The procedures for review in the bill provide that automatic review will take place following each detention and that there will be an automatic right to legal aid for representation. The provisions of the bill go beyond the recommendations of the working party. Whether or not the provision in the bill of 28 days to reach a decision will satisfy the requirement of speed remains to be seen. The suggestion that an 'adversarial procedure' should be used needs further clarification. If placement and treatment are found by the tribunal to be enforced in contravention of the legislation, the person would have the right to compensation.

Monitoring implementation

The working party suggests the setting-up and monitoring of quality standards for the implementation of mental health legislation and that such a monitoring body should include psychiatrists, non-psychiatrists, users and laypersons.

Although the document refers mainly to involuntary placement and treatment, it uses the term 'especially', implying that those who are not involuntarily detained are also included. The legislators must take cognisance of the contents of this white paper when considering amendments to the bill, which goes to committee stage soon. G

Mary Keys is a lecturer in law at NUI Galway.

Seminar: *Litigation in the European Court of Justice*

The Law Society, together with the General Council of the Bar of England and the Academy of European Law, has organised a seminar on *Litigation in the European Court of Justice* to be held in Trier, Germany from 20 to 22 September. Topics covered will include an in-depth look at the ECJ, references from national courts to the European courts, and the relationship between EC law and national law. The seminar will also include a visit to the ECJ in Luxembourg and an opportunity to meet some of the judges and staff members working at the court. Speakers will include lawyers with experience of litigating before the courts and current and former staff members.

There are 15 places on this course reserved for Irish solicitors and apprentices. There will be no fee charged for these participants, though they will be expected to meet their own travel and accommodation charges. Further details can be obtained from Ide Ni Riagain at the Academy of European Law (tel: 00 49 6519373751).

Recent developments in European law

COMPETITION

State aid

Cases T-89/96 *Wirtschaftsvereinigung Stahl v Commission* and T-106/96 *British Steel plc v Commission*, judgment of 7 July 1999. Irish Steel is a state-owned company. In 1996, the commission authorised state aid from the Irish government to Irish Steel for its restructuring and privatisation. As Irish Steel had only one mill, the commission did not insist on reduction of production capacity. The two applicants brought proceedings seeking the annulment of that decision. The Court of First Instance dismissed the two applications. It held that the contested decision was based on provisions of EU law. The court held that the commission had been entitled to grant the aid, and that the basis on which it was granted was not incorrect. It also held that the commission is under no obligation to impose capacity reductions as a pre-condition for the grant of state aid in this area.

EMPLOYMENT

Gender discrimination

Case C-158/97, *Georg Badeck and Ors*, judgment of 28 March 2000. Mr Badeck and 45 others had applied to the State Constitutional Court of Hesse for a review of the legality of a law of Hesse on equal treatment for men and women. Under the law, government administrative departments were required to contribute to the equal treatment of men and women in the public service and to eliminate under-representation of women by means of advancement plans for women. Each plan was to provide that more than half the posts to be filled by appointment or promotion in a sector in which women were under-represented were to be given to women. The applicants argued that this law discriminated against men and breached the *Directive on equal treatment*. The European Court of Justice (ECJ) ruled that a measure which gives priority in promotion to women in sectors of the public services where they are under-represented is compatible with EU law if the measure does not unconditionally give priority to women when men and women are equally qualified and the promotions are done through an objective assessment which takes account of the specific personal situations of all candidates.

Case C-207/98 *Silke-Karin Mahlburg v Land Mecklenburg-Vorpommern*, judgment of 3 February 2000. Ms Mahlburg had been employed as an operating-theatre nurse by a clinic operated by the respondent between 26 August 1994 and 31 August 1995. She applied on 1 June 1995 for an indefinite period post in the clinic. She was pregnant. On 13 July, she gave written notice of her pregnancy. In September, it was decided not to appoint Ms Mahlburg to the indefinite post in the operating theatre. This was to comply with German legislation which prohibits employers from employing pregnant women in areas in which they would be exposed to the harmful effects of dangerous substances. Ms Mahlburg claimed that the failure to appoint her was unlawful discrimination on grounds of gender, contrary to the equal treatment directive. The ECJ agreed with this contention. It held that the directive precluded refusing to appoint a pregnant woman to a position on the basis that a statutory prohibition on employment attaching to the condition of pregnancy prevents her from being employed in the position from the outset. Only women can be refused employment on grounds of pregnancy, and therefore such a refusal is direct discrimination on grounds of gender.

FREE MOVEMENT OF GOODS

Case C-412/97 *ED Srl v Italo Fenocchio*, judgment of 22 June 1999. ED, an Italian company, had supplied goods to Fenocchio, a German resident. ED applied to a court in Bologna for an order for payment for the goods, together with interest and costs. The order would have to be served on the defendant in his state of residence. However, the Italian Civil Code provided that such an order could not be served outside Italy. The ECJ held that this provision was too uncertain and indirect to be regarded as liable to hinder trade between member states. The court also held that the national provision in question did not constitute a restriction on the freedom of payments, contrary to article 56(2).

INTELLECTUAL PROPERTY

Case 383/98 *The Polo/Lauren Company, LP v PT Dwidua Langgeng Pratama International Freight Forwarders*, judgment of 6 April 2000. Polo/Lauren is a US company which holds several verbal and pictorial trademarks registered in Austria and known worldwide. It requested Austrian customs officials to detain counterfeit Polo T-shirts featuring its trademarks. The customs authorities did so, relying on EC regulation 3295/94 on counterfeit and pirated goods. Over 600 T-shirts were detained in a warehouse. The consignor of the goods was an Indonesian company, Dwidua, and the consignee was a Polish company, Olympic-SC. Polo applied to the Austrian courts for an order prohibiting Dwidua from marketing those goods bearing its pictorial or verbal trademarks and authorising them to destroy the detained T-shirts at Dwidua's expense. The Austrian Supreme Court sought guidance on whether the regulation applied where goods are imported from a non-member state and are detained while they are in transit to another non-member state and where the holder of the trademark is registered in a non-member state. The ECJ held that the regulation was applicable. The regulation is expressly designed to apply to goods passing through the EU. It does not matter whether the trademark holder has his registered office outside the EU.

SPORT

Freedom to provide services

Cases C-51/96 and C-191/97, *Christelle Deliège v Ligue Francophone de Judo et Disciplines ASBL and Ors*, judgment of 11 April 2000. The applicant had practised judo at a very high level since 1983. She argued that the Belgian Judo Federation had frustrated her career by not allowing her to participate in important competitions. She argued that she engaged in an economic activity, a matter involving a freedom guaranteed by EU law. The Belgian court sought guidance on the compatibility of the rules laid down by the sports authorities with the freedom to provide services – in particular, the requirement that professional sportsmen be selected by their national federation to participate in an international competition. The ECJ held that rules for the organisation of sport must comply with EU law, insofar as sport constitutes an economic activity. The fact that a federation classifies its members as 'amateur' does not mean that those members do not engage in economic activities. The court held that sports activities, and in particular a high-ranking athlete's participation in an international competition, are capable of involving the provision of a number of services. Athletes taking part in a sports event which the public may attend, which television broadcasters may retransmit and which may be of interest to advertisers and sponsors, provided the basis for services of an economic nature. It is for national courts to determine whether specific sporting activities are activities of an economic nature and the provision of services. The court then considered whether the selection rules might be a restriction on the freedom to provide services. It noted that, unlike in *Bosman*, the rules did not determine the conditions governing access to the labour market by professional sportsmen and did not contain nationality clauses limiting the number of nationals of a state who may participate in a competition. Selection rules invariably result in a limited number of participants in a competition. However, such a limitation is inherent in holding an international high-level sports event. Some selection rules or criteria are necessary. These rules or criteria may not in themselves be regarded as a restriction on the freedom to provide services. Furthermore, these selection rules apply to competitions organised with the EU and to those taking place outside it and involve nationals of both member states and those of non-member states. The national federations are entitled to lay down appropriate rules and to make selections. G

SADSI
Solicitors Apprentices Debating Society of Ireland

Twenty-first century apprentices

All masters were once apprentices, and the current training of would-be solicitors ensures that the quality of an apprenticeship depends largely on the ability of both parties to work together. Apprentices are naturally expected to be flexible, but the reason apprentices are paid less than their colleagues in the office is because they are perceived as receiving more than they contribute. Whether this is true today is open to question.

What is not open to argument is that apprentices are entitled to be treated fairly by their masters. The basic inequality of the apprentice-master relationship and the terminology itself (which refers more to the era of Charles Dickens than of John Grisham) reflects the potential for abuse. Add to this the difficulties (or perceived difficulties) an apprentice would have with a 'bad' reference from a previous master and the fact that the legal world is quite small, and it can be appreciated why an apprentice may remain in an intolerable situation. The legal profession is self-regulated, and it is in no apprentice's favour to be seen to complain or blow the whistle on a master, regardless of how unfairly he or she may be treated.

There is no provision for a minimum standard of behaviour towards an apprentice, as it was probably assumed that masters would treat apprentices with respect and courtesy, as indeed the majority do. However, some masters in Dublin and outside the capital have abused their dominant position in their relationships with apprentices.

The economic boom and the increase in numbers to the profession has freed the apprentice to some degree in this regard, however SADSI believes there exists a definite need to insert a minimum code of conduct for masters with regard to treatment of apprentices into the indentures of apprenticeship. This code would be very straightforward and could be relied on by apprentices and masters if they experience unfair treatment. It is in both apprentices' and masters' interests to know what is, and what is not, acceptable conduct.

The SADSI national welfare survey will be sent to every apprentice in the country in the next number of weeks, and you are urged to carefully complete the questionnaire, which will be collated to form part of the SADSI report on welfare. A minimum code of conduct is only one of the aspects of the contract between the apprentice and master which will be examined in the survey.

If you have any particular comments or thoughts with regard to the above, please contact the SADSI welfare sub-committee of Gareth Bourke, Eva Lalor and Patrick Bardon on SADSI2000@yahoo.com or write to SADSI, PO box 7477, Dublin 4.

Keith Walsh

Mayo apprentice hooks Bertie and de Chastelain: It was very much the case of the one that didn't get away, as big fish from the political and angling world gathered in the Shelbourne last month to launch a new fishing magazine, *Hooked on the Moy,* produced by 23-year-old Mayo apprentice John Geary. John will soon be starting his apprenticeship with Matheson Ormsby Prentice in Dublin, but was adjudged by the *Sunday Business Post* as more likely to end up in politics following his recent big catches, an Taoiseach Bertie Ahern and decommissioning body chairman General John De Chastelain

Laughing in Limerick: Keith Walsh, Ann Brennan, David Ryan, Ronan O'Brien, Anthony Coomey and Pauric Heraghty at the Limerick SADSI event

SADSI NEWS AND UPCOMING EVENTS

New professional course reps: Una Gately, Anton Richardson, John Connellan and Olivia Traynor, all education reps. The social reps are Davis McCoy, Odhran Bannim, Hugh Dockry and Willie Cahir.

The professional course ball will be held in Dublin on 1 July.

The SADSI barbecue will be held in Galway at 6pm on 24 June. Tickets (£10, including food and drink) and accommodation details available from David Higgins on 091 566 751 or Conor Fottrell on 091 567 3145.

The Career Development Day runs from 10am to 6pm on 14 July, followed by a barbecue and drinks reception.

The SADSI ball takes place in the Great Southern Killarney on 26 August.

Calcutta Run 2000

Far from the mad-for-it crowd: the runners assemble at the Law Society's Blackhall Place headquarters

The Calcutta Run 2000 was a rousing success by any standard. Organisers estimate that funds raised for homeless children during the 21 May run will surpass last year's take, which was £60,000. Judge Peter Kelly fired the starting pistol from the back seat of a vintage Daimler, sending 736 participants, including Law Society President Anthony Ensor, speeding towards the finish line of the 10k event. Gerry Dunne was the race's overall winner, while the Law Society's own Grainne Butler was the first woman home. Those who did not make it out to enjoy the sunshine, camaraderie and barbecue are advised to polish up their track shoes for next year, since the organisers are committed to making this an annual event.

The Law Society team, including Grainne Butler *(front, centre)*, the first woman home

Law Society President Anthony Ensor enjoys a well-earned pint after the race

Marksman: Mr Justice Peter Kelly gets the race underway

Jessup International Law Moot Court world finals

The members of the Law Society's successful Jessup moot court team were (*left to right*) Nora Staunton, Aisling Kelly, Paul Madden, coach TP Kennedy, Aoife Gibson and Madelina Loughrey-Grant

A Law Society team recently finished third in the international finals of the Philip C Jessup Moot Court Competition held in the United States. The team was comprised of five apprentices, Aoife Gibson, Aisling Kelly, Madelina Loughrey-Grant, Nora Staunton and Paul Madden, as well as TP Kennedy, the Law Society's director of education, who acted as team coach and mentor. The team had won the Irish rounds of the competition, defeating opponents from Trinity College, Dublin, in the final.

The Jessup Moot Court Competition, co-sponsored by the International Law Students Association and the American Society of International Law, has been run annually since 1960 and is considered the most prestigious moot court competition in the world. Following national competitions in 55 countries involving over 300 teams and 1,600 students, 67 teams gathered in Washington DC for the eight-day event. This year's problem focused on the contentious area of vaccine trials and medical ethics, and the Australian team was ultimately victorious. In addition to the team competition, there was an individual oralist competition, which was based on each individual's performance in the preliminary rounds. This competition saw two members of the Law Society team, Paul Madden and Madelina Loughrey-Grant, finish in the top 20.

Paul Madden

Pictured at the society's annual conference in Seville were *(front)* John O'Connor and his wife Pamela McGrath and *(standing)* Susan and Michael Monahan

Doing justice
Minister for Justice, Equality and Law Reform John O'Donoghue (*seated, right*) at a recent meeting at Blackhall Place with Law Society representatives President Anthony Ensor (*seated, left*) and (*standing, left to right*) Deputy Director General Mary Keane, Senior Vice President Ward McEllin, Director General Ken Murphy and Junior Vice President Owen Binchy

Solicitors on the warpath
The triumphant team from the Cavan Bar Association who roundly defeated the Cavan/Monaghan division of the Garda Síochána in a recent paintball competition that took place in the Cooley Mountains, Carlingford, Co Louth

CONTINUING LEGAL EDUCATION
JUNE/JULY 2000

SEMINAR	VENUE	DATE
DISTRICT COURT PRACTICE AND PROCEDURE	Great Southern Hotel, Eyre Square, Galway	14 June
NEW HOUSES	Fitzpatrick's Hotel, Cork	15 June
VAT ON PROPERTY	Blackhall Place	20 June
PASSING ON THE FAMILY WEALTH	Blackhall Place	21 June
CHILDREN AND THE LAW	Fitzpatrick's Hotel, Cork (video conference)	22 June
JUDICIAL REVIEW	Blackhall Place	26 June
REFUGEE LAW AND PRACTICE	Blackhall Place	28 June
VAT ON PROPERTY	Imperial Hotel, Cork	5 July
VAT ON PROPERTY	Great Southern Hotel, Eyre Square, Galway	13 July

For further information, please see CLE brochure or telephone the CLE department on 01 672 4802 or fax 01 672 4803.
Suggestions for CLE seminars are always welcome.

OIFIG AN ÁRD-AIGHNE
OFFICE OF THE ATTORNEY GENERAL

CONFERENCE INVITATION

Legislative drafting: Emerging trends

The Attorney General, Mr Michael McDowell SC, invites you to attend an international conference examining emerging trends in legislative drafting. Issues such as plain language, regulatory reform and new approaches by the courts to the interpretation of statutes will be addressed. Practitioners, legislative counsel, civil servants and others with an interest in the preparation and drafting of legislation will benefit by attending this conference. Contributors will include specialists from Ireland, England, France, Gibraltar, the United States and

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 9 June 2000)

Regd owner: Alan Reilly, Cornamagh, Kingscourt, Co Cavan; Folio: 8942F; Area: 12 acres; Lands: Collops; **Co Cavan**

Regd owner: Patrick Felim Culligan, Crenard, Ballinagh, Co Cavan; Folio: 23667; Lands: Crenard; Area: 4.375 acres; **Co Cavan**

Regd owner: Michael Sexton, Thomondgate, Limerick; Folio: 2306; Lands: Townland of Quinspool South and Barony of Bunratty Lower; Area: 14a 3r 7p; **Co Clare**

Regd owner: James Scanlon, Decomade, Lissycasey, Co Clare; Folio: 3268; Lands: Townland of Cranagher and Barony of Bunratty Upper; Area: 2a 1r 8p; **Co Clare**

Regd owner: Patrick Duffy, 46 The Moorings, Westbury Estate, Corbally, Co Clare; Folio: 21490F; Lands: Townland of Athlunkard and Barony of Bunratty Lower; **Co Clare**

Regd owner: Edmund Roche and Patrick O'Leary; Folio: 66756F; Lands: Known as a plot of ground situate in the Townland of Nadrid, and Barony of Muskerry East and County of Cork; **Co Cork**

Regd owner: James Manning; Folio: 51227; Lands: Known as a plot of ground situate in the Townland of Carriganass, and Barony of Bantry and County of Cork; **Co Cork**

Regd owner: Dominick O'Donnell; Folio: 51378; Lands: Known as a plot of ground in the Lands of Coolroe, the Barony of Condons and Clangibbon, and County of Cork; **Co Cork**

Regd owner: Ann Cronin; Folio: 13847; Lands: Known as a plot of ground in the Lands of Rossaghroe, the Electoral Division of Doneraile, the Barony of Fermoy, and the County of Cork; **Co Cork**

Regd owner: Maurice D Hickey; Folio: 53505; Lands: Known as a plot of ground situate in the Townland of Baltimore, the Barony of Carbery West (East Division) and the County of Cork; **Co Cork**

Regd owner: Josephine Myles; Folio: 334F; Lands: Known as a plot of ground formerly situate in the Townland of Brigown and now situate on the west side of George Street, in the non-municipal town of Mitchelstown, and County of Cork; **Co Cork**

Regd owner: Thomas Doyle and Brenda McCarthy; Folio: 47922F; Lands: Known as a plot of ground situate in the Townland of Creggolympry North, the Barony of Fermoy in the County of Cork; **Co Cork**

Regd owner: James Daly; Folio: 5604; Lands: Known as a plot of ground in the Lands of Granig, the Barony of Kinalea, and County of Cork; **Co Cork**

Regd owner: Anthony Penrose, Cashel, Gortahork, Letterkenny, Co Donegal; Folio: 35262; Lands: Cashel; Area: 3.919 acres; **Co Donegal**

Regd owner: Josephine McCafferty, Belalt South, Pettigo, Co Donegal; Folio: 36047; Lands: Belalt South; Area: 270.41 acres; **Co Donegal**

Regd owner: Cissy Smith, Upper Keadew, Meenbanad, Co Donegal; Folio: 30157; Lands: Keadew; Area: 4.875 acres; **Co Donegal**

Regd owner: John J Moore; Folio: DN3776L; Lands: Property situate in the Parish and District of Crumlin known as 207 Errigal Road; **Co Dublin**

Regd owner: Bernard Fitzsimons; Folio: 763L; Lands: Property known as No.11 Windsor Avenue situate on the east side of the said Avenue in the Parish of Clonturk and District of Clontarf; **Co Dublin**

Regd owner: Basil Phipps; Folio: DN77012L; Lands: Property situate to the west of Belgard Road in the Town and Parish of Tallaght; **Co Dublin**

Regd owner: James F O'Mahony and Joan O'Mahony, both of Claremont Pines, Carrickmines, County Dublin; Folio:61491L; Lands: Townland of Cabinteely, and Barony of Rathdown; **Co Dublin**

Regd owner: Carey and Clarke Limited; Folio: 63158F; Lands: Property known as No 12, Old Kilmainham in the City of Dublin; **Co Dublin**

Regd owner: John Killeen, 5 Montpellier Terrace, Sea Road, Galway; Folio: 39472F; Lands: Townland of Carowmoneash and Barony of Dunkellin; Area: 0.206 hectares; **Co Galway**

Regd owner: George Searle (deceased) and Christopher Searle; Folio: 6077; Lands: Townland of Aughacasla and Barony of Corkaguiny; **Co Kerry**

Regd owner: Joan Hennessy (deceased); Folio: 14577; Lands: Banse Glebe and Barony of Crannagh; **Co Kilkenny**

Regd owner: Brendan & Michael & Humphrey Dowling; Folio: 64F; Lands: Stradbally and Barony of Stradbally; **Co Laois**

Regd owner: Nesta Odlum; Folio: 9082; Lands: Whitebog and Barony of Ballyadams; **Co Laois**

Regd owner: Eileen Scott; Folio: 5567; Lands: Strahard and Barony of Portnahinch; **Co Laois**

Regd owner: William Bolton; Folio: 18123; Lands: Ballymorris and Barony of Portnahinch; **Co Laois**

Regd owner: Ingrid McMahon; Folio: 3678; Lands: Townland of Lemonfield and Barony Pubblebrien; **Co Limerick**

Regd owner: Laurence Carroll, The Retreat, Batchelors' Walk, Dundalk; Folio: 163L; Lands: Marshes Lower; **Co Louth**

Regd owner: Gerard Callan, Millgrange, Greenore; Folio: 4254; Lands: Ballagan; Area: 10.605 acres; **Co Louth**

Regd owner: Liam Scott, Doonalton, Dromore West, Co Sligo; Folio: 3795F; Lands: Townland of Carrowcardin and Barony of Tireragh; Area: 0.414 acres; **Co Sligo**

Regd owner: John and Teresa Franklin; Folio: 6093; Lands: Townland of Burgery and Barony of Decies-without-Drum; **Co Waterford**

Regd owner: John and Teresa Franklin; Folio: 11177F; Lands: Townland of Burgery and Barony of Decies-without-Drum; **Co Waterford**

Regd owner: Olive McKeon, Monasette, Rahugh, Co Westmeath; Folio: 9590; Lands: Monasset; Area: 81.25 acres plus one undivided sixteenth part of 77.12 acres; **Co Westmeath**

Regd owner: Kevin P Walsh; Folio: 1086F; Lands: The Raven and Barony of Shelmaliere East; **Co Wexford**

WILLS

Connolly, John Charles (deceased), late of Mullaghconnolly, Roslea, Co Fermanagh. Would any person having knowledge of a will made by the above named deceased who died on 12 February 2000, please contact Murnaghan & Fee, Solicitors, 37 Townhall Street, Enniskillen, Co Fermanagh, tel: 028 66 322819 or fax: 028 66 323073

Corbett, John (deceased), late of No 3 Geraldine Place, Albert Road, Cork. Would any person having knowledge of a will made by the above named deceased who died on 6 April 2000, please contact Coughlan Griffith & Company, Solicitors, 20 Parnell Place, Cork, tel: 021 279300, fax: 021 279254

Doyle, Patrick (deceased), late of The Barracks, Newtown, Borris, Co Carlow. Would any person having knowledge of a

will made by the above named deceased who died on 21 March 2000, please contact Mr Nicholas Russell, Solicitor, Messrs O'Shea Russell, Main Street, Graignamanagh, Co Kilkenny

Harrington, Bernard, late of Maple Leaf, Glengarriff, Co Cork, who died on 8 April 2000. Would anyone knowing of a will please contact O'Mahony Farrelly, Solicitors, ref: H.72083F, Bantry, Co Cork, tel: 027 50132

Kilcullen, Thomas (deceased), late of 142 Roselawn Road, Castleknock, Dublin 15. Would any person with knowledge or information of the original will of the above named deceased, who died on 8 September 1996, please contact George McGrath, Solicitor, 11 Clanwilliam Street, Dublin 2

McEarley, George Joseph, late of Kickham Street, Carrick-on-Suir, Co Tipperary. OB 23 November 1996. Would any person or parties who have any knowledge of the relatives of the above named deceased please contact M J O'N Quirk & Company, Solicitors, Main Street, Carrick-on-Suir, Co Tipperary, tel: 051 640019, fax: 051 641376, e-mail: *mjonquirk@securemail.ie*

McWilliams, Ellen Mary (deceased), late of 11 Frascati Park, Blackrock in the County of Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 26 March 1995, please contact O'Neill Regan & Company, Solicitors, 12 Carysfort Avenue, Blackrock, Co Dublin, tel: 288 2100, fax: 283 3627

Nolan, Elizabeth, late of 51 Sperrin Road, Drimnagh, Dublin 12. Would any person having knowledge of a will made by the above named deceased who died on 31 October 1999 at Highfield Hospital, Whitehall, Dublin 9, please contact GA Scully & Company, Solicitors, 337 Ballyfermot Road, Grange Cross, Dublin 10, tel: 626 9475, fax: 626 1785, e-mail: *gascully@eircom.net*

O'Donnell, Manus (deceased), late of Toome, North Lettermacaward, Co Donegal and also of Glasgow, Scotland. Would any person having knowledge of assets, investments, bank accounts, life insurance policies etc owned by the above named deceased, who died on 28 November 1998, please contact DP Barry & Sons & Company, Solicitors, Bridge Street, Killybegs, Co Donegal, tel: 073 31174

Sheehan, Vincent (deceased), late of 2 Marian Terrace, Ballymahon, Co Longford. Would any person having knowledge of a will made by the above named deceased who died on 28 September 1999, please contact Damien Maguire & Company, Solicitors, Leinster House, Main Street, Maynooth, Co Kildare, tel: 01 628 6728, fax: 01 628 5846

EMPLOYMENT

County Kerry – locum solicitor required with the possibility of a full-time position later if required. **Reply to Box No 50**

Solicitor required specialising in conveyancing, experience desirable, excellent conditions and salary. Contact Donal Farrelly & Company, Solicitors, Tullagh House, High Street, Tullamore, tel: 0506 21324 or 51490 or fax CV to 0506 21328

Solicitor with seven years' post-qualification experience in general practice available for locum work from 1 July 2000 to 30 November 2000 in Kildare/Dublin West area. **Reply to Box No 51**

Legal executives/law clerks required (two positions) for conveyancing/probate department and litigation department of busy Waterford city office. Experience desirable but not essential. Apply with CV to **Box No 52**

Mature, newly-qualified solicitor recently returned to Ireland, seeks employment in Sligo area. Qualified in London, admitted to Irish roll. Trained mainly in construction, litigation and employment, with some commercial litigation. Willing to work part-time/full-time as required for minimal salary in return for practical experience. **Reply to Box No 53**

Solicitor wanted for busy County Monaghan practice. Applications will be treated in the strictest confidence. **Reply with CV to Box No 54**

Experienced solicitor, retired from general practice, willing to undertake conveyancing and probate work from own home, might suit firm unable or unwilling to engage additional staff, modern office facilities. **Reply to Box No 55**

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. Reply to **Box No 56** with full details and CV

North Cork – long-established firm requires immediately solicitor with two-to-three years' post-qualified experience, primarily civil litigation and conveyancing. State-of-the-art premises and facilities. Please apply in writing to: Gerard O'Keeffe, Gerard O'Keeffe & Company, Solicitors, Law Chambers, Kanturk, Co Cork

Secondment sought by post-professional apprentice in Dublin city centre office with criminal and family law. September 2000 to February 2001. **Reply to Box No 57**

TAX SOLICITOR

Warren & Partners is a specialised tax practice which provides taxation and corporate finance advice to a range of high net worth individuals and Irish-owned businesses. The professional team offers a range of tax and legal expertise which is tailored to each client.

We have a vacancy for a solicitor with two to three years' post-qualification experience, who holds the AITI qualification.

This is an opportunity for an ambitious solicitor to play a key role in the development of a rapidly growing practice. We offer an attractive remuneration package.

Apply to Finola O'Hanlon, Solicitor, Warren & Partners, 39 Northumberland Road, Ballsbridge, Dublin 4, tel: 01 660 7333, or e-mail *finola@warrenp.ie*

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

Ordinary seven-day publican's licence required. Rural or city without restrictions. Please reply quoting price and date of availability to Sheehan & Company, Solicitors, 1 Clare Street, Dublin 2

Advertiser requires full ordinary seven-day publican's licence which will need to be renewed at ALDC 2000. Please respond to Advertiser, Brendan Walsh, Solicitor, at 01 660 2955 or fax: 01 667 1080 giving details of price etc

Would any solicitor having possession of land certificate folio 6796 County Dublin – registered owner Margaret Cowley, now deceased – please contact Enda P Moran, Solicitor, Main Street, Celbridge, County Kildare, who acts for the personal representatives, Patrick Cowley and Kathleen Cowley

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of 72 Connaught Street, Dublin 7 (also known as 72 Albemarle Terrace, Dublin 7): an application by Edward Coonan

Take notice that any person having any interest in the freehold interest of the following property: the hereditaments and premises comprised in indenture of lease dated 25 June, one thousand, nine hundred and ninety-eight and made between Thomas Callan of the one part and John Leonard of the other part and therein described as 'all that plot of ground fronting that part of Connaught Street called Albemarle Terrace and containing in front 2 Albemarle Terrace 21 feet and in depth from front to rere 122 feet and in breadth in the rere 21 feet together with the dwellinghouse and premises erected thereon and now known as number 72 Albemarle Terrace bounded on the north by a laneway upon land of Viscount Monck upon the south by Connaught Street on the east by premises number 70 Albemarle Terrace and on the west by the premises number 74 Albemarle Terrace which said hereby demised premises are situate in the parish of Grange Gorman and City of Dublin and are described in the map endorsed hereon and thereon bounded red'.

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

In default of the said notice being received, Edward Coonan intends to proceed with the application before the county registrar of the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest and that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Signed: Brown & McCann, Solicitors, Naas, Co Kildare
22 May 2000

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of an application by John White of 61 Grenville Lane, Dublin 1

Take notice that any person having any interest in the freehold estate of the following property, no 61 Grenville Lane, Dublin 1 (formerly known as rere of 61 Mountjoy Square, Dublin 1).

Take notice that John White of 61 Grenville Lane, Dublin 1 intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, John White of 61 Grenville Lane, Dublin 1 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 city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest 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: EP Daly & Company, Solicitors, 5 Lower Dorset Street, Dublin 1
1 May 2000

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2 Act), 1978* and in the application by Ada Wall, 5 Ushers Quay in the city of Dublin

Any person having interest in the freehold estate in the following property, no 5 Ushers Quay in the city of Dublin, take notice that Ada Wall intends to submit an application to the county registrar for the county of city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Mary Thompson intends to proceed with the application to the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are as known or unascertained.

Signed: Bowler Geraghty & Company, 2 Lower Ormond Quay, Dublin 1 (solicitors for the applicant)

LAW DIRECTORY 2000

Errata sheet

Please mark the following amendments in your *Law directory*

Page	Entry	Section	Correction
23	**President, Waterford** Helena Bowe O'Brien	Section 1 (Bar Associations)	**Delete** DX number for Helena Bowe O'Brien
111	**EARLEY**, William	Alpha List of Solicitors	**Amend** e-mail address to *william.earley@mccann-fitzgerald.ie*
121	**FLANAGAN**, Mary E	Alpha List of Solicitors	**Delete** the * and insert Flanagan, Mary E, (E1998) (Dip Eu Law, RTMA), Good & Murray Smith & Co, Nassau House, 40-43 Nassau Street, Dublin 2 DX 108, Tel 6791201, 6708045, 6708020, Fax 6795854 Email: gms@goodmurraysmith.ie
166	**KENNELLY,** Anne Lucy	Alpha List of Solicitors	**Delete** the * and insert Kennelly, Anne Lucy (E1995) (BA Dip Ls Dip Ed) Aurora, 42 Ashlawn, Dundrum, Dublin 14, Tel 2820835
196	**MACKEY**, James H	Alpha List of Solicitors	**Amend** from MacKey to MACKEY
196	**MACKEY**, James HM	Alpha List of Solicitors	**Amend** from MacKey to MACKEY
219	**MURPHY**, Daniel A	Alpha List of Solicitors	**Amend** address to read 3 Moorfield Terrace, South Douglas Road, Cork
270	**RAFTER**, Carmel MA	Alpha List of Solicitors	**Amend** e-mail from *carmelrafter@inbs.ie* to *crafter@farrellsolrs.ie*
312	**FLANAGAN**, Mary E	Members Not Holding PCs	**Delete** entry
313	**HIGGINS GREEVES,** Josephine	Members not holding PCs	**Amend** the zip code to 02110-2624 instead of 0210-2624
314	**KENNELLY,** Anne Lucy	Members not holding PCs	**Delete** entry
347	**MURPHY & CO, DANIEL**	Alpha List of Firms in Cork	**Amend** address to read 3 Moorfield Terrace, South Douglas Road, Cork
380	**GOODBODY, A&L**	Alpha List of Firms in Dublin	**Amend** the London telephone number to 207 9292425
380	**GOOD & MURRAY SMITH & CO**	Alpha List of Firms in Dublin	**Insert** Flanagan, Mary E in the list of solicitors for this firm
495	**Goodbody, A&L**	Irish Firms with Offices Abroad	**Amend** the London telephone number to 207 9292425
524	**International Arbitration Centre**	King's Inns/Bar	**Amend** telephone number to 817 4614
624	**Revenue Sheriff:** Michael O'Hanrahan	The Courts	**Amend** Revenue Sheriff for Co Kilkenny to Thomas Murran
662	**Notary Public:** Brendan Walsh	Notaries Public, Commissioners for Oaths, Coroners & Summons Servers	**Amend** address to 34 Upper Baggot Street, Dublin 4
686	**James McAleese**	Section 8 – Services	**Relocate** to page 681 under heading Vocational Rehabilitation Consultants/Assessors

Northern Ireland telephone numbers

From 22 April 2000 all five and six digit numbers became eight digit numbers. The prefix for Northern Ireland also changed to 048. Please check with directory enquiries (11811) before dialling a Northern Ireland number.