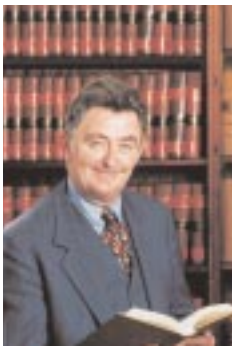
Law Society Gazette

Regulars



Cover Story

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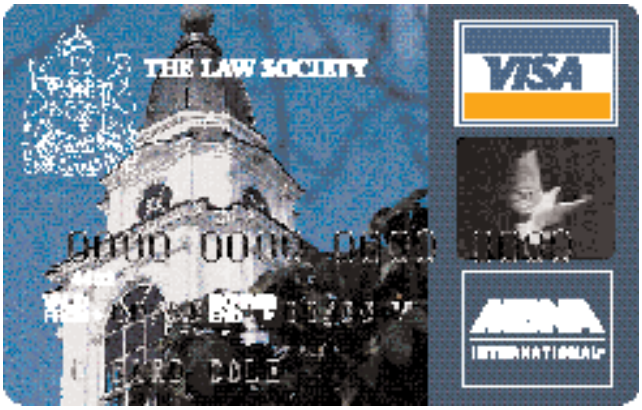

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Better late than never

At least no-one can accuse us of unseemly haste. Fifty-one years ago we signed up to the *European convention on human rights* and now it's finally going to be incorporated into Irish law – two months earlier than was originally planned.

While the Law Society warmly welcomes the government's announcement that the convention will come into force by October – after all, we have been arguing for its adoption for more years than I care to remember – it would be nice to think that the decision reflects this country's outstanding commitment to human rights and justice for all. But we all know that's not the case. The fact is that we were obliged to take this step under the *Good Friday agreement*. It's no coincidence that Britain had already announced it would do so by October.

Bottom of the league

Ireland will be the last of the 41 member states of the Council of Europe (and the last of the 15 EU states) to incorporate the convention into domestic legislation. Think about that for a moment. Last out of 41. Not even our national bobsleigh team is that bad.

For 51 years, successive Irish governments have resisted the pressure to incorporate an international agreement – which we signed up to voluntarily – that would allow the Irish courts to enforce provisions defending fundamental civil liberties, including freedom of speech and religious observance. And as a result, Irish citizens have been obliged to take their cases to the European Court of Human Rights in Strasbourg if they wanted to argue that particular laws or decisions infringed their civil rights – a long and costly process.

Minister for Justice John O'Donoghue has described the government's decision as 'the most significant development ever in terms of human rights in this jurisdiction'. Indeed. But before we start patting ourselves on the back, perhaps we should bear in mind this country's tendency to give with one hand and to take back with the other.

The government has announced it is ready to implement the restrictions on the right to bail that were passed in a constitutional referendum three years ago. The introduction of these restrictions was delayed because of the lack of prison space to accommodate those affected by this most illiberal of measures. At the time the Law Society expressed its serious concerns about restricting the right to bail for criminal suspects. Those concerns are still valid, and will probably continue to be ignored.

Changing attitudes

The rising wave of intolerance towards those who come to our shores seeking refuge from persecution might also give us pause for thought. Lawyers should be in the vanguard of those who fight against racism and bigotry. And the fact that we are adopting the convention into domestic law doesn't mean that people will change their attitudes as a result.

The solicitors' profession gets a certain amount of bad press from time to time. And occasionally some of it is deserved. No profession is perfect. But I think we can be justifiably proud of our record in defending the civil and human rights of our clients and the Irish citizen generally. We understand that the law is the cornerstone of democracy, and if we don't fight for it, who will?

The *European convention on human rights* should help us in that fight.

Anthony Ensor,
President

'Lawyers should be in the vanguard of those who fight against racism and bigotry'

SOLICITORS STRUCK OFF

In the matter of Francis G Costello, a solicitor, and in the matter of the *Solicitors Acts, 1954 to 1994*: take notice that by order of the High Court, made on 14 February 2000, it was ordered that the name of Francis G Costello, solicitor, formerly practising under the style and title of Francis G Costello & Company at 51 Donnybrook Road, Dublin 4, be struck off the roll of solicitors.

In the matter of Conor McGahon, a solicitor, and in the matter of the *Solicitors Acts, 1954 to 1994*: take notice that by order of the High Court, made on 21 February 2000, it was ordered that the name of Conor McGahon, solicitor, formerly practising under the style and title of McGahon & Company at 19 Jocelyn Street, Dundalk, Co Louth, be struck off the roll of solicitors.

EUROPEAN TRAINING FOR LAWYERS

The Council of the Bars and Law Societies of the European Union (CCBE) is offering a training programme on legal and judicial co-operation in Europe. It aims to make lawyers throughout Europe aware of the need for a good knowledge of the European dimension to legal and judicial co-operation between national and community jurisdictions. The programme will be split between theory and practice and begins on 31 July in Brussels. Applications should be received by 1 June. For further information (and application forms), contact Howard Linnane in the Law School.

MARITIME LAW SEMINAR

A seminar on recent developments in Irish maritime law and promoting Ireland as a centre for maritime arbitration and commerce will take place on 17 May at Jury's Hotel, Ballsbridge, Dublin 4.

Radical overhaul of adoption legislation urged

Adopted people should have the right to access information about their natural parents as part of a complete overhaul of adoption legislation, according to a new report by the Law Society's Law Reform Committee. The report, *Adoption law: the case for reform*, was launched last month at a press conference in the Law Society's Blackhall Place headquarters.

It calls for the establishment of a 'voluntary contact register' to enable adopted children and birth parents to get in touch with each other, but it adds that the law should also provide for an 'information veto register' by which birth parents or adopted children can ensure their privacy.

The report says: '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'.

In addition, it suggests that legislation should require adoption agencies to retain carefully, under threat of criminal penalty, all records relating to adoptions. It also calls for the provision of counselling for those seeking birth information or contact and for detailed guidelines for those offering tracing and reunion services.

Among its many recommendations, the report argues that unmarried couples should no longer be excluded from adopting and that children born within marriage should be eligible for adoption. This would allow step-parents to formally adopt their step-children and would allow many children currently confined to long-term care to be adopted by a family. The report points out that the current ban on adopting marital children 'can run counter to the best interests of the child, for example, where deeply committed foster parents are prevented from adopting'.

Launch of the Law Reform Committee's adoption report last month

The report also recommends that the law should recognise a natural father's relationship with his child where that child's mother and her new partner seek to adopt.

The report goes on to make a number of further proposals for reforming the law on adoption. These include:

- The provision of legally-aided advice and representation where adoption leads to a dispute
- That adoption disputes be heard by the proposed regional family courts
- That 'open adoption' (where some kind of relationship exists between the adoptee and the adoptive parents and birth parents) be encouraged
- That the huge body of adoption legislation be consolidated into a single act.

The Law Society's Law Reform Committee has submitted its adoption report to the Department of Health and Children as part of its on-going programme of highlighting those areas of the law in urgent need of reform.

The full text of the report is available on the Law Society's website at www.lawsociety.ie.

Revised AG's Scheme issued

A revised version of the Attorney General's Scheme has been issued, clarifying which types of judicial review are covered and which costs are available. The scheme is intended to provide legal representation for people who need it but can't afford it, and applicants must satisfy the court at the start of proceedings that they are unable to retain a solicitor or counsel unless they receive the benefit of the scheme. According to the new version, the scheme applies to the following types of litigation: *habeas corpus* applications, bail motions, judicial reviews such as *certiorari*, *mandamus* or prohibition (and which are concerned with criminal matters or where the applicant's liberty is at stake), applications under section 50 of the *Extradition Act, 1965* and District Court extradition applications.

Chief Justice warns of media pressure on judges

The media may be putting the judiciary under too much pressure, according to Chief Justice Ronan Keane. In an exclusive interview with the *Law Society Gazette*, he said that judges were now 'subjected to much more intense publicity and scrutiny than they ever were in the past' and that they risked 'being deluged with criticism' if they brought in a verdict that didn't find favour with journalists and the general public.

'They have the spotlight of media attention on them morning, noon and night. That's a fact of life that we have to accept', he said. 'But it doesn't make it any easier for a judge, knowing that sometimes an ill-informed public thinks there should be a particular result and that he may be deluged with criticism when the verdict comes out.

Dublin's Four Courts: are judges under too much pressure?

'Judges are not children, and they know that's part of the job and they get on with it. But it's a pressure that perhaps they shouldn't be subjected to'.

The Chief Justice also said that he didn't believe that recent controversies, such as the Sheedy affair, had damaged the judiciary in the eyes of the public. 'I take quite a strong view about this. I don't think the judiciary has been damaged but we cannot afford to be complacent either'. The committee on judicial ethics, set up in the wake of Sheedy, would be reporting to the government later this year, he added. *(See also page 12 for the full interview.)*

McAleese to open Education Centre

President Mary McAleese has agreed to perform the formal opening of the Law Society's new £5 million Education Centre at Blackhall Place on 2 October.

Appropriately, the date in question will be the first day of the new legal year. President McAleese, who in an earlier part of her career was head of the Institute of Legal Education at Queen's University, Belfast, will address an invited audience in the Education Centre's state-of-the-art 200-seat lecture theatre before unveiling a plaque.

President Mary McAleese: getting the new legal year off to a good start

The substantially redesigned and improved professional course will begin later that week for the first intake of 360 apprentices. The centre will also be available for CLE courses.

The building itself is coming in on time and on budget and is scheduled to complete its construction in early July, followed by a fitting-out period.

No joy on Land Registry fees

Last month the Minister for Justice, Equality and Law Reform John O'Donoghue met a Law Society delegation to discuss the problems with the Land Registry, but he declined to comply with the society's request that the new fees order be withdrawn. Moreover, he said that the arrears of dealings was now in excess of 100,000 and, he feared, the situation was likely to get worse before it got better.

The society was represented by President Anthony Ensor, Director General Ken Murphy, Conveyancing Committee chairman Brian Gallagher, and Orla Coyne of the DSBA's Conveyancing Committee.

The minister indicated that he fully understood the frustration of solicitors dealing with the Land Registry under current conditions but, with the recruitment of some 60 new staff approved, he was trying to reverse the effects of years of under-investment. Despite the society's concerns about moving the Land Registry in its current condition to semi-state status (*see last issue, page 11*), he is still inclined to pursue this course.

ECJ LITIGATION SEMINAR

The Law Society, together with the English Bar Council and the European Law Academy, 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 European Court of Justice, references from national courts to the European courts and the relationship between EC law and national law. There are 15 places reserved for Irish solicitors and apprentices. There will be no fee, though participants will be expected to meet their own travel and accommodation costs. Further details can be obtained from the Law School or from Ide Ni Riagain at the European Law Academy.

DEAL REACHED ON ARMY DEAFNESS CASES

A breakthrough has been reached in negotiations between the solicitors involved in army deafness litigation and the representatives of the Department of Defence (*see March issue, page 5*). The deal, brokered by the Law Society, means that all army deafness cases that were due to be heard in the Easter law term, which runs from 1 May to 8 June, have been adjourned to allow settlement negotiations to take place.

The Chief State Solicitor's Office will be contacting as many plaintiffs' solicitors as possible to arrange meetings with them. Settlement discussions will be based on the levels of *quantum* set by the Supreme Court late last year in the *Hanley* case.

While the scheme is being conducted on an experimental basis at the moment, the department says it hopes it will lead to 'the disposal of all outstanding cases within a reasonable period of time'.

Commenting on the deal, Law Society Director General Ken Murphy said: 'While it is too early to say for certain, there are positive signs that this could be the key to resolving the outstanding 10,000 cases'.

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Kerry O'Halloran

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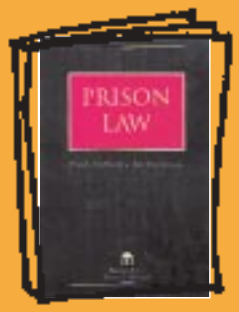
Price: £85.00 (hb)
Publication: June 2000
ISBN: 1-85800-177-3



Prison Law
Paul Anthony McDermott

Takes a practical look at the law as it relates to prisoners and examines all relevant legislation and its interpretation by the courts. It provides analysis, comment and opinion on Irish prison law - it analyses every major Irish case, identifies where the gaps are, draws comparisons with other jurisdictions and reviews progress to redress shortcomings.
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Henry Comerford and Aengus R M Fogarty

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Price: £95.00 (hb)
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Criminal Liability
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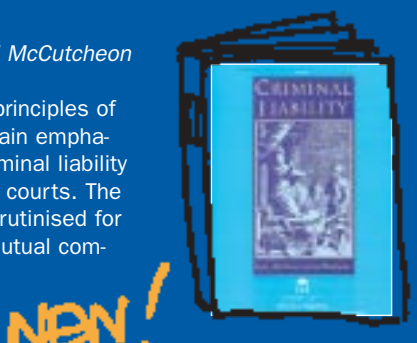
Publication: May 2000



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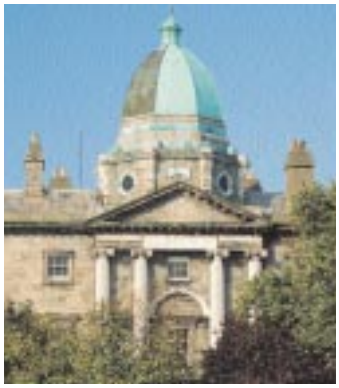
Letters

A few votes short of a resolution

From TC Gerard O'Mahony, Dublin

Mr Conor O'Toole's letter (*Gazette*, Jan/Feb issue, page 6) hit a sore spot with solicitors denied parking facilities at their Blackhall Place premises. Parking in the vicinity of the Four Courts is a fundamental need of the profession that has funded a magnificent new school for its students at over £5 million.

In association with professionals in the development field, a proposition was put to the Law Society last year, which, apart from the enormous economic and organisational benefit, would provide an additional



A modest proposal to the Law Society

200 parking spaces.

In the present circumstances, we could provide upwards of 650 parking spaces in conjunction with adjoining developments, with no material alteration to the society's premises. Subject to survey, the cost could be in the range of £3.3 million to £4.7 million, depending on the degree of amenity required. Even as an investment, it could be a very beneficial proposition.

If sufficient members are interested and contact me, I would purport to pursue further in consultation with them preparatory to procuring the interest of the Council.

Law Society Director General Ken Murphy replies:

The fact that the demand for car parking spaces in Blackhall Place exceeds supply is a problem of which the society is very conscious. Planning permission has been sought to increase the spaces potentially available. This application, however, is not in accordance with some of the more radical proposals which have been put forward over the years by Mr O'Mahony. These proposals, at least some of which envisaged the sale of the Blackhall Place premises, have been discussed at length by Mr O'Mahony at a number of general meetings, including a resolution at the most recent annual general meeting. They have received a fair hearing, although little or no support, from members at these meetings.

DUMB AND DUMBER

From: John Keaney, BCM Hanby Wallace, Dublin

Place: Coventry Magistrates Court

Date: Late 1980s

Magistrate: The possession of Class A drugs is a serious offence. I believe that drug abuse is at the very core of the breakdown of the fabric of our society and it is something that this bench has always taken a very dim view of. Now, have you anything to say before I pass sentence on you?

The defendant reaches into his back pocket and pulls out a tobacco tin, holds it to his mouth, taps it with his other hand.

Defendant: Beam me up, Scotty, it's getting hot down here.

From: Gearoid O Baoill, Politics Dept, Trinity College

I heard this story recently, and I haven't been able to find a source to substantiate it: Apparently, an American with a taste for very expensive cigars bought a huge number of them and insured them for a great deal of money against a host of misfortunes – including fire. Then he smoked them.

When the insurance company refused to pay up, he successfully sued them and received his claim. But the insurance company had the last laugh when they counter-sued him for arson. The poor sod wound up with a massive fine and two years in prison for insurance fraud.

From: Brian O'Kane, Cork

The following is an excerpt from a recent *Mensa* magazine. It quoted an Internet quiz consisting of four questions that ought to tell you whether or not you are qualified to be a professional.

Question 1: How do you put a giraffe into a refrigerator?
Correct answer: Open the refrigerator, put in the giraffe and close the door.
This question tests whether you are doing simple things in a complicated way.

Question 2: How do you put an elephant in a refrigerator?
Incorrect answer: Open the refrigerator, put in the elephant and shut the refrigerator.
Correct answer: Open the refrigerator, take out the giraffe, put in the elephant and close the door.
This question tests your foresight.

Question 3: The Lion King is hosting an animal conference. All the animals attend except one. Which animal does not attend?
Correct answer: The elephant. The elephant is in the refrig-erator.
This tests if you are capable of comprehensive thinking.

Question 4: There is a river filled with crocodiles. How do you cross it?
Correct answer: Simply swim across. All the crocodiles are attending the animal meeting.
This question tests your reasoning ability.

If you answered four out of four questions correctly, you are a true professional and a great deal of wealth and success await you. If you answered three out of four, you have some catching up to do but there's hope for you yet. If you answered two out of four, consider a career as a hamburger flipper in a fast-food joint. If you answered one out of four, try selling some of your organs. It's the only way you will ever make any money. If you answered none correctly, consider a career that does not require any higher mental functions at all, such as law or politics.

Mr Keaney wins the bottle of champagne this month.

When did you last read the law reports?

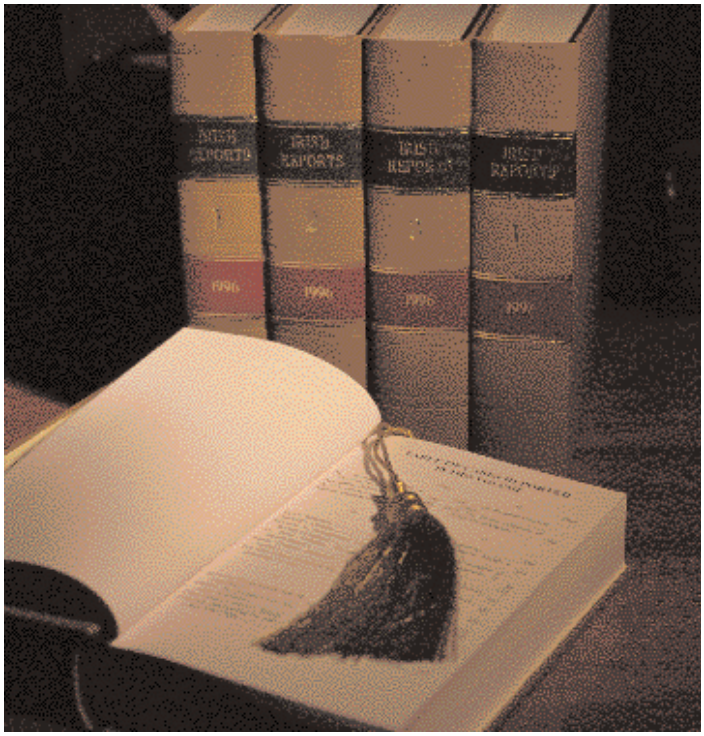
Failure to keep yourself up to date with the latest reported cases could seriously damage your professional health, warns Eamonn Hall

The decisions of the superior courts in Ireland, as reported in the pages of the various law reports (including *The Irish reports* and in recent decades the *Irish law reports monthly*) constitute, together with the statute book, the living law of this country. It is also appropriate to include here the electronic *Irish weekly law reports*. The decisions of the judges as reported in the law reports, vested with the authority attached to them as precedents, constitute formal elements of the common law and constitutional law of Ireland.

Many readers will know that the Incorporated Council of Law Reporting for Ireland, established in 1866 with the concurrence of the judges, law officers of the state, the bar and the Law Society, has published *The Irish reports* continuously since 1866 and these reports are regarded as the official or quasi-official law reports in Ireland. The council also publishes the *Digests of cases* which not only contain reports of cases in *The Irish reports* but also include the headnotes of the *Irish law reports monthly* and *The Northern Ireland reports*.

Before proceeding any further, I must declare an interest. I have the privilege of having been elected chairman of the Law Reporting Council of Ireland, but the council is a legal charity and neither the chairman nor any member of the council receive emoluments in their capacity as members. This note is also written in a personal capacity.

The issue arose recently as to the duty of a solicitor or barrister who holds himself out to be competent in a particular field of law as to whether he must keep himself up to date with recent authority as set out in the law reports.



Are you ready if a judge throws the book at you?

The duty of advocates to keep up to date was considered by the Court of Appeal (England and Wales) in *Copeland v Smith* ([2000] All ER 457). The background to the case is as follows. Stephen Copeland was riding his motorcycle on the M3 motorway when he was involved in a serious traffic accident on 24 September 1993. He suffered serious injury but had little recollection of what occurred. There were several vehicles involved. He originally sued a Mr Smith, alleging that the vehicle Smith was driving had collided with his (Copeland's) body when it was lying on the ground. Copeland instructed experienced solicitors to act on his behalf, and proceedings were initiated against Smith. Subsequently, it transpired, outside the statutory limitation period, that it might have been a Mr Goodwin who was the person responsible for knocking Copeland off his motorcycle. Goodwin was joined as a party to the proceedings and he appealed against that decision.

The issue arose as to whether, in construing the UK *Limitation Act 1980*, a claimant was fixed with the knowledge of the action or inaction of his solicitors. When the judge in the Circuit Court, Judge Kenny, heard the matter on 31 March 1999, he was apparently told that there was no authority covering the point at issue. The judge expressed surprise and the court rose for a short time to give the advocates an opportunity of checking any authorities. Judge Kenny was then informed on resuming the hearing that the authorities 'faxed through' during the brief adjournment did not advance matters at all. Accordingly, the judge then construed the statutory provisions without the benefit of any authority and concluded that Copeland was not fixed with responsibility for what his solicitors had done or had not done.

The matter went to the Court of Appeal. The Court of Appeal stated that Judge Kenny was wrong in so concluding. He was wrong because the contrary had been decided by the Court of Appeal itself in the case of *Henderson v Temple Pier Company Limited* ([1998] 1WLR 1540). That case had been reported in part 36 of the *Weekly law reports* for 1998 some four-and-a-half months before the relevant hearing took place before Judge Kenny in the Circuit Court. Lord Justice Buxton in the Court of Appeal stated that he could not draw back from expressing his very great concern that Judge Kenny was permitted by professional advocates to approach the matter at issue as if it were free from authority when there was a recently reported case of the Court of Appeal directly on the point 'which was not reported in some obscure quarter but in the official law reports'. Lord Justice Buxton stated that it was not only extremely discourteous to Judge Kenny not to inform him properly

about the law, but it had also been wasteful of time and money because the matter had ended up in the Court of Appeal.

Lord Justice Buxton considered that the advocates who appeared in the court below did not discharge their duty properly to the court and that they apparently failed to be aware of the existence of that authority. Lord Justice Buxton also said that in the case in question a Court of Appeal transcript was stated to be attached to the appellant's papers. In fact, it was not. Lord Justice Buxton stated that it was not satisfactory to refer to a reported case by means of a transcript. The purpose of cases being reported was, among other things, to help the court and the advocates by listing the cases that had been referred to and also by means of the very helpful headnotes provided. He trusted that lapses of this sort would not occur again.

Lord Justice Brooke, in a concurring judgment in the same case, said that it was essential for advocates who hold themselves out as competent to practise in a particular field to keep themselves up to date with recent authority in that field. By 'recent authority', he stated he was not necessarily referring to authority which was only to be found in specialist reports, but authority which had been reported in the general law reports. If a solicitors' firm or barristers' chambers only took one set of the general reports, they should have systems in place which enable them to keep themselves up to date with cases which had been considered worthy of being reported in another general series. He added that if this was not done, judges might be getting the answer wrong, through the default of the advocates appearing before them.

Lord Justice Brooke noted that the system of justice had always been dependent on the quality of assistance that advocates give to the bench. He noted that it was one of the reasons why, in contrast to systems of justice in other countries, English judges were almost invariably in a position to give judgment at the end of a straight-forward hearing without having to do their own research or without the state having to incur the cost of legal assistance for judges. He noted, of course, that it was the duty of an advocate to draw the judge's attention to authorities which are in point, even if they are adverse to the advocate's case.

While there is no recent authority in Ireland on the issue, I believe that practising lawyers here should subscribe or have access to a comprehensive series of law reports. Failure on the part of a solicitor or barrister who holds himself out to be competent in a particular field of law to read the law reports and keep abreast of relevant authorities could have serious professional consequences. G

Dr Eamonn Hall is the company solicitor of Eircom plc.

Should solicitors give it a spin?

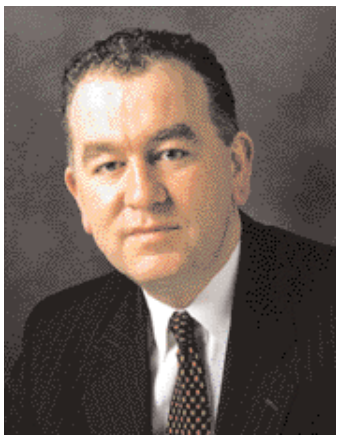
Garrett Fennell examines the increasing role of lobbyists and public affairs consultants, and asks whether solicitors have what it takes to become spin doctors

Yet again the whole area of political lobbying has been brought into focus by controversy. The recent revelations by PR man Frank Dunlop to the Flood Tribunal have heightened awareness of the ever-increasing band of professional advisors engaged in lobbying or public affairs activities.

In Ireland, political lobbying is in its infancy. While there is a long tradition of effective lobbying by representative groups for farmers, unions and teachers, professional political lobbyists emerged here only in the late 1980s.

The first professional political lobbyists were probably Brendan Halligan, the former Labour Party TD and MEP, and Myles Tierney, a former Fine Gael councillor. In recent years, the ranks of lobbyists and public affairs consultants have swollen to include former journalists, former politicians, numerous government press secretaries, ex-government advisors and at least one solicitor (myself!). At last count, there were at least ten firms in Dublin providing a dedicated public affairs service to clients, while many public relations firms also offer that service.

There are a number of reasons for this rapid growth. The arrival of multinational companies accustomed to receiving professional public affairs advice certainly created an immediate demand. The increase in legislative activity



Garrett Fennell: the government will soon regulate political lobbying

on issues affecting business and interest groups – which is largely attributable to membership of the EU – also acted as a catalyst. In recent years, the privatisation of state assets and the liberalisation of the former state utilities have produced a need for advice on transactions with a highly political dimension. The *Freedom of Information Act* has also played an important role in ensuring that there is transparency in political decision-making. Ministers must consider political decisions in the context of the advice they receive from their officials and now most of this advice can be obtained under the *Freedom of Information Act*. Business people can see the factors that influence a key decision and frequently wish to exercise their own influence.

It is important to distinguish between lobbyists and public affairs advisors. The

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terms are used interchangeably, but signify quite different approaches to political lobbying. A lobbyist usually acts as an advocate or political spin-doctor for a client. They interact directly with politicians on their clients' behalf, pressing flesh and bending ears. This would probably accord with what most people believe political lobbying is all about.

A public affairs advisor or consultant acts more as an advisor to a client, with the client maintaining the direct relationship with the politician. Put simply, a public affairs consultant acts as a political advisor to a client, in much the same way as a client has access to other specialist advisors to assist on other business issues.

Typically, a public affairs consultant's activities on behalf of a client will include:

- monitoring the proceedings of the Oireachtas, reviewing the order papers and highlighting individual debates or parliamentary questions of concern to clients
- reviewing proposed legislative developments to assess their impact on a client's business or sector
- where appropriate, suggesting and preparing draft amendments to legislation for a client to submit to government or the opposition
- researching and drafting submissions for a client to lodge with a government department on an issue of exceptional concern or interest
- where necessary, identifying and engaging additional professional expertise to support a client's case
- preparing briefings and correspondence on issues of concern, and
- providing an external and objective perspective on political issues likely to impact on a client's business activities.

Would you buy a used point of view from a spin doctor?

There is no doubt that the government will move to regulate political lobbying over the next few months. There is a need for regulation of this sector in the light of recent controversies over the activities of lobbyists and public affairs consultants. Inevitably, a register of lobbyists and public affairs advisors will be introduced and a code of ethics will be produced. These are all positive developments.

There are doubtless some similarities between the activities of public affairs consultants and the work of practising solicitors. As anyone who has visited the US can confirm, lawyers dominate the political lobbying industry there. Large law firms have dedicated departments advising clients on how to conduct their relations with government. In the UK, there are indications that some of the larger law firms are starting to develop public affairs practices to meet clients' needs.

As the practice of law changes, both due to the encroachment of other professions into areas traditionally reserved for solicitors and as a result of international competition, solicitors must look for ways to innovate and develop practices to anticipate clients' needs. In the US, it is noticeable that accountancy practices are increasingly involved in providing political lobbying services to clients. In 1998, there were 117 lobbying firms in Washington that reported at least $1 million in income. Many of these firms had a small handful of employees, others were Washington outposts of national law firms. PriceWaterhouseCoopers made a jump from a combined 42nd place in 1997 to 11th place in 1998, with a fee income of $6.5m for lobbying. The leading political lobbying firm, Cassidy & Associates, had a fee income of nearly $20m in 1998. Clearly, lobbying in Washington is big business.

There is much that is wrong with the US system of political lobbying, but the involvement of law firms is something that Irish law firms should note with interest. As multi-disciplinary practices emerge to challenge the traditional demarcation between the professions, the provision of professional services is increasingly likely to be dictated by client expectations. Clients will expect certain services and it will not matter who provides them, as long as they are delivered expertly, on time and at a reasonable cost.

In the absence of continued controversy about political lobbying, perhaps some Irish law firms will assess the benefit of providing public affairs services to clients. One thing is sure: if they don't, there will be other professions willing and able to jump into that gap! G

Garrett Fennell is a Dublin-based public affairs consultant. He qualified as a solicitor in 1992 and practised with McCann FitzGerald until 1996, when he left to join the ESB as a public affairs advisor. He has since established his own consultancy practice.

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Meet at the *Four Courts*

Keane's se

The new chief justice, Ronan Keane, has been in office just a little over three months. In his first-ever press interview, he tells Conal O'Boyle about his plans for the Supreme Court and why solicitors had better brush up on their debating skills if they want to make it to the top

The most senior judge in this country seems to be a man of contradictions: a traditionalist in many respects – a staunch defender of wigs and gowns, for example, and no supporter of a unified legal profession – he is considering a number of innovations that might help the Supreme Court work more efficiently and effectively. He is also the first chief justice to speak frankly to the press about his plans.

'I don't believe we can sit in ivory towers', says Ronan Keane. 'It doesn't do judges any good and it doesn't benefit the public'.

In recent times, it could be argued that the judiciary has been living more in glass houses than ivory towers, with judges coming in for some stinging public criticism from commentators as a result of one or two high-profile events. While the chief justice is understandably reluctant to discuss the specifics of these, would he accept that the judiciary's reputation has been tarnished by recent controversies?

'No, I don't think so', he says. 'In fact, I take quite a strong view about this. It's been said that various institutions in the state have been seriously damaged in the public mind. I don't think the judiciary has been damaged, but we can't afford to be complacent either. My predecessor appointed a committee to consider the whole area of judicial conduct and ethics. It has done a great deal of work already and will be reporting to the government later in the year.

'Nowadays, judges are subjected to much more intense publicity and scrutiny than they ever were in the past. They have the spotlight of media attention on them morning, noon and night. That's a fact of life that we have to accept. In one sense that can be good, in that it demystifies the process. If ever people thought that judges were remote, with no connection to ordinary life, they now know that's not so.

'But on the other hand, it means that judges deciding cases are under a good deal more pressure than they were before. Instead of people doing the sensible thing and waiting to see what the courts decide, there are waves of speculation about how they think a case should be decided – which of course judges withstand. But it doesn't make it any easier for a judge, knowing that sometimes an ill-informed public thinks there should be a particular result and that he may be deluged with criticism when the verdict comes out. Judges are not children, and they know that's part of the job and they get on with it. But it's a pressure that perhaps they shouldn't be subjected to'.

No benchmarks

Keane knows a little bit about pressure himself because when he was appointed to the High Court bench in 1979 there was no such thing as judicial training or 'judicial studies', as they prefer to style it. 'You had to undertake areas of work which you would never have done in practice', he recalls. 'We all dealt with the situation by talking to senior colleagues who did have the requisite experience'.

These days a judge's lot is a much more happy one. With the establishment in 1996 of the Judicial Studies Institute, a form of continuing legal education is now available to the judiciary.

nse of justice

'We don't like the expression judicial training, although that's the one used in the act', says Keane, who, as chief justice, chairs the institute. 'We take judicial studies seriously, and not simply for incoming judges but also for judges who have been in place for quite a long time but who really do need to keep abreast of developments in the law'.

There are regular weekend seminars for all levels of the judiciary, with talks from outside experts such as psychologists, prison governors, doctors, social workers and economists. 'Some of the judges were resistant to this initially', notes Keane, 'but now they actually look forward to them. It's got such a good reception and people are getting so used to the idea now that I think we can see it expanding considerably'.

Apart from chairing the Judicial Studies Institute, he also chairs the Judicial Appointments Advisory Board, the Courts Service Board, the Superior Courts Rules Committee and is treasurer of the King's Inns – all this in addition to the ever-increasing workload faced by the Supreme Court.

'I knew that the role of chief justice carried all these additional responsibilities', he says. 'It was only really when I took up the job that I realised how extensive they are. Of course, I've had great support from my colleagues on the court and I expect it will get a little easier as I get more used to it'.

Life should also get a little easier for those who hope to get a hearing before the Supreme Court. The backlog of cases that had clogged up its list has been whittled down to more manageable levels, thanks in no small part to the energy with which it was tackled by Keane's predecessor, Liam Hamilton. It now looks possible to guarantee the hearing of an appeal within a relatively short time. 'As far as I know', says Keane, 'every case that is ready to go on – where the books of appeal are lodged and there's a certificate of readiness – will be heard by the end of this year'.

Judges on tour

The efficiency with which the court has tackled the backlog means that the new chief justice will be able to implement one of his pet projects later in the year. He wants to revive the now-moribund practice of sending Supreme Court judges out on circuit around the country to hear appeals. It's probably been ten years or more since the court felt able to release one of its members in such a fashion.

'There are two advantages to it', he explains. 'First, it enables Supreme Court judges to keep in touch with what is actually going on "out there", from which we're naturally isolated. Second, Supreme Court work is exacting and somewhat lacking in variety for people who, as High Court judges, were used to hearing a wide range of cases'.

None of them would complain for a moment about it, he adds, because they knew what they signed up for when they took the job, but the public is sure to benefit from a re-invigorated and in-touch Supreme Court. The president of the High Court must also be

delighted because it should ease the pressure of work that has built up, not least as a result of regularly losing so many of his judges to tribunals. He may soon be pressing for two roving justices.

Keane is also looking at how to reduce the length of time that cases take in the Supreme Court, but admits that this is ground on which he will have to tread warily, at least initially. 'We really have to consider ways of processing cases more expeditiously, while at the same time making sure that they're dealt with properly and justly, because you can never sacrifice justice to efficiency and expedition. But that doesn't absolve us from seeing whether we can do it more efficiently. And that inevitably raises the vexed question of time limits on oral submissions'.

He cites the example of the United States Supreme Court, which limits oral presentations to half an hour, no matter how enormous the case, but says that this is not necessarily the appropriate approach in this country. 'The US Supreme Court presides over an entire continent. It filters all its cases, which we most certainly cannot and do not do. And it exercises a very strict selectivity in the cases which it is satisfied should be dealt with'.

You don't have to put on a red light

In Canada, another federal jurisdiction, they allow one hour a side, while the European courts allow 30 minutes before the red light comes on.

'I'm not saying that any of those is necessarily the model to be followed; still less would I be thinking at this stage of specific time limits. It's a matter on which you would have to feel your way. As matters stand now, we do on occasion say at a certain stage in a case, "we understand the submissions, we understand the points of law, we think you can cover it in an hour". That would have been unheard of before and it's not infrequent now.

'I think we could move from that to some tighter time limit. It's something that – apart from obviously consulting all the members of the court first – one would very much want to consult the bar and the solicitors' profession about, and I anticipate that there would be some resistance'.

He also believes that proper case management could help to make litigation quicker and cheaper, and suggests that modern judges may give more leeway to long-winded counsel because of their

CHIEF JUSTICE RONAN KEANE

Born: 1932
Educated: Blackrock College, Dublin; University College Dublin; King's Inns
1954: called to the bar
1970: called to inner bar
1979: appointed to High Court bench
1981: chaired Stardust Inquiry
1987-92: chairman of Law Reform Commission
1996: appointed to Supreme Court
2000: appointed chief justice of the Supreme Court
Publications include: *Law of local government in the Republic of Ireland*, *Walsh's planning and development law* (2nd edition), *Company law in the Republic of Ireland*, *Equity and the law of trusts in the Republic of Ireland*

own experiences of appearing before difficult and interventionist judges a generation before.

'I think we all started off our judicial careers saying, "the thing to do in this job is to sit back and listen to the case and never interrupt". That's going to one extreme; now, it's a more desirable extreme than constant interventions, but I don't think either extreme is right. I think judges really must take control of cases.

'I'm not trying to trespass on the president of the High Court's domain – he's well aware of all this – but judges should know more about the case; they shouldn't just be in a position of coming onto the bench and saying "what's this all about?" It should certainly be possible to have preliminary conferences with the judge and counsel. This is all case management, of course, and it really must come. The Working Group on a Courts Commission under Judge Denham has pointed the way forward in this area, and it is now a matter for the Courts Service to ensure that it happens at every level.

'But everybody has a part to play – judges, counsel, solicitors, expert witnesses. Everybody's aware that litigation is far too long, expensive and cumbersome. It's something where everybody has to contribute to the solution, not just one body'.

If you want to get ahead, get a hat

A speedier, cheaper litigation system? It sounds too good to be true. But if Ronan Keane does manage to pull it off, he may leave his mark as one of the great chief justices, certainly as far as a sceptical public is concerned. So why not go one step further in the cause of demystifying the legal system: what about those wigs and gowns?

'Frankly, I think the wigs matter is somewhat peripheral because the essential thing is that the courts carry out their very important tasks with a degree of formality. That is important. It's important that people have respect for the courts, and that respect is not increased by undue informality. Most countries I've been to accept that.

'The wig has this advantage: it gives anonymity to the officers of the court. It means that they tend to look the same to the onlooker, and that's as it should be, because they're simply ministers of justice and one should try to keep the personal element out of it as far as possible. It's always struck me as odd that nobody finds it in the least bit peculiar that people are dressed the same way in the army, in the police or in hospitals. I'm sure doctors and surgeons wear white coats not simply because it's hygienic but because it shows that they are doctors. I've always thought it was a totally overblown issue. There are more important things to worry about. Obviously, since the law was changed, barristers are entitled to wear wigs or not in court, as they choose, and we must respect their right to appear unwigged if they want to'.

Wigged or unwigged, solicitors now have the right of audience in every court in the land, although, as the chief justice points out, they seem to make very little use of it. While it may be bad form to ask the most senior member of the judiciary about his successors, a whole profession wants to know: is there any chance we'll see a solicitor chief justice one day?

'I don't see why not. I think the day is long past when any sensible barrister regards himself as belonging to a superior profession. Both perform an essential function from the public's point of view. They're specialist branches of a very important profession. I've never had any sympathy with the view that the professions should be merged. Of course, they should co-operate more than they used to in the past, and they are co-operating. But I'm sure that both the Oireachtas and the Judicial Appointments Advisory Board will always bear in mind that, in appointing people to the courts, experience of court work is very important. I think that solicitors would acknowledge that. After all, they can sometimes spend their lives with very little experience of court work.

'Solicitors have obtained the right of audience in all the courts but make use of it very little in the superior courts, it has to be said. Of course, that's counter-productive from the point of view of their being appointed to the bench, at least at High Court level.

'But it's obvious that they're going to play a greater part as judges. So who knows in time?' G

THE CHIEF JUSTICE ON ...

JUDGES IN THE MEDIA SPOTLIGHT

'It doesn't make it any easier for a judge, knowing that sometimes an ill-informed public thinks there should be a particular result and that he may be deluged with criticism when the verdict comes out'.

SPEEDING UP SUPREME COURT HEARINGS

'We really have to consider ways of processing cases more expeditiously, while at the same time making sure that they're dealt with properly and justly ... And that inevitably raises the vexed question of time limits on oral submissions'.

BETTER CASE MANAGEMENT

'Judges should know more about the case; they shouldn't just be in a position of coming onto the bench and saying "what's this all about?"'

COURT DRESS

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A step too fa

Reporting restrictions on the *Nevin* case

During the recent Catherine Nevin murder trial, Ms Justice Mella Carroll made certain orders restricting press coverage of the case. Simon McAleese argues that her restrictions were excessive and incorrect

Ms Justice Mella Carroll, In the absence of the jury (and consequently unreported by the media), heard extensive arguments from Mrs Nevin's legal team about press publicity, both pre-trial and while the case was being heard. While the judge held that the publicity did not give rise to a real risk of an unfair trial, she nevertheless made certain orders restricting press coverage.

Pre-trial publicity

Mrs Nevin's lawyers alleged that there had been a garda plot which had been designed to prevent Mrs Nevin successfully defending herself. It was argued that the gardai had consistently leaked to the press details of progress which they were making in their on-going investigation of the crime. It was alleged that these leaks were purposely designed to ensure that the media portrayed Catherine Nevin in such a fashion that her conviction would be inevitable. Patrick McEntee SC argued on behalf of his client that the pre-trial press publicity which had resulted from this alleged plot had caused detrimental injury to his client's chances of successfully defending herself. He argued that Mrs Nevin had been prejudiced to such an extent that the prosecution should be permanently stayed. However, Carroll J rejected this argument.

Publicity during the trial

By way of secondary argument, Mr McEntee claimed that the press reporting of the first trial[1] had been so prejudicial in nature that, at the very least, the proceedings against Mrs Nevin should be stayed for a number of months so as to allow the allegedly prejudicial publicity to fade from the minds of the public and most particularly from the minds of potential jurors.

Mr McEntee's objections to press coverage of the first trial related to material which he argued fell outside the usual contemporaneous reporting of the case. He objected to what are known as 'colour pieces', articles which attempt to paint a written picture of the scene inside the courtroom and to portray the appearance, character, demeanour and attitude of the main players in the unfolding drama. In particular, he objected to press comment on what Mrs Nevin was wearing, her hair style, her jewellery, her manicured and carefully-painted fingernails, her demeanour in court and her reading matter while waiting for court to resume. Certain colour pieces published by the *Evening Herald* and the *Irish Independent* were singled out as amounting to a systematic attempt to dehumanise and demonise Mrs Nevin. Mr Peter Charleton SC, who was prosecuting the case, argued that what Mr McEntee

ar?

MAIN POINTS

- **Ms Justice Carroll decided some news-paper publicity of the trial was distasteful, but wouldn't jeopardise the fairness of the trial**
- **Nonetheless, restrictions were imposed not just on the offending newspapers, but all print media**

characterised as an effort to demonise Mrs Nevin was in reality nothing more than comment on her clothing and demeanour which was distasteful, discourteous, nonsense and speculation. Mr McEntee argued that descriptions of Mrs Nevin's painted fingernails were designed to symbolise talons dripping with blood.

Carroll J found that the colour pieces, particularly in the *Evening Herald* but to a lesser extent in the *Irish Independent*, were: 'the worst kind of tabloid journalism, designed solely to sell newspapers without any regard to Mrs Nevin's dignity as a human person ... and all of this to feed an insatiable public curiosity for detail upon detail of what kind of person Mrs Nevin is. The theme which emerged of a fictional character or plot from an airport novel is a trivialisation of what is the most serious exercise being carried out in this court, consequent on the violent death of a man to determine whether his wife, Mrs Nevin, the accused, is guilty of his murder'.

She considered in some detail the case law relevant to publication of prejudicial publicity, before concluding that: 'I do not believe that there has been such publicity that there is a real or serious risk that Mrs Nevin would not get a fair trial which could not be avoided by appropriate rulings and directives. The publicity has been distasteful and discourteous but I do not subscribe to the view that she has been deliberately demonised. It is rather a pandering to the insatiable appetite of some of the media for details about Mrs Nevin, at times cruel, at times titillating, and always intrusive'.

Notwithstanding her finding that there was no real

PUBLICITY AND THE CONSTITUTION

Carroll J, in *Attorney General for England and Wales v Brandon Book Publishers Limited* ([1986] IR 597), pointed out that:

'Any consideration of the question of preventing publication of material of public interest must be viewed in the light of the constitution'. It is as well to consider the constitutional provisions governing the issues in question:

- article 34.1 provides that: 'Justice shall be administered in courts established by law by judges appointed in the manner provided by this constitution and, save in such special and limited cases as may be prescribed by law, shall be administered in public'
- article 38.1 provides that: 'No person shall be tried on any criminal charge save in due course of law'
- article 40.6.1 provides that the state guarantees the rights of citizens to express freely their convictions and opinions (subject to certain limited restrictions). In the *Brandon Books* case, Carroll J indicated that this article implied a constitutional right to publish information
- article 40.3.1 stipulates that: 'The state guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen'. This article of the constitution has been held to guarantee certain unenumerated constitutional rights, including the right to communicate and the right to fairness of procedures.

HIERARCHY OF CONSTITUTIONAL RIGHTS

It is well established that there is a hierarchy of constitutional rights (*People v Shaw* [1982] IR 1). Where there are competing rights, the court should strive to give a mutually harmonious application of those rights. If that is not possible, the hierarchy of rights should be considered both as between the conflicting rights and the general welfare of society. In other words, the courts have to strike a balance between conflicting constitutional rights, taking into account all of the surrounding circumstances.

If there is a real risk that the accused would not receive a fair trial, then there would be no question of the accused's right to a fair trial being balanced detrimentally against the community's right to have alleged crimes prosecuted (*D v DPP* [1994] 2 IR 465). This doctrine has been held to apply with equal force to the media's right to publish and the public's right to know and be informed (*Irish Times and Others v Ireland* [1998] IR 359). A 'real risk' has been defined (in *Z v DPP*) as meaning the risk of an unfair trial *'... which cannot be avoided by appropriate rulings and directions on the part of the trial judge'*.

risk of an unfair trial, the judge then made an order that until the conclusion of the trial there should be no further comment by any of the print media on Mrs Nevin's appearance and demeanour. Nor would the press be allowed publish any photograph or representation of Mrs Nevin: 'She is entitled to wear what she likes to court without being dissected. Her demeanour in court is a matter for the jury to observe without being told by reporters how to interpret it'.

Judge Carroll indicated that she was satisfied that, as part of her constitutional duty to ensure a fair trial, she had the power to make such an order. The order was to extend to all of the print media and, by implication, all press Internet websites. As the judge pointed out: 'Even the *Irish Times*, which was not the worst offender, commented on her facial expression, her clothing, her jewellery and her hairstyle'.

Many newspapers about which no complaints had been made were adversely affected by the order. But it did not affect the radio/television/electronic media who were entitled to continue publishing photographs of Mrs Nevin for the duration of the trial and also to comment upon her appearance and demeanour in court.

To be fair to Mrs Justice Carroll, she made her order after very patiently hearing extensive submissions about the constitutional rights of the accused and the obligation of the courts to protect such rights. She was at pains to point out that, in the hierarchy of constitutional rights, Mrs Nevin's right to a fair trial far outweighed the rights of the media to publish the details which had been restricted. Implicitly referring to the guidelines set out by the Supreme Court in *Z v DPP* ([1994] 2 IR 476), she concluded that the trial could proceed without risk of unfairness as a result of the restrictions which she had imposed.

The order was unusual: both the press and the public were free to attend her court; she emphasised that she was not prohibiting contemporaneous reporting of the proceedings. The press could, subject to the restrictions imposed, relay contemporaneous, accurate and straightforward court reports to their readership.

The most unusual aspect of the order made by Mrs Justice Carroll in the Nevin case was her implicit acceptance of the fact that the colour pieces which had been complained about had not caused prejudice to Mrs Nevin's chances of successfully defending herself; rather, they were 'an unwarranted intrusion on Mrs Nevin's privacy and an insult to her dignity as a person. She comes before the court presumed innocent to face a charge of murder, which is a most serious charge. She is entitled to be treated with respect and not to be put under additional strain'. The judge indicated that her order was 'calculated to reduce the risk of an unfair trial by curbing the licence taken by some journalists to comment on every aspect of [Mrs Nevin's] appearance and demeanour'. She also issued a direction to the jury that they should not read newspaper reports of the case and should confine their deliberations to the evidence which they had heard in court.

The judge was walking a constitutional tightrope. She was anxious to ensure fairness of procedures (article 40.3.1) and fairness of trial (article 38.1) for the accused, but at the same time felt that it was necessary to trespass on the constitutional rights of newspapers to communicate with their readers and to publish information (articles 40.3 and 40.6.1).

Having accepted that the press coverage had not amounted to contempt of court, Carroll J essentially made an order of a *quia timet* nature which had the net effect of editing future press coverage of the trial. This is an entirely new type of order and certainly not one which had been envisaged by the earlier case law, which was mostly confined to *prejudicial* pre-trial publicity. The order creates an unusual and dangerous precedent. Similar orders at all court levels will probably follow in early course. Many members of the judiciary have not been slow to impose reporting restrictions in dubious circumstances.

European convention on human rights

In *Murphy v IRTC* ([1997] 2 ILRM 467), Geoghegan J stated that: 'Although the *European convention on human rights* is not part of Irish municipal law, regard can and should be had to its provisions when considering the nature of a fundamental right and perhaps more particularly the reasonable limitations which can be placed on the exercise of that right'.

Geoghegan J then proceeded to consider case law of the European Court of Human Rights relevant to broadcasting restrictions. He did so for the purpose of ascertaining restrictions which could be placed on the applicant's constitutional rights. The *Murphy* case was ultimately appealed to the Supreme Court ([1999] 1 IR 12), which upheld Geoghegan J's decision at first instance.

The similarities between article 40.6.1 of the constitution and article 10 of the *European convention on human rights* were considered by the Supreme Court in *Irish Times and Others v Ireland* ([1998] 1

Simon McAleese: judge walking a constitutional tightrope

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IR). Barrington J compared article 40.6.1 of the 1937 constitution with article 10 of the *European convention on human rights* (which deals with freedom of expression). He noted that there were significant similarities as well as important differences:

'A constitutional right which protected the right to comment on the news but not the right to report it would appear to me to be a nonsense. Therefore, it appears to me that the right of the citizens "to express freely their convictions and opinions" guaranteed by article 40 of the constitution is a right to communicate facts as well as a right to comment on them. It appears to me also that when the *European convention on human rights* states that the right to freedom of expression is to include "freedom ... to receive and impart information", it is merely making explicit something which is already implicit in article 40.6.1 of our constitution'.

It is notable that the convention has been incorporated into British law as the *Human Rights Act 1998* which will be brought fully into force in the UK on 2 October this year. This is monumental legislation: it provides that all existing and future UK legislation will, so far as possible, have to be read and given effect in a way which is compatible with the rights guaranteed by the convention. Where it is not possible to read and give effect to primary legislation in this way, the courts will be empowered to grant a declaration that a statutory provision is incompatible with a convention right. It is expected that similar legislation will be introduced here in the very near future.

A recent decision of the European Court of Human Rights is directly relevant to the issues which arose in the Nevin case. The case is *News Verlags GMBH v Austria* (judgment handed down in Strasbourg, 11 January 2000). That case concerned a decision of the Vienna Court of Appeal. The Vienna court had issued injunction orders prohibiting the applicant company's newspaper from publishing photographs of B. This individual was well known for his neo-nazi affiliations and had been charged with perpetrating letter-bomb offences.

B succeeded in obtaining the injunction orders pursuant to Austrian copyright law on the basis that photographs published by the newspaper were, in an initial edition of the paper, accompanied by text which was prejudicial to B's chances of obtaining a fair trial. However, the order made by the Vienna Court of Appeal (and affirmed by the Austrian Supreme Court) imposed a blanket prohibition on the newspaper, preventing future publication of B's photograph, irrespective of whether or not the accompanying text would be prejudicial to the criminal trial.

The European Court of Human Rights found that the Austrian courts had restricted the newspaper's choice as to the presentation of its news reports. Other media were free to continue publishing B's photograph throughout the course of the criminal proceedings. Having regard to these circumstances and to the admitted fact that it was not the photographs used by the applicant company but only their combination with a prejudicial text that interfered with B's rights, the European Court found that the absolute prohibition of the publication of B's photograph went further than was necessary to protect B's rights. The newspaper should not have been injuncted from publishing photographs of B in circumstances where such photographs were accompanied by non-prejudicial text. Accordingly, there had been a violation of article 10 of the *European convention on human rights*.

When the Austrian case is compared to the Nevin case, it is notable that the initial publication by the Austrian newspaper contained material which was highly prejudicial to the presumption of B's innocence; in the Nevin case, however, the material which had been published was merely deemed distasteful, an intrusion upon Mrs Nevin's privacy and an insult to her dignity as a person. It is somewhat ironic in those circumstances that the restrictions imposed in the Nevin case went further than those imposed by the Austrian court. It is difficult to see how the reporting restrictions imposed in the Nevin case could withstand a challenge in the European Court of Human Rights.

Although well intentioned, Ms Justice Carroll's ruling in the Nevin case was excessive and incorrect. This is a personal opinion and I have done my best to mentally distance it from the fact that my office acts for the two newspapers that were most severely criticised by the judge. G

Simon McAleese is a partner with solicitors Matheson Ormsby Prentice.

Footnote

1 The first trial was aborted due to information that the deliberations in the jury room could be heard by people present in the public gallery of the court. The second trial had barely got off the ground (no evidence had been heard) when a juror fell ill; that trial was aborted in favour of a third trial which followed very shortly thereafter.

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Discovery in the District Court

New rules dealing with District Court discovery orders should make life a little easier for practitioners and their clients, writes Patrick Mullins

The District Court Rules Committee has adopted new rules dealing with District Court discovery orders. The new rules, contained in the *District Court (Discovery of Documents) Rules, 1998* (SI no 285 of 1999), govern the application for and making of orders for discovery in civil actions. They also set out the penalties applying to parties who default in relation to a discovery order. The rules became law on 27 September 1999 and introduce a new order 46A to the *District Court Rules 1997*.

The order allows any party to civil proceedings to apply to the court by way of notice of motion, served at least four clear days before the hearing of the application, for a discovery order against any other party to the proceedings. The latter must then make discovery on oath of the documents in their possession, power or procurement relating to any matter in question in the proceedings.

The court may make a general order for discovery or an order limited to specified documents or classes of documents. It may also make an order for security of costs. Obviously, the court may refuse to make an order on the grounds that discovery is not necessary (order 46A, rule 1).

The application must be preceded by a letter requesting voluntary discovery and allowing the respondent 21 days to comply. The respondent must refuse or fail to make discovery by the end of the 21-day notice period. The court may waive the notice requirement with the consent of both parties or in an emergency (order 46A, rule 2). It also has the power, with or without application, to make an order for the production of documents on oath (order 46A, rule 3).

The affidavit of discovery must list the documents to be produced and also what objections have been made by the party on whom the order is to be served. When an affidavit of discovery is served on the applicant, the applicant may serve a notice to produce on the deponent's solicitors, requesting inspection of any of the documents listed in the affidavit of discovery (except those over which privilege or some objection to production is being maintained). The applicant is entitled to take copies of the documents on inspection.

The judge may refuse to allow any document to be allowed into evidence if it has not been produced to the applicant for discovery after due notice has been served. Once a notice to produce has been served, the recipient has four days to tell the party seeking inspection of a time (within three more days) when these documents may be inspected (order 46A, rule 8).

Costs of discovery

In every case, the costs of discovery will be allowed as part of the costs of the party seeking discovery, either as between party and party or solicitor and client, only where this discovery has been certified by the court as being reasonably requested. These costs will not be less than £150 plus VAT (order 46A, rule 11).

However, the rules do not deal with the issue of third-party discovery against people or companies who are not a party to the proceedings. Nor do they deal with the issue of discovery against a party who has been joined in the proceedings as a third party by the defendant. Further, the rules do not provide for an appeal against the grant or refusal of an order for discovery.

Nevertheless, the new rules are welcome and should make it easier to air issues properly in the District Court. But it would also be a good idea if rules were also introduced to permit the raising of a notice for particulars in the District Court, similar to the provisions in the *Circuit Court Rules*. G

Patrick Mullins is a partner in the Co Cork solicitors' firm Dillon Mullins and Company.

FAILURE TO COMPLY WITH AN ORDER FOR DISCOVERY MAY LEAD TO:

- an order for attachment
- an order dismissing the claim for want of prosecution (where an order for discovery has been made against the plaintiff), or
- an order striking out the notice of intention to defend, where an order for discovery has been made against the defendant.

Furthermore, a party failing to make discovery will be liable to an order for costs of not less than £150 plus VAT or any greater sum that the court thinks fit (order 46A, rule 9).

The European Commission Representation in Ireland requires the services of a LAWYER (Barrister or Solicitor)

to provide clear, concise and accurate information and assistance to persons confronted with problems of interpretation of the law of the European Union. He or she will be expected to reply to enquiries from members of the public and may be required to take part in radio and / or television programmes.
The person appointed should be in a position to carry out the duties outlined above outside Dublin where necessary.
The services of the person will be required for 100 days per annum.

Applications should be accompanied by the following documentation:

- Name (or corporate name), address, telephone and fax numbers
- Detailed Curriculum Vitae + copies of testimonials/references
- VAT registration number
- Certificate less than 90 days old to the effect that the applicant has fulfilled his fiscal and social security obligations
- Proof of having graduated in law or being a licensed lawyer
- Proof of knowledge of Irish law
- Proof of knowledge of Community law
- Proof of at least 3 years' work experience in the field of European Community or related law
- Proof of linguistic ability when carrying out the work in question: perfect knowledge of English, knowledge of Irish.

Should the tenderer be a legal entity, all the above documents must be provided for the proposed person responsible for carrying out the work.

In addition, legal entities should enclose :

- Names and functions of the members of the management
- Articles of association
- Registration extract from the commercial register
- Accurate documents indicating the applicant's financial position : annual balance sheets and profit and lost accounts for the last three fiscal years

Applications should be submitted by registered mail, in a double envelope to Mr Peter Doyle, Director, European Commission Representation in Ireland, 18 Dawson Street, Dublin 2 **no later than 31st May 2000 (postmark).**

The inner envelope should contain the documents required, and should be marked "PR/2000-12/Dub - not to be opened by the mail service".

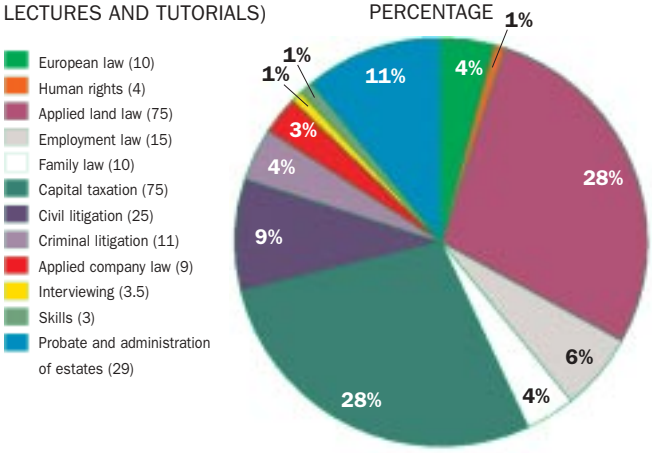
CDU: Time well spent?

Continuing its series of articles on the Law School's syllabus for apprentices, the Curriculum Development Unit asks members for their views on whether the Law Society has got the balance right between the two courses

Subjects on professional practice course

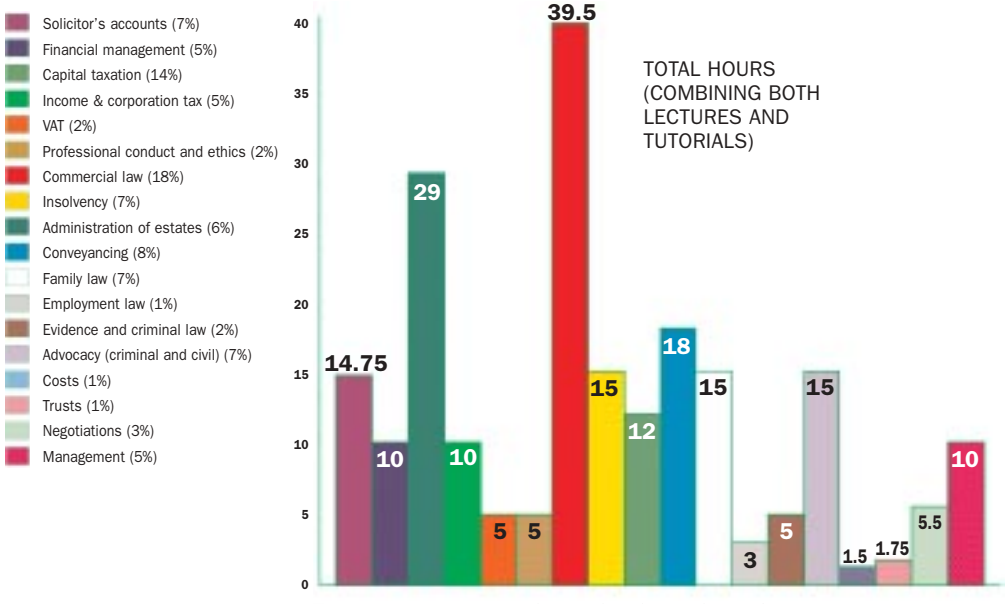
TOTAL HOURS (COMBINING BOTH LECTURES AND TUTORIALS)

TIME-ALLOCATION PERCENTAGE



Subjects on advanced course

TIME-ALLOCATION PERCENTAGE



The Curriculum Development Unit, as part of its on-going examination of the Law School curriculum, would welcome the views of members on the current time cation between subjects on the professional ctice course and the advanced course. is time allocation is represented in two ays:

- on a percentage basis, in a pie chart, and
- on the basis of the total number of hours llocated to each subject, presented in a bar hart.

r views would also be welcome on any sub- s *not* already included in the curriculum. lease send any comments or suggestions to Kennedy, Director of Education, Law School, Law Society of Ireland, Blackhall Place, Dublin 7, DX 79 Dublin, tel: 01 672 4800, fax: 01 672 4803, e-mail: tp.kennedy@lawsociety.ie.

Book reviews

Takeovers and mergers law in Ireland

Blanaid Clarke. Round Hall Sweet & Maxwell (1999), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-98-3. Price: £100.

Ever wondered what a reverse bear hug is? *Takeovers and merger law in Ireland* will provide the answer. The publication of this book is timely, given the enactment of the *Irish Takeover Panel Act, 1997* and the establishment of the panel in July of that year. Although the panel has been given wide powers to regulate takeover activity, the legislation also provides for the right to apply to the High Court for judicial review of a ruling or direction by the panel, or where the panel exercises its disciplinary powers. These provisions alone will mean that the new statutory framework will be a matter of professional interest for lawyers.

The author, Blanaid Clarke, a lecturer in corporate finance law at post-graduate level in UCD, is well placed to write on this topic: in addition to being a barrister, she holds the degree of MBS (Banking and Finance).

The book is divided into six parts. Part 1 introduces the subject matter of the work and discusses the economic rationale for mergers and acquisitions. Part 2 sets out the regulatory framework and discusses in detail the Irish Takeover Panel, stock exchange regulations and competition law, at both the European and domestic level. The *Draft 13th company law directive*, in gestation since 1989, and the regulation of financial institutions are also examined.

Parts 3 and 4 deal with the acquisition of public and private companies. The acquisition of a business and the acquisition of shares of a company are discussed separately and the transfer of undertakings regulations are examined in detail. The author also discusses the procedural requirements for the takeover of a quoted company and the dealing restrictions and disclosure requirements during the course of an offer. In relation to private companies, the issues of pre-contractual negotiations, due diligence, the contents of a sale agreement and completion are examined.

Part 5 deals with management buy-outs and includes a discussion of the Irish Association of Investment Management guidelines, while part 6 is concerned with the question of how to resist takeover bids.

Although concerned with the law in Ireland, the author refers not only to Irish, UK and European Court of Justice decisions, she also considers a number of Australian, Canadian, New Zealand and US decisions. A minor quibble: although there are references in the text, among others, to the *Taxes Consolidation Act, 1997*, the *Finance Act , 1999* and the *Stamp Act 1891*, these references are not reflected in the table of legislation.

Takeovers and mergers law in Ireland manages to be both a learned treatise and a work which is of use to practitioners. The discussion of issues relating to the acquisition of private companies should assure the book of a readership not only among takeover and merger specialists but also among commercial lawyers generally. It will make a worthwhile contribution to a practitioner's bookshelf, which is no mean achievement in this increasingly well-served niche of the market. Whether bears will read the book is another matter ... G

Niall O'Hanlon is a practising barrister and editor of the journal Irish business law *(Blackhall Publishing). He is also a chartered accountant and an associate of the Institute of Taxation.*

Tuairiscí Éireann (The Irish reports): Tuairiscí speisialta, 1980-1998 (Special reports, 1980-1998)

Arna chur in eagar ag Séamus Ó Tuathail BL, agus foilsithe ag Incorporated Council of Law Reporting for Ireland, Áras Uí Dhálaigh (1999), Four Courts, Dublin 7. ISBN: 0-946738006-8. Price: £15.

The special reports 1980-1998, published by the Law Reporting Council of Ireland, contain judgments of the High and Supreme courts delivered in the Irish language with full English translations. Edited by barrister Séamus Ó Tuathail, this volume also covers, in part, the status of the Irish language and the rights and entitlements of Irish speakers.

Inevitably, these judgments, unreported to date, contain matters of general law and practice and procedure. For example, in *An tAire Poist agus Telegrafa v Cáit Bean Uí Chadhain (Tuairiscí Éireann: The Irish reports: Tuairiscí speisialta: Special reports, 1980-1998, 21, 91)*, the Supreme Court considered, among other things, the issue of *mens rea*, unconditional strict liability and the law relating to a consultative case stated from the Circuit Court to the Supreme Court.

Judge Ruairi Ó Hanlon has written a preface on the status of the Irish language in law and makes some thought-provoking comments.

Molaim go mor an foilseachán seo. G

Dr Eamonn Hall is company solicitor of Eircom plc.

Economics of EC competiti concepts, application and

Simon Bishop and Mike Walker. Round Hall Sweet & Maxwell (1999), 43 Fitzwilliam Place, Dublin 2. ISBN: 0421-5794-4. Price: stg£95.

This book explains such economic concepts as relevant markets, elasticities, price correlation, price concentration, bidding studies and so on. It is a book which is comprehensible by economists and lawyers alike. However, it is a specialised book which will not have a wide appeal among Irish solicitors

Lawyers on the spot

Donna Leigh-Kile. Vision, Satin Publications (1998), 20 Queen Ann Street, London W1M 0AY. ISBN: 1-901250-06-7. Price: stg£11.25 (paperback).

'The system at the top end is frankly out of control. We have to get a grip on fees – otherwise the system ... will grind to a halt'. Jack Straw's famous words will be familiar to many. As with other attractive media lines, it is often repeated faster than one can say 'fat cat' or 'legal fees'. Another quote in the book refers to lawyers as being perceived somewhere below undertakers and used-car salesmen.

This paperback certainly lives up to its title. Throughout there are many legitimate and some less-legitimate misgivings about the legal profession. What makes this book interesting is that the author proceeds to outline these criticisms by using the words of those lawyers (many eminent) whom she has interviewed.

Most sources are either UK or US lawyers, but the topics discussed will be equally interesting to readers here. The three main themes in the book are the various problems with law and lawyers generally, the changes taking place in the legal profession and the future for lawyers.

Predictably, the issue of fees is canvassed a number of times. Today, success is gauged by profit. Some City lawyers can earn up to one million pounds a year. Large fees can often deter litigation. The author does, however, set out the counter-arguments. Frequently fees (while large in themselves) are small compared to the size of the transaction to which they relate. Furthermore, specialist work is also of such a nature that it rarely involves litigation.

John Jarvis QC is quoted as saying 'my clients come to me because they want money or some commercial advantage and they do not like it sometimes when I tell them that they cannot win. I am bound to spell out a client's prospects but, should he insist on going on with the case despite what I have told him, I will say things like: "I will fight for you and give it my best shot. But remember, you are the sort of person who pays my children's school fees. We love clients like you"'. While such frankness may be uncommon, there is no doubting how the issue of fees can contribute to the public perception of the legal profession.

It is not uncommon now for clients to shop around, change firms or to retain more than one firm of solicitors. Clients are also more willing to sue their lawyers and accountants. Lawyers must be more commercially minded and service oriented. Team work and client developments skills are now central aspects of most commercial and specialists firms. Many lawyers will also spend secondments working with their clients.

However, there are other forces at work. The squeeze is on for the more traditional firm. Old 'bread-and-butter' revenue sources are not what they used to be. On this point the book seeks to blame increased competition and the (UK) recession for an upturn in crime and fraud by solicitors.

Familiar issues are repeated, such as lawyers defending guilty persons. Class traditions and the perceived stuffiness of the profession receive scathing criticism, and racism and sexism in the profession are put under the spotlight.

Image is equally a concern for barristers as for solicitors. While clients may wish to be represented by someone they have heard of, as one lawyer noted: 'If you become known as a rent-a-quote, or have a reputation for your cases making headlines, clients who wish to maintain low profiles will not come to you and the judges and the lawyers will lose respect for you'.

The book concludes with a number of predictions. US firms shall continue to expand, as will multi-disciplinary practices. Client service and marketing strategies to get and maintain clients will continue to play an important role. The reforms undertaken by Jack Straw and Lord Irvine are also flagged for their future effects. Leigh-Kile predicts that such reforms will bring an end to the legal profession as we know it. The survival of the individual lawyer will depend on how swiftly he or she is able to find a profitable speciality and a space in an already-overcrowded field.

Finally, the bar is seen as an endangered species. Already many barristers are employed by law firms. The number of solicitor-advocates is also increasing. In Ireland, we can also point to the increase in solicitor-judges. G

Paul Lambert is a solicitor with the Dublin law firm LK Shields.

The tax book '99

Alan Moore. Taxworld Ltd (1999), 73 Bachelors Walk, Dublin 1. Volume 1 – ISBN: 1-902065-05-0; price: £62.50; volume 2 – ISBN: 1-902065-06-9; price: £37.50.

The 1999 edition of *The tax book*, now in its third year of publication and published, for the first time, in two volumes, provides a section-by-section explanation not only of income, corporation, and capital gains tax (volume 1) but also of capital acquisitions tax, VAT and stamp duties (volume 2). *The Tax book* and two companion volumes which reproduce the text of the legislation, *Tax law 99*, are also available on CD-ROM.

Author Alan Moore, a former inspector of taxes, has assembled a team of seven consultant editors to help in the task of providing a plain-English guide to the various tax acts, including two past presidents of the Institute of Taxation, Norman Judge and Brian Bohan, both of whom are noted authors in their own right.

The tax book is a substantial work; volumes 1 and 2 incorporate references to revenue precedents, inspector's manuals, statements of practice, guidelines, leaflets and tax briefings. Volume 1 also includes references to 2,131 cases and 1,114 illustrative examples, while volume 2, which is somewhat less than half the size of volume 1 and will no doubt expand in future editions, covers, among other things, the *Stamp Duties Consolidation Act, 1999*.

In order to properly advise clients in the field of taxation, a familiarity with the legislation is not of itself sufficient. *The tax book*, if it simply collated all relevant materials for its readers, would perform a useful function. However, by also providing an expert interpretation of the legislation and doing so in a timely manner, it offers an invaluable service to both the specialist seeking a second opinion and the general practitioner looking for an introductory guide. G

Niall O'Hanlon is a practising barrister and editor of the journal Irish business law *(Blackhall Publishing). He is also a chartered accountant and an associate of the Institute of Taxation.*

on law: measurement

generally, but would be very useful for competition lawyers. G

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

Tech trends

Compiled by Maria Behan

The great dictator

If you really love the sound of your own voice, then check out Sony's IC digital dictation machine. Instead of using standard or microcassette tape, your words are etched on an integrated circuit (hence the IC moniker). Digital recording produces better sound quality, and since there are no internal moving parts, this gizmo is lighter and smaller than other recorders. Not only can you capture memos, letters and brilliant insights as they occur to you, the top-of-the-line model connects to your laptop so you can use the Internet to leave audible e-mails or send voice files in to the office for transcription. *Between £90-£150, available at Sony Centres and other electronics outlets.*

Free and easy

Sun aims to outshine its rival Microsoft with its *StarOffice 5.2* software package, a simple-to-use (and free) alternative to Microsoft's ubiquitous *Office* suite. *StarOffice* includes workplace basics such as e-mail, word-processing and graphics, and it can create and edit most other types of files (including those in Microsoft *Office* format) to avoid file-sharing snafus. *Available free of charge as an Internet download from* www.sun.com/products/staroffice *(a CD-Rom version will be available later this year).*

The lazy man's guide to note-taking

Want an easy way to instantly capture quotes and other text from newspapers, law books, or any other typed material? C-Pen, a pocket-sized hand-held scanner, might be just the ticket. Run it along text the same way you would a highlighter and it's saved in digital form so you can print it out or add it to word-processor files and other applications. The latest – and most expensive – model lets you e-mail or fax stored material via the telephone.

Price: about stg£180-stg£300; available from C-Technology's UK distributor, Megapixels LTD, tel: 0044 (0)1425 674 617 or http://www.megapixels.co.uk.

Perfect pitch for tin ears

If you can't tell your treble from your bass, you're probably not going to need the Bose Lifestyle 5 music system, which automatically adjusts for optimum performance. The space-saving system – which includes a sleekly-designed AM/FM radio tuner, CD player and cube speakers with built-in amplifiers – is easy on the eyes, if not on the pocket. The included radio-frequency remote can work through walls and around corners, an improvement on 'line-of-sight' models.
Price: about £1,300; available at audio outlets and Brown Thomas in Dublin.

WAP's it all about?

Billed as the world's first 'media phone', the Nokia 7110 uses the wireless application protocol (WAP) technology you've been hearing so much about. WAP-ability means that mobiles can access text-based Internet content, including up-to-the-minute news, stock quotes and weather reports. This model boasts a large graphics display and features the delightfully-named Navi-Roller, which lets you scroll through and click on menu and phone-book functions. *Available at mobile phone outlets; the start-up package costs about £200.*

Sites to see

European Company Lawyers' Association *(http://www.ecla.org)*. This site, from a confederation of national associations of company lawyers across Europe, provides info on the ECLA itself, as well as various topics concerning in-house counsel throughout Europe.

Irish Supreme Court decisions *(http://www.bailii.org/ie/cases/IESC)*. A database from the Courts Service, and supported by the Law Society, containing a complete record of decisions, which can be searched alphabetically or by date.

CollegesWeb *(www.collegesweb.com)*. Billing itself as a 'one-stop-shop educational, information and social resource', this site is a must for anyone interested in third-level education. It gives the low-down on CERT courses, apprenticeships and institutions across Ireland, including schools for everything from nursing to agriculture.

How stuff works *(http://www.howstuffworks.com)*. Want to know how the world works? If you don't have a hotline to God, then check out this arsenal for wannabe know-it-alls, which explains everything from the stock market and cruise missiles to dietary fat and tattoos. The romantically-challenged can look up 'How Valentine's Day works', while the even worse-off might read up on 'How flatulence works'.

Sports.com *(www.sports.com)*. Die-hard sports fans (if not their bosses) should love this UK-based site, which boasts loads of information on football, rugby, golf, boxing and just about every other popular sport. It also offers information on sporting news and results across Europe and even the United States.

Report of Law Society Council meeting held on 10 March

Army deafness litigation

The director general reported on the outcome of meetings between officials from the department of defence and representatives of the solicitors' firms acting for plaintiffs in army deafness cases. In the short term, there would be an adjournment of cases in order to facilitate serious and realistic settlement negotiations. If these proved successful, it could be the key to settling the outstanding 10,000 cases. James McCourt said that, for the first time in three years, the department officials had been conciliatory in tone and appeared to be anxious to progress matters. They had been reminded that, if the state settled cases reasonably and expeditiously, solicitors would not be found wanting.

Land Registry and Registry of Deeds fees orders

The director general briefed the council on discussions and correspondence relating to the recent fees orders. He noted that the Conveyancing Committee's principal objections centred on (a) the inequity of increasing fees at a time when services were being reduced, and (b) the new penalty clauses contained in the fees orders. Both matters had been raised with the Land Registry, through its users group, on which the Law Society and the DSBA were represented. Questions had been tabled in the Dáil and there was now considerable disquiet about the proposed move by the Land Registry to semi-state status.

Orla Coyne said that, as the operative date of the new fees orders was fast approaching, she believed that the society should seek an urgent meeting with the minister. Gerard Griffin said that it had originally been intended that the Land Registry system would operate as an instant registration system. However, delays in the Land Registry were currently running to 13 months.

John Harte said that the service provided by the Land Registry had disimproved over the past ten years, with increasing arrears and increasing fees. He was concerned that, as a semi-state monopoly, the registry could become answerable to no-one. Tom Murran and John D Shaw suggested that the society might try to identify solutions to the various problems, in co-operation with the Land Registry.

Moya Quinlan said that the society should seek to meet with the minister as soon as possible and should discuss the necessity, in the interests of clients rather than solicitors, for a lead-in period in advance of any move to semi-state status. The council agreed that the society should seek an urgent meeting with the minister.

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

John Fish reported that a letter had been received from the department which (a) indicated the minister's commitment to the principle of extending the money-laundering provisions of the 1994 act to solicitors, (b) acknowledged the fact that a draft EU directive was being considered, and (c) confirmed his decision to put designation 'on hold' pending finalisation of the directive. The director general said that the minister's decision to put designation 'on hold' represented a significant success by the society's subcommittee. James MacGuill said that the profession had been very ably represented by John Fish, both at national and EU level, on the issue.

Establishment directive

Michael Irvine briefed the council on the current status of the legislation implementing the *Establishment directive*. The council authorised the sub-committee to proceed to seek certain amendments to the *Solicitors Acts*, arising as a result of the directive.

Second annual report of the independent adjudicator

The council noted that the independent adjudicator had produced his second annual report and that it was a very positive reflection on all those involved in complaints-handling within the society. It acknowledged the commitment of the staff in the Complaints Section in a function which, by its nature, could be emotive and stressful.

The director general said that it was intended to seek a meeting with the minister to present the report, following which a press conference would be held by the independent adjudicator.

Civil legal aid

The council considered and approved a report by the Family Law and Civil Legal Aid Committee on civil legal aid in Ireland. It was agreed that the committee should proceed to print and publicise its recommendations.

Adoption law: the case for reform

The council approved a report from the Law Reform Committee on the case for reform of the law of adoption. It was agreed that a press conference should be held on 13 April 2000 to launch the report. G

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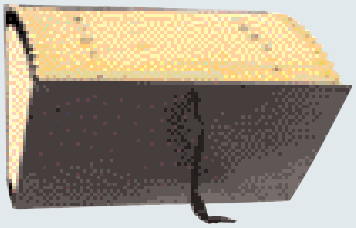


Committee reports

CONVEYANCING

Priority was given at the April Conveyancing Committee meeting to the continuing impasse over the Registry of Deeds and Land Registry fees orders. It was reported to the committee that the president, the director general, the chairman of the committee, and the chairperson of the DSBA Conveyancing Committee had arranged to meet the minister for justice, equality and law reform to express the continued opposition of the profession to the new fees orders, especially those items which were aimed at disciplining solicitors. In the light of widespread dissatisfaction with the new fees orders and the continuing deterioration in the level of service provided by the registries, the delegation wanted the views of the committee as to whether to raise with the minister the proposed conversion of the registries to a semi-state body.

The Law Society Council had decided, in the late 1980s, to support the idea of conversion to semi-state status. Some members of the committee felt that conversion should be put on hold pending the resolution of the fees orders dispute, and a substantial improvement of service. Other members pointed to the success of the Courts Service, and suggested that this might be a model. Clearly, the question of funding was vital to the registries, but it was noted that the substantial profit made by the registries each year was not ploughed back into their development. The registries have been underfunded for years. Members of the committee expressed their fears that mere conversion to semi-state status would not achieve anything, and might simply be 'more of the same' without the protection of parliamentary accountability.

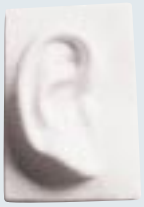
Members felt that the registries were intended to provide a public service and should not be converted into a commercial body, with no public service requirement, such as consumer protection. Other members questioned the value of the Land Registry. It was intended to be cheaper and quicker than the Registry of Deeds, whereas it was proving to be dearer and slower. The question was posed whether solicitors should advise clients to apply for first registration at all (save where it is compulsory). Members bitterly complained about the severe restriction in telephone service, and asked the delegation to urge the minister to ensure that it was not repeated. They also suggested that the minister might apply the Land Registry fees order only to dealings where the transfer was dated after 1 May 2000.

The committee asked the delegation to ascertain whether the semi-state body would be funded any better than the registries are at present. Members questioned to what extent conversion was crucial, or even important. The committee decided that it could not give a 'blank cheque' to conversion. It would only now give support conditional upon a number of matters: the revision of the fees orders; a guarantee of top quality service; adequate funding; a commitment to full co-operation with the profession; consumer protection being built in; the proper control of future fee increases, with particular consideration being given to the overheating property market, and the vulnerable sectors therein. The committee felt that the society should remain to be convinced of the value to the consumer and the profession of conversion to semi-state status. What may have been a good idea in the 1980s may not be one in the 21st century. Finally, committee members pointed out that Stamp Office delays would make it all the more difficult to meet the 1 May deadline, and asked that appropriate representations be made to the Revenue Commissioners in this regard.

The committee also considered a heavy agenda of items, including: unfair terms in building contracts; homebond; stage payments; revising the building agreement; revising requisitions on title; VAT; the *Conveyancing handbook*; relations with the lending institutions; e-commerce; the *Planning and Development Bill*; together with various other matters.

Solicitors experiencing difficulties with the Land Registry or the Registry of Deeds, or with the new stamping system, might please report these, in writing, to the secretary of the Conveyancing Committee at 33 Manor Street, Dublin 7. G

Brian Gallagher, chairman, Conveyancing Committee



Practice notes

GUIDELINES ON LANDLORD'S TITLE

The Conveyancing Committee issued a practice note in the *Law Society Gazette* in January/February 1980 in relation to the enquiries which ought to be made in relation to title by a solicitor for a tenant on the granting of a rack-rent lease. The view of the committee at that time was that enquiries need only be made in relation to a landlord's title when acting for a client taking a lease of commercial property for a period in excess of three years. This view was taken on the basis that while a tenant was not, under the provisions of the *Conveyancing* or the *Vendor and Purchaser Acts*, entitled to enquire into the landlord's title, both the practice of the profession and certain judicial pronouncements (in particular, the decision in *Hill v Harris* [1965] 2 AER) referred to in that practice note) had made inroads into the statutory position.

More than 20 years have passed since the issuing of the practice note. The committee is now of the view that in relation to shorter-term commercial leases the practice of the profession since then and the decision in *ICC Bank Plc v Richard Verling, Niamh Landy and Wine Dimensions Limited* ([1995] 1ILRM 1.23) have resulted in an alteration of this position. In that case, a two-year, nine-month lease of an off-licence premises was granted by the first-named defendant to the third-named defendant. The licence was transferred into the name of the second-named defendant as a nominee of the third-named defendant. The plaintiff as mortgagee issued proceedings in April 1994 in which, among other things, it sought possession of the premises. Lynch J in his judgment indicated that the second- and third-named defendants had to be regarded as having notice of the mortgage created by the first-named defendant in favour of the plaintiff as it was registered in the Registry of Deeds and they could have discovered its existence by means of a simple search.

In view of the above, the committee is of the view that prudent solicitors acting for tenants of short-term leases of commercial property should make the same enquiries and investigations as those acting for tenants of longer leases. The committee is of the view that the Law Society's recommended 'pre-lease enquiries or checklist' as published in the *Gazette* in May 1990 (and reproduced in the current edition of the *Conveyancing handbook*) should be raised in relation to all such leases. Practitioners should, however, note that this checklist is at present the subject matter of a review by the committee to take account of recent legislation.

Conveyancing Committee

RETENTION PERMISSION: DWELLINGHOUSES CERTIFICATE OF COMPLIANCE?

The Law Society published a practice note about the need for certificates of compliance relating to retention permissions in the November 1997 issue of the *Gazette*. This practice note was intended to apply only to private houses. The committee takes the view that it is reasonable for a solicitor for a purchaser to ask for confirmation by way of letter of opinion by a suitably qualified person that the drawings submitted for the retention application correctly showed the actual structure for which permission to retain was applied for. If there are conditions to the grant of permission to retain, the certifier should go on to deal with these in the usual way.

No certificate of compliance should be required where the permission related only to the retention of a (changed) use, where no conditions were attached.

The committee was asked to consider whether it was reasonable to accept a title in a case where permission to retain an extension to a dwellinghouse was obtained more than ten years ago and no certificate of compliance is available. The committee takes the view that, in light of the provisions of the 1992 act, it is reasonable for the solicitor not to require a certificate of compliance in such a case unless there is an evident problem.

When acting for a vendor in such a case, a solicitor preparing a contract should put in a special condition putting the purchaser on notice of the position and providing that no requisition or objection shall be made due to the lack of certificate. In that way, before signing a contract, a purchaser has an opportunity of getting advice in the matter, and, if necessary, to get advice from an experienced architect or engineer.

Conveyancing Committee

ISSUING OF MORE THAN ONE CONTRACT FOR SALE

The Conveyancing Committee has been asked to indicate the correct practice in the following circumstances:

The vendor's solicitor has issued a contract to a purchaser's solicitor, but then received instructions to issue a second contract to a second purchaser's solicitor without calling for the return of the first contract from the first purchaser's solicitor, and without informing the second purchaser's solicitor of the issuing of the first contract.

The Conveyancing Committee is of the opinion that this is not proper practice, and that the first purchaser's solicitor should be informed in writing that the vendor is not proceeding with the sale to his/her client, and that a contract should not be issued to the second purchaser's solicitor without first calling for the return of the first contract from the first purchaser's solicitor.

Conveyancing Committee

HIGH COURT BAIL APPLICATIONS

Practitioners are advised that the target date for the use of Cloverhill Courthouse for High Court bail applications is **15 May 2000.**

Criminal Law Committee

INSURANCE ON APARTMENTS OR QUASI-APARTMENTS

Many modern commercial developments comprising one structure are intended to end up in different ownerships. The best practice in relation to fire insurance in such cases is that the entire structure is in the name of one entity and the contributions for the different units forming part of this are contributed by way of service charge. The entity is usually a management company but sometimes a major commercial company takes on the role. The reason for this is simple. In the event of a fire involving total destruction, it is impractical to have a number of different owners involved in re-planning and rebuilding.

The Conveyancing Committee is alarmed to hear that some developers are ignoring such fundamental points in arranging the legal structures in new building developments.

The committee finds it surprising that insurance companies seem to happily insure an upper floor apartment which, in the event of the total destruction of the entire block of which it forms part, could not be rebuilt without the co-operation of others who would have their own vested interests and agendas.

Two examples are worth considering.

EXAMPLE 1

A new block is being developed comprising retail units on the ground floor and basement with several stories of apartments above. The apartments were all insured in one block policy and this policy was a typical apartment insurance policy as if the apartment block was standing on its own foundations and ground. The individual retail units were left to arrange their own insurance. The legal documentation gave no rights to the apartment owners to enter on the retail area to rebuild the foundations in the event of total destruction of the entire block. Such problems were just ignored.

The best practice in such matters would be to have one management company which would insure the entire structure, recovering the insurance by way of service charge. Such arrangements may be somewhat more complicated in that two management companies are sometimes necessary and considerable care is needed in relation to the control thereof. There is a tendency to give the commercial owners (whose units are likely to be much more valuable) a greater say in the management of the company in the hope that their business experience is more likely to have the insurance reviewed on an on-going basis, which is sometimes neglected by management companies which may be run by people who have little or no experience of business.

EXAMPLE 2

A builder is selling apartments/duplex units comprising a three-storey building. This comprises an apartment on the ground floor and a two-storey duplex unit above. Each are self-contained (with their own entrance). The developer does not arrange a block insurance but leaves it to the owner of each unit to arrange their own insurance. In some cases, they also fix the owner of the ground floor apartment with responsibility for the foundations and the owner of the duplex unit with responsibility for the roof.

The best practice in such matters in the view of the committee is to treat such a development like any apartment block. The structure should be owned by a management company which should insure the entire block and be responsible for repairs of the foundations, structural fabric and roof and the common areas (although in the case of a duplex unit the only common areas would probably be water tanks in the roof space).

Conveyancing Committee

REFUND IF CONTRACT SIGNED UNAMENDED WITHIN SEVEN DAYS

The Conveyancing Committee has been asked to indicate the correct practice in the following circumstances:

The vendor's solicitor has issued a contract to the purchaser's solicitor containing the following special condition: *'If the purchaser signs the contract documentation without alteration or addition, and it is returned with the full deposit to us within seven days of today's date, then the purchaser will receive a refund of £2,000. Time is of the essence in this regard'*.

The Conveyancing Committee is of the opinion that the insertion of such a special condition is not proper practice because:

- the purchaser's solicitor could not in these circumstances advise his/her client properly in relation to title and other essential matters, and
- it might introduce a conflict of interest between the purchaser's solicitor and the purchaser, and
- it might act as an inducement for the purchaser's solicitor to overlook some aspect of the transaction to which he/she would otherwise object.

Conveyancing Committee

CANCELLATION OF FAMILY LAW BURDENS REGISTERED ON FOLIOS

Under the provisions of section 9(4) of the *Family Law Act, 1995* and section 14(4) of the *Family Law (Divorce) Act, 1996*, the registrar of the court which makes a property adjustment order when granting a decree of judicial separation or divorce is obliged to lodge a certified copy of the property adjustment order in the Land Registry for registration under section 69(1)(h) of the *Registration of Title Act, 1964*.

There is no procedure under which the burden consisting of the property adjustment order will automatically be cancelled when the instrument implementing the order is lodged in the registry for registration.

The Conveyancing Committee recommends that when a transfer implementing a property adjustment order is being drafted, the solicitor concerned should include a consent by the parties to the cancellation of the burden consisting of the property adjustment order.

Conveyancing Committee

LAW SOCIETY OF IRELAND ON E-MAIL

Contactable at
general@lawsociety.ie

Individual mail addresses take the form:
j.murphy@lawsociety.ie

CONTENTS OF DOCUMENTS SCHEDULE IN CONDITIONS OF SALE: A REMINDER

The Conveyancing Committee was recently asked to reconsider its recommendation on the question of what documents should be included in the documents schedule in contracts for sale. The committee was requested to reconsider its recommendation on the basis that many practitioners do not appear to be adhering to the practice as originally recommended and are instead listing all documents of title in the documents schedule, thereby putting a purchaser's solicitor on notice of such documents at the pre-contract stage.

The committee considered the fact that such a practice would oblige a purchaser's solicitor to carry out a full and detailed investigation of title (including the raising of requisitions on title pre-contract) before advising the purchaser to complete the contract. The committee expressed grave doubts about whether full investigations of title could be completed pre-contract in these cases in the timeframe usually available.

The committee unanimously decided that it would be extremely dangerous to change its previous recommendation, as to do so would have the effect of exposing purchasers' solicitors to claims for negligence. The committee urged that purchasers' solicitors resist conditions in contracts which seek to attempt to restrict the raising of proper requisitions on title or which put them on notice of documents at pre-contract stage which would oblige them to carry out a full investigation of title pre-contract. The committee likewise urged solicitors acting for vendors not to insert such conditions into draft contracts as, in the view of the committee, such conditions are highly undesirable and unfair to purchasers and their solicitors.

The original practice note is re-published below for the information of the profession with the addition of a new sub-paragraph (d).

'Contents of documents schedule in conditions of sale

The intention of the Law Society Conveyancing Committee in preparing the standard conditions of sale for general use was that the vendor would disclose at contract stage sufficient and adequate particulars of the vendor's title to enable a purchaser's solicitor to consider properly the adequacy of such title before completion of contracts in accordance with long-standing conveyancing practice.

The Conveyancing Committee has become quite concerned at the developing practice of vendors' solicitors furnishing to purchasers' solicitors copies of all documents relating to the vendor's title coupled with a special restrictive condition worded in the following or similar terms, viz: *"The title shall consist of the documents listed in the documents schedule and shall be accepted by the purchaser as full and adequate evidence of the vendor's title to the subject property".*

It is the view of the committee that such a practice is highly undesirable and unfair to purchasers and their solicitors as a clear attempt to restrict the raising of proper requisitions on title. Furthermore, the committee considers that the practice is also unfair to purchasers and their solicitors as by putting them on notice of such documents at the pre contract stage it obliges the purchaser's solicitor to carry out a full and detailed investigation of title before advising his clients to complete the contract. This is particularly the case where property is being sold by auction.

Even if the condition merely says "The title shall consist of the documents listed in the documents schedule", a purchaser's solicitor is by virtue of general condition 6 put on notice of certain covenants etc.

The Conveyancing Committee disapproves of the foregoing practice and recommends that, in accordance with established conveyancing practice, the documents listed in the documents schedule should be limited to:

- the root of title being shown
- any document to which title is stated to pass under the special conditions
- any document which is specifically referred to in a special condition
- planning documentation.

The Conveyancing Committee disapproves, save in very exceptional circumstances, of a practice which would unreasonably restrict solicitors for purchasers in carrying out proper and detailed investigations of title on behalf of their clients.'

(Published in the *Law Society Gazette*, March 1995, and re-published at page 12.16 of the Law Society's *Conveyancing handbook*, 2nd edition.)

Conveyancing Committee

LAW SOCIETY GENERAL CONDITIONS OF SALE

A practice appears to be developing whereby vendors' solicitors, in drafting conditions of sale, automatically insert a special condition deleting the entire of general condition 36 (the planning warranty).

While many circumstances exist where vendors are not in a position to give any planning warranty because they have no personal knowledge of the property (such as liquidators and personal representatives), the Conveyancing Committee considers that the automatic deletion of general condition 36 is unfair to purchasers and should be resisted. Vendors' solicitors should take full instructions in relation to the planning history of the property in sale and disclose any planning difficulties in the contract. The planning warranty can then be modified accordingly and, in an appropriate case, limited to the period during which the vendor has been familiar with the property.

Purchasers faced with a blanket exclusion of general condition 36 must carry out a full investigation of planning issues prior to contract. While this will sometimes be appropriate in any event, it can lead to substantial delays from the vendor's perspective in having contracts exchanged. The vendor can avoid such delays by a full disclosure of planning issues in the contract. In an auction situation, the vendor's solicitor who deletes in full general condition 36 may find him/herself dealing with pre-contract planning queries from numerous interested parties.

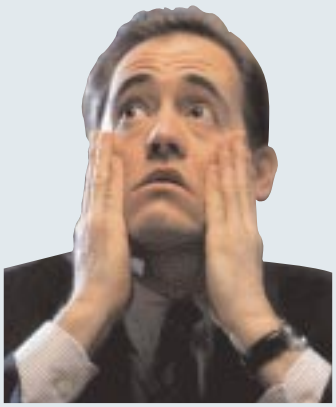
Practitioners' attention is drawn to the note published in the *Law Society Gazette* in October 1995 (and on page 12.21 of the *Conveyancing handbook*), an extract from which is reproduced below.

'Note:

There is a recommendation within the marginal note to general condition 36 that certain matters be dealt with expressly by special condition. Practitioners are reminded that a corresponding recommendation extends to issues arising under any of the general conditions including, inter alia, points of difficulty or doubt on warranties or compliance or as to the existence or nature of conditions referred to in general condition 36 itself. In the latter connection, the committee considers it important for an intending vendor, prior to contract, to put the prospective purchaser in possession of all material information in the spheres of planning, building control and kindred legislation, and that any inability to fulfill the requirements of general condition 36 be dealt with through the medium of special condition'.

While this note is directed at general condition 36, the same principle applies to other general conditions. Any deletion of general conditions, for reasons which are not self-evident, should be accounted for in the special conditions.

Conveyancing Committee



In a corner

What to do when the CAB comes to call

Continuing our series on coping with crisis situations, Mary Keane explains what you should do if officers from the Criminal Assets Bureau call to your office with a warrant

Under section 14 of the *Criminal Assets Bureau Act* of 1996, the Criminal Assets Bureau can obtain a search warrant from a district judge where the judge is satisfied that there are reasonable grounds for suspecting that 'evidence of or relating to assets or proceeds deriving from criminal activities, or to their identity or whereabouts' is to be found in any place.

On occasion, section 14 warrants have been issued in respect of client information held at solicitors' offices. In these circumstances, the usual format is that a number of CAB officers will attend, without notice, at the solicitor's offices, will produce the warrant and will ask to examine the client's file(s) and the accounting/computer records relating to transactions undertaken on behalf of the client. Often, these will be conveyancing transactions and the purpose of the examination is to establish a paper trail in relation to the purported disposal/laundering of assets derived from criminal activities. In most cases, there is no suspicion that the client named on the warrant was knowingly involved in money laundering, but the CAB may believe that the transaction formed part of a chain of transactions engaged in by a person under investigation.

It is worth noting that the bureau is a multi-disciplinary body and its officers comprise members of the Garda Síochána, officers of the Revenue Commissioners and officers of the minister for social welfare. Consequently, the criminal activity being investigated can vary across the spectrum from social welfare offences to tax offences to mainstream criminal offences. Non-garda bureau officers have a statutory guarantee of anonymity and do not have to show evidence of identity. However, at least one of the visiting officers must be a member of the gardaí and, on request, must identify himself as such.

The warrant will follow a standard layout, which can be divided into four constituent parts:

- **The introduction.** This will identify the garda member who brought the application, and will contain the statement by the judge that he is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal activities or to their identity or whereabouts is to be found at the solicitor's offices
- **A description of the material.** This will usually be divided into (i) financial records (cheques, copy cheques, bank drafts, receipts and so on), and (ii) non-financial records (correspondence, notes, memoranda, contracts, requisitions, title documents and so on). Both (i) and (ii) will be qualified so as to exclude items 'subject to legal privilege'. The name(s) of the persons to whom the warrant relates and their address(es) will be listed. In some instances, the warrant will apply to evidence relating to a specific named property; in others, it will apply to evidence relating to 'property transactions' on behalf of the named person; in others still, it will apply to evidence relating to 'monies and goods' received by the named person. This part of the warrant will usually conclude with the name and address of the solicitor's offices, being the place authorised to be searched under the terms of the warrant
- **The authorisation.** This part of the warrant will name the garda member authorised to conduct the search and will empower him to enter the premises within one week, to search it and any person found there, and to seize and retain any material which he believes to be evidence of or relating to the proceeds of criminal activities. The warrant will also authorise him to 'exercise the powers contained in section 14(6) of the *Criminal Assets Bureau Act, 1996*', that is, to require any person present to give their name and address and to arrest any person who refuses to give his name and address or who obstructs the officer in carrying out his duties
- **Signature and date.** The warrant will conclude with the signature of the district judge and the date the warrant was issued.

WHAT SHOULD YOU DO?

If the CAB arrives at your office with a warrant, you should:

- Read the warrant carefully and take a copy
- Check that it has been issued within the last week
- Comply with its exact terms, that is, in relation only to the persons named and the material listed
- Satisfy yourself that there is nothing in the documentation that is subject to legal privilege. If any items are privileged, inform the bureau officer
- If a file or documents are being retained by the bureau officer and if time allows, copy the file. Otherwise, obtain a receipt from the bureau officer
- Take care not to disclose any information in relation to other clients of the office
- Inform your client that you have been required by law to hand over his file/documentation to the authorities
- Prepare and retain an attendance note on the visit
- If in doubt, contact the Law Society.

Because it is anathema to the training of a solicitor to disclose any information in relation to his client to a third party, the production of a CAB warrant can cause great consternation in

a solicitor's office. While a warrant issued by a court must be complied with, nevertheless it should be complied with strictly within its terms and not beyond. A warrant does not constitute an authorisation for a general trawl through all and any files in a solicitor's office. It has been issued on the basis of sworn evidence and for a specific purpose. As with any authorisation, it must be exercised reasonably. A solicitor should assist the CAB officers in complying with the terms of the warrant, but should also be conscious of his client's rights and his own professional obligations. In particular, a solicitor should ensure that information in relation to other clients who are not the subject of the warrant are not disclosed to the authorities.

In relation to the exemption for items subject to legal privilege, the CAB will accept a solicitor's assurance that a particular item/document/file is subject to legal privilege and a solicitor should always satisfy himself that there is no privileged item on a file before releasing it.

There has been a question mark over a solicitor's right to notify his client that his file has been seized by the CAB. Under section 58 of the *Criminal Justice Act, 1994*, any person who makes a disclosure which is likely to prejudice an investigation by the authorities into drug trafficking or money laundering is open to criminal prosecution himself. However, a solicitor's relationship with his client is of a special nature and the section should not be read in isolation.

Section 58 provides for a defence of 'lawful authority or reasonable excuse' to a prosecution for disclosure. In addition, the judgment of Kinlen J in *Michael E Hanahoe & Co v District Judge Hussey, the Garda Commissioner and the Attorney General* indicates that a solicitor served with an order to produce client documents under section 63 of the *Criminal Justice Act, 1994* 'would have been bound or at least entitled' to inform his client. It seems reasonable to conclude that a similar entitlement would apply where a section 14 warrant is involved and the CAB has informally indicated that this accords with its view. As a matter of good practice, a solicitor might indicate to the CAB officers his intention to notify his client. G

Mary Keane is deputy director general of the Law Society.

01 284 8484

SOLICITORS' HELPLINE

The Solicitors' Helpline is available to assist every member of the profession with any problem, whether personal or professional.

The service is completely confidential and totally independent of the Law Society.

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Personal injury judgments

Employer liability – negligence – breach of statutory duty – employee restarting a machine in a factory unaware that a fitter was inside – nervous shock – post-traumatic stress disorder – whether employer liable – review of authorities

CASE

***Eithne Curran v Cadbury (Ireland) Limited*, Circuit Court in Dublin, before Judge Bryan McMahon, judgment of 17 December 1999.**

THE FACTS

Eithne Curran, a woman with three adult children, was employed by Cadbury (Ireland) Limited at a factory in Coolock, Dublin. On 16 March 1996, Mrs Curran, with another operator, was working near a moving belt which carried bars of chocolate to her workstation where they were packed by her and her workmate. The machine feeding out the bars of chocolate stopped without notification to her. She proceeded to re-start the machine and immediately became aware that there was a fitter inside the machine, repairing it, out of her sight. She got a great fright and thought she had killed or done serious injury to the fitter inside the machine. Mrs Curran claimed she suffered a serious psychiatric illness due to the negligence, breach of duty and breach of statutory duty of Cadburys.

Cadburys denied liability. Mr Breen, a member of the company's management, stated that he and another manager, Mr Carolan, while doing their rounds in the factory, noticed there was something wrong with the machine and they called a fitter to assess the problem. A loose screw was identified as the problem which could be repaired in a couple of minutes. The machine was closed down and the fitter went to work on the repairs. All of this was done out of the sight of Mrs Curran. Mr Breen stated he warned Mrs Curran's workmate about what was going on. Mrs Curran alleged that she was not informed that the fitter was in the machine. Accordingly, she went to the control panel and pressed the start button, as was her normal practice. It was then, as Mrs Curran put it, 'all hell broke loose'.

Mr Breen stated in evidence that he signalled through perspex glass to Mrs Curran's workmate that the machine would be shut down while the fitter was working on it on the blind side from Mrs Curran. Mr Breen stated he communicated the repairs would take approximately three minutes and that the machine should not be restarted while the work was in progress. That message was, according to Mr Breen, communicated by a series of hand signals from behind the perspex panel to Mrs Curran's fellow employee. Mrs Curran gave evidence that, whatever might have passed between Mr Breen and her fellow operative, the message was never passed on to her by anyone.

Evidence was given that Mr Breen was the only person who could see both the fitter and the control panel at the same time when the repairs were in progress. While Mr Breen was on guard, as it were, he received a call on his telephone bleeper. He left his post of vigilance and it was in his absence that Mrs Curran re-started the machine.

Evidence was given to the court by a consultant psychiatrist that Mrs Curran suffered post-traumatic stress disorder as a result of the accident. One doctor considered the condition as of 'moderate intensity', while another considered it 'a mild form'. One of the doctors stated that when the fitter emerged from the machine, Mrs Curran was in 'a state of extreme shock'. Following the accident, she became very anxious and complained of bouts of diarrhoea and tightness in her chest. She had nightmares and her self-esteem was diminished. There was evidence that she was much less outgoing and developed a phobia regarding the site of the accident, was agitated and tearful when describing the incident. Mrs Curran had received a course of psychotherapy but also became depressed and received medication from time to time. The 16-session course of psychotherapy addressed problems with her self-esteem and confidence. She became more dependent on support from her family. At the date of the trial, more than three-and-a-half years after the accident, she was still on anti-depressants but, according to medical reports, a favourable prognosis was anticipated and it was expected that her residual problems would resolve within a further 12 months.

A consultant psychiatrist confirmed that Mrs Curran was anxious, tense, red in the face, distressed and tearful when talking about the experience. Initially, the psychiatrist recommended medication to inhibit panic. When the psychiatrist reported in February 1999, Mrs Curran was somewhat improved, but still taking anti-depressant and anti-anxiety medicine. She was still experiencing occasional flashbacks but had begun to emerge from 'an emotional shell she had constructed around herself'. The psychiatrist said she would continue to improve and she would be back to normal after another six to nine months of medication.

THE JUDGMENT

Judge Bryan McMahon delivered a written judgment on 17 December 1999. Having outlined the facts as above, he stated that Mrs Curran, unlike other nervous shock cases which came before the Irish courts in recent years, was a

participant in, and not a mere observer of, the accident. She started the machine; she pressed the button; she heard the commotion and screams, as the fitter, although out of sight, was quite close to her. She unwittingly caused the injuries to the fitter. Thinking she had killed or seriously injured a fellow employee, she quickly turned off the power and then ran some 45 yards around the machinery to see the result of her work. As she ran, she was filled with fear, apprehension and probably, according to the judge, 'irrational guilt'. The judge referred to her evidence when she stated she was 'blinded with panic'. She could not see the fitter's face. All she saw was a blur. She feared the worst.

The judge stated that post-traumatic stress disorder was a recognised psychiatric illness, referring to *Mullally v Bus Éireann* ([1992] 1LRM 722). He considered in some detail the terminology used in certain jurisdictions in the context of people who had suffered nervous shock and who claimed compensation. The judge referred to the tendency in recent years, especially in English cases, to divide victims into two categories, primary victims and secondary victims. But he added that he was not convinced that the separation of victims into these two categories did anything to assist the development of legal principles that should guide the courts in this complex area of the law.

Judge McMahon quoted Hamilton CJ in *Kelly v Hennessy* ([1995] 3 IR 253), the leading case in the matter, noting that the chief justice did not refer to the distinction between primary and secondary victims. However, the judge said it was clear that Mrs Curran was a primary victim.

Basic principles in relation to nervous shock

The court noted that the Supreme Court in *Kelly v Hennessy*, in addressing the problem of compensating victims for negligently-inflicted 'nervous shock', approached the issue from basic principles. In *Kelly*, Hamilton CJ, with whom Egan J agreed, started his analysis with the neighbour concept expressed in *Donoghue v Stevenson* ([1932] AC 562). The chief justice listed five conditions which had to be complied with before recovery would be allowed. Judge McMahon noted, bearing in mind the Supreme Court's approach, it was appropriate that he too should approach the present case from basic common law principles. He noted that although there was controversy and uncertainty still enveloping this branch of the law in England, and he referred to the most recent House of Lords pronouncements, he considered it was prudent to be guided by the basic principles 'and to observe good navigational advice: small boats should sail close to the shore especially when the sea is cross and uncertain'.

Judge McMahon noted that Mrs Curran, in addition to being a neighbour in the 'Atkinian' sense (a reference to Lord Atkin's dictum in *Donoghue v Stevenson*), was also an employee of Cadburys and the legal relationship between them imposed some obligations (tortious and contractual) on Cadburys as an employer. He stated that the duty of the employer towards his employee is not confined to protecting the employee from physical injury only; it also extends to protecting the employee from non-physical injury such as psychiatric illness or the mental illness that might result from negligence or from harassment or bullying in the workplace. The judge referred to *Walker v Northumberland County Council* ([1995] 1 All ER 737), where the English courts imposed liability where the plaintiff in that case foreseeably suffered a nervous breakdown because of unreasonably stressful working conditions imposed on him by his employer. The judge noted that there was no reason to suspect that courts in Ireland would not follow this line of authority.

He considered that the question arose as to whether this kind of harm in Mrs Curran's case (that is, psychiatric illness) could reasonably be foreseen as a consequence that would follow from Cadbury's lack of care in the circumstances. He stated it was clear that Cadburys had failed to take reasonable care in the circumstances for the safety of its employees. In particular, when management appreciated the risk involved, Mr Breen as a manager fell short of what a reasonable employer would do.

First, according to the judge, Mr Breen failed to communicate the danger of restarting the machine in a clear, unambiguous way to all people in the vicinity who were likely to restart the machine: 'The tick tack sign language used in the noisy atmosphere and through the perspex glass was more appropriate to the coded language required to the bookmakers' ring where secrecy was at a premium than what was required in ensuring clear communications in a situation where death and serious personal injuries are present'.

Second, the judge noted that Mr Breen left his post of vigilance to take a telephone call; there was no evidence that the call was so urgent that it should take priority over the task at hand, which Mr Breen testified would only take three minutes in any event.

Third, Mr Breen, and the management generally, failed to: a) devise a more adequate warning system (a simple warning notice on the control panel while repairs were in progress would have prevented an unsuspecting operative from restarting the machine); and b) devise a system which would ensure that the machine would be knocked off while it was being repaired. The judge noted that even if Mr Breen did give a coherent warning to Mrs Curran's fellow employee, the message was not passed on to Mrs Curran, whose evidence on this he accepted.

Issue of liability for nervous shock

Having referred earlier in his judgment to certain basic principles relating to nervous shock, Judge McMahon proceeded to consider the law in some detail in the context of the harm or the psychiatric injury suffered by Mrs Curran. He stated that Irish authorities clearly established that the duty to compensate for nervous shock in negligence cases extends only to recognised psychiatric illnesses. He noted that in the present case the medical evidence of doctors was that Mrs Curran suffered from a mild to moderate post-traumatic stress disorder and this had been accepted in this jurisdiction as a recognised psychiatric illness (*Mullally v Bus Éireann*, above). Second, the judge stated that such harm is recognised as compensatable in negligence only if it is brought about by a shock or sudden event. He noted that compensation in this jurisdiction was not available for general grief or sorrow, or for a condition which was brought about over a period of time, for example, by the wear and tear which caring parents might suffer if they have to look after a son or daughter severely injured in an accident (*Kelly v Hennessy*, above).

The judge emphasised that the psychiatric illness as harm must be reasonably foreseeable by the employer. In determining whether such psychiatric illness was reasonably foreseeable or not, it would be relevant to take into account, according to the judge, that there was fear for one's own physical safety, the safety of one's family, or the safety of one's fellow employees or fear for the safety of one's home. The judge quoted authorities for all of these propositions.

In Mrs Curran's case, the judge noted it was clear from the evidence and from the facts already outlined that the harm was reasonably foreseeable. If Mrs Curran switched on the machine while the fitter was inside the housing of the machine, then the fitter would in all probability be physically injured and Mrs Curran would get a great fright which would easily result in a serious assault on her nervous system and result in psychiatric illness. 'The noise, the screams, the malfunctioning of the machine, the shout of alarm from others, all assaulting the plaintiff through her own senses would frighten the most courageous', according to the judge. Added to this was the guilt factor, irrationally assumed by Mrs Curran as a result of her causative role, and 'one that has a combination that would frighten the bravest soul'. The psychiatric illness that the events triggered was acknowledged by the doctors who had given the evidence.

In the circumstances, the judge stated there was a breach of the common law duty to take care; Cadburys attracted liability vicariously through the negligence of its employees. Mrs Curran suffered a compensatable injury which was reasonably foreseeable in the circumstances.

Liability must follow, he said, unless there were public policy reasons which would operate against Mrs Curran. He noted that evidentiary problems for proving psychiatric illness in Ireland were exaggerated. The evidentiary issues are no more difficult than proof required in some types of back injuries which are not detectable by x-ray or scanning process.

Judge McMahon considered the general conditions necessary to recover in nervous shock cases and referred to the criteria set out by Hamilton CJ in *Kelly*. Judge McMahon quoted as follows from the judgment of the chief justice:

'*1. The plaintiff must establish that he or she actually suffered "nervous shock". This term has been used to describe "any recognisable psychiatric illness" and a plaintiff must prove that he or she suffered a recognisable psychiatric illness if he or she is to recover damages for "nervous shock" … The plaintiff must establish that his or her recognisable psychiatric illness was "shock induced" … A plaintiff must prove that the nervous shock was caused by a defendant's act or omission … The nervous shock sustained by a plaintiff must be by reason of actual or apprehended physical injury to the plaintiff or a person other than the plaintiff … If a plaintiff wishes to recover damages for negligently-inflicted nervous shock, he must show that the defendant owed him or her a duty of care not to cause him a reasonably foreseeable injury in the form of nervous shock. It is not enough to show that there was a reasonably foreseeable risk of personal injury generally*'.

The judge noted that Mrs Curran met all the requirements and there was nothing to prevent her from recovering. He posed the question as to whether an unwitting participant in an accident who suffered psychiatric illness could successfully sue a defendant who, through his negligence, put the plaintiff in a position that she thinks she has killed or caused serious bodily injury to a fellow employee. Judge McMahon had no doubt on principle and under the general requirements set down by Hamilton CJ in *Kelly* that Mrs Curran could recover in such circumstances.

He considered, based on authorities he quoted, that Mrs Curran could recover since the employer owed her a duty of care not to expose her to reasonably foreseeable psychiatric illness caused by the employer's negligence which caused Mrs Curran to think she had seriously injured her fellow employee.

Breach of statutory duty

In addition to Cadburys' breach of its common law duty of care, the judge considered whether Cadburys was also in breach of its statutory duties. Mrs Curran's legal team had referred in particular to the *Safety, Health and Welfare at Work (General Application) Regulations, 1993* (SI no 44 of 1993) and especially to paragraph 13 of the fifth schedule, which reads as follows:

'*13(a) where possible, maintenance operations shall be carried out when equipment is shut down*

(b) where this is not possible, it shall be necessary to take appropriate protection measures for the carrying out of such operations or for such operations to be carried out outside the area of danger'.

Mrs Curran alleged, among other things, a breach of this provision. Judge McMahon found Cadburys in breach of this regulation, and since Cadburys should have foreseen that Mrs Curran might have suffered psychiatric illness for their failure in this regard, Mrs Curran was also entitled to recover on this ground. The judge noted that in defining 'personal injury', section 2 of *the Safety, Health and Welfare at Work, Act, 1989* included 'any disease and any impairment of a person's physical or mental condition'. The judge considered the definition of 'personal injury' in the 1989 act and stated it was clear that the statutory duty in the present case obliged Cadburys to avoid both physical and mental injury, and if Cadburys foresaw some personal injury it could be argued that such a person would nevertheless be liable for any personal injury that follows, even if this were mental impairment only. He noted that Mrs Curran did not have to rely on this interpretation, since he had found as a fact that Cadburys in the present case could foresee psychiatric illness and that is what Mrs Curran suffered.

Judge McMahon allowed Mrs Curran to recover on the following grounds:

- She was owed a general duty of care on proximity and neighbourhood principles, and there had been a breach of that duty which caused her reasonably foreseeable psychiatric harm. Further, there were no good policy reasons in her case which should deny the duty of care
- She complied with the five conditions laid down by Hamilton CJ in *Kelly v Hennessy*
- She was an 'involuntary participant' due to Cadburys' negligence
- Cadburys was in breach of a statutory duty which resulted in 'an impairment of Mrs Curran's physical or mental condition'. G

THE AWARD

Having held Mrs Curran suffered a very unpleasant experience which had a serious effect on her emotional life for three-and-a-half years, that her family life and her social contacts had been fractured (she was on the mend but there was some way to go before she was back to her old self), Judge McMahon awarded her £12,000 for pain and suffering to date, and £5,000 for future pain and suffering. To this, he added £1,700 for agreed special damages, making a total of £18,700. He also awarded costs to Mrs Curran.

This judgment was summarised by solicitor Dr Eamonn Hall from a written judgment of Judge Bryan McMahon which is available in the Law Society library.

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CHILDREN

Adoption and family law

Family law – children – welfare – adoption – An Bord Uchtála – custody – fit person order – definition of 'abandonment' – whether child had been abandoned by parents – whether ethnic or cultural background of child a consideration in making adoption order – whether adoption order should be made – Adoption Act, 1988, *ss2, 3* – Children Act 1908

The High Court had granted the applicant an order that An Bord Uchtála issue a declaration authorising the adoption of the child at the centre of the dispute. The trial judge had found that the child had been subject to ill-treatment by his parents and that this had amounted to abandonment on their part. The parents of the child appealed against this order. The Supreme Court upheld the order of the High Court. On the evidence presented in the High Court, the trial judge was entitled to hold that the injuries the child had suffered were caused by his parents. The child had suffered substantial physical and psychological damage. The trial judge was entitled to come to the conclusion that the parents had in effect 'abandoned' their child as set out under section 3 of the *Adoption Act, 1988*. The appeal would therefore be dismissed.

***Southern Health Board v An Bord Uchtála and MO'D*, Supreme Court, 11/07/99** [FL2378]

COMPANY

Contract and costs

Company law – practice – security for costs – breach of contract – breach of trust – breach of fiduciary duty – duties of directors – whether defendants had made a prima facie *defence* – Companies Act, 1963, *section 390*

The plaintiff and the defendants had been involved in a business venture. The business relationship eventually broke down and the business itself declined. The plaintiff sued the defendants, alleging that the defendants were responsible for a downturn in business. The plaintiff brought a motion for judgment in default of defence and the defendants in reply sought orders for security of costs. Barr J was satisfied that the defendants had a *prima facie* defence to the claim of the plaintiff. In view of all the circumstances, the defendants had demonstrated that they were entitled to the orders for security of costs that they were seeking.

***Wexford Rope v Gaynor and Modler*, High Court, Barr J, 06/03/2000** [FL2537]

Contract, landlord and tenant

Contract – mistake – rescission – trust property – misrepresentation – settlement reached – ownership of property – evidence of legal counsel involved in negotiations – state of mind of parties – company law – directors' meeting – notice of meeting – advice of accountant – whether settlement included certain property – whether proceedings by plaintiff company properly authorised – Companies Act, 1963, *sections 132, 134* – Companies Act, 1990, *section 193*

The dispute centered around the ownership of certain pieces of furniture which were housed in Blarney Castle. The plaintiff had entered into a settlement whereby he purported to recognise the ownership by the defendant of furniture in question. The plaintiff subsequently claimed that he had entered into the settlement on the basis of a representation which was untrue and now sought rescission of the said settlement. McCracken J held that the onus to prove the representation was untrue lay on the plaintiff and this onus had not been discharged. Accordingly, the relief sought was refused. In a separate matter, McCracken J held that the resolution purportedly passed by the plaintiff company (the second plaintiff) of notice of the intention to issue proceedings was not validly passed as all the shareholders were not notified. Accordingly, the second plaintiff was not legally involved with the proceedings.

***Colthurst and Tenips Ltd v Colthurst*, High Court, McCracken J, 09/02/2000** [FL2278]

Further and better discovery

Allegation that full disclosure of relevant documentation not made – that defendants conspired against the plaintiff – whether court should look behind affidavit of discovery – whether court should order further and better discovery – Companies (Amendment) Act, 1990

The plaintiff had been involved in a business venture with the second defendant. The plaintiff subsequently alleged that the second defendant had acted in concert with the first defendant to bring about a state of deadlock in the business venture, forcing the plaintiff to sell his stake in the venture at a substantial undervalue. The plaintiff initiated proceedings against the defendants. The plaintiff brought a motion of discovery which the defendants claimed to have complied with. The plaintiff was not satisfied with the discovery made and sought further and better discovery. The High Court rejected the application and the plaintiff appealed. The Supreme Court dismissed the appeal, holding that the plaintiff had failed to satisfy the court that there was further documentation in existence in the possession of the defendants which was relevant to the case and had not yet been discovered.

***Phelan v Goodman*, Supreme Court, 24/01/2000** [FL2406]

Insolvency

Liquidation – official liquidator's costs – connected companies – method of calculation – exercise of court's discretion – whether liquidator entitled to payment of fees by reference to gross realisation of companies involved – Companies Act, 1963, *s228* – Insurance (No 2) Act, 1983

The application concerned the liquidation of a number of companies in the PMPA Group. The liquidation had been in progress for a number of years. In conjunction with the liquidation, an administrator had been appointed pursuant to the provisions of the *Insurance (No 2) Act, 1983*. The liquidator sought payment of fees for the work done and calculated the amount by allocating the hours worked to the various companies by reference to their gross realisations. In effect, this meant that the liquidator attributed the hours worked to companies in the group that had assets behind them regardless of the actual amount of hours worked on behalf of those companies. The administrator was concerned that this would result in the assets of Car Replacements Limited (one of

the companies in the group) being used to pay the liquidator's fees and brought the present application. Murphy J held that, despite its infirmities, the methodology proposed by the liquidator was the best solution in view of all the circumstances and dismissed the application.

***Car Replacements (In Liquidation)*, High Court, Murphy J, 15/12/99** [FL2270]

Local government and planning

Planning – development – local government – plaintiff applied for planning permission – permission initially refused but granted on appeal – applicant company formed for judicial review proceedings – locus standi *of applicant – security for costs – pre-emptive costs order – discretion of court – whether applicant obliged to furnish security for costs* – Local Government (Planning and Development) Act, 1963 – Companies Act, 1963, *section 390* – Courts (Supplemental Provisions) Act, 1961 – Rules of the Superior Courts, 1986 *(SI 84)*, *order 84*, *rule 20(7)*,*order 99*, *rule 1(1)*

The second-named respondent (McDonalds) had been granted planning permission on appeal in respect of an intended development. The applicant had been formed by objectors who sought judicial review of the decision to grant permission. McDonalds sought an order for security of costs. The applicant opposed such an order and were themselves seeking a pre-emptive costs order that would prevent the applicant being made liable for costs of any other parties that may arise in the proceedings. Laffoy J held that the applicant had not established any basis for an entitlement to a pre-emptive costs order and held that McDonalds were in fact entitled to an order of costs against the applicant and stayed all further proceedings pending the furnishing of security.

***Village Residents v An Bord Pleanála (& Others)*, High Court, Laffoy J, 23/03/2000** [FL2543]

CONSTITUTIONAL

Financial services and negligence

Proceeds of claim – fire policy – property – land law – family home – allegations of malpractice against solicitors – affidavit stated that property in question was not family home – whether statement of claim disclosed any cause of action – whether action against defendant's solicitors well-founded – whether proceedings vexatious – Family Home Protection Act, 1976 – *Rules of the superior courts, 1986, order 19, rule 28*

The plaintiffs had initiated proceedings against the defendants claiming that they had been wrongly deprived of proceeds from a fire policy. As part of the proceedings, the plaintiffs alleged that the solicitors who had acted on behalf of the first-named defendants were guilty of negligence. The solicitors brought a motion seeking to have the claim against them dismissed. The Supreme Court granted the application, holding that the solicitors had merely acted on foot of instructions given to them. There was accordingly no cause of action against the solicitors and this part of the claim would be dismissed.

***Moffitt v Bank of Ireland*, Supreme Court, 19/02/99** [FL2075]

CRIMINAL

Defamation

Allegation that individual involved with Provisional IRA – defendants pleading partial justification – mitigation of damages – further and better particulars sought – doctrine of res judicata – Defamation Act, 1961, *section 22*

The plaintiff had sued the defendants on the basis that an article appearing in the *Sunday Times* had referred to him as one of the organisers behind an IRA bombing campaign. The plaintiff had been successful in the High Court and had been awarded £15,000 damages. On appeal, the Supreme Court ordered that the case be retried. The plaintiff moved an application to have the defence of partial justification struck out. The application was dismissed and the plaintiff appealed. The Supreme Court dismissed the appeal, holding that the defendants were entitled to rely on whatever defences were available to them.

***Murphy v Times Newspapers Ltd (& Others)*, Supreme Court, 17/01/2000** [FL2437]

Practice and procedure

Self-incrimination – right to silence – privacy – confidentiality – refusal to answer questions – judicial review – judges' rules – statutory interpretation – evidence received by judge of the District Court for the purpose of investigation in France – role of District Court – whether applicant obliged to answer questions posed – whether district judge entitled to hold witness in contempt for refusal to answer questions – Petty Sessions (Ireland) Act 1851, *section 13* – Criminal Justice Act, 1984, *section 4* – Criminal Justice Act, 1994, *section 51* – Bunreacht na hÉireann, *article 34*

The applicant was being questioned in regard to an investigation conducted pursuant to section 51 of the *Criminal Justice Act, 1994*. The applicant declined to answer certain questions, and sought judicial review of the respondent's decision to compel him to answer those questions. Held by McGuinness J in refusing the relief sought. In general terms, the applicant should be compelled to answer questions posed in the inquiry and did not have a right to silence. The applicant would be entitled to claim the privilege against self-incrimination if it could be shown that there was a realistic prospect that answers furnished could be used against him in criminal proceedings. The applicant had as yet not produced any such evidence.

***de Gortari v Minister for Justice*, High Court, McGuin-ness J, 18/01/2000** [FL2536]

Sexual offences

Prohibition – trial – constitution – denial of fair procedures – judicial review – applicant charged with sexual offences against children – applicant sought to prevent trial from proceeding – applicant claimed that length of delay between date of alleged offences and prosecution of offences was so inordinate as to deprive applicant of fair trial – Offences Against the Person Act 1861, *sections 47, 62*

The applicant had been charged with a number of sexual offences alleged to have occurred in a period between 1967 and 1974. The applicant sought to prohibit the impending trial from proceeding. The applicant was first interviewed in relation to the alleged offences in 1995. The respondent contended that in cases such as these, involving alleged sexual assaults on children, special factors intervened particularly in regard to the length of time it may take for the allegations to surface. McGuinness J rejected the argument that the delay involved should prevent the trial from proceeding. The difficulties that the applicant may face could be dealt with in rulings by the trial judge. The application was dismissed.

***SM v DPP*, High Court, McGuinness J, 20/12/99** [FL2400]

DAMAGES

Garda Síochána

Tort – personal injuries – garda compensation – recurring back injury – whether compensation adequate – Garda Síochána (Compensation) Act, 1941 – Garda Síochána (Compensation) (Amendment) Act, 1945

The applicant had sustained injuries while on duty in a patrol car. Another accident occurred which compounded the injuries already received. The applicant brought a claim for compensation. Murphy J held that in the circumstances an award of £25,000 seemed appropriate.

***Walsh v Minister for Finance*, High Court, Murphy J, 13/03/2000** [FL2505]

DISCRIMINATION

Indirect sex discrimination

Equal treatment – self-employed – professions – doctors – indirect sex discrimination – pension

The European Court of Justice has held that a self-employed person may claim indirect sex discrimination if, after an individual assessment of each rule or provision applicable to her/his profession, the national court finds that they statistically affect a significant number of persons, unless it is shown that the measures in question are objectively justified by, for example, the pursuit of a legitimate aim of the social policy of the member state.

ECJ, Case C-226/98, 06/04/2000 [FL2509]

Positive discrimination

Equal treatment – sex discrimination – employment – public administration – positive discrimination

In a significant judgment, the European Court of Justice has confirmed the acceptability of positive discrimination in EU law, provided that national measures did not impose absolute preferential treatment in favour of women.

ECJ, Case C-158/97, 28/03/2000 [FL2447]

EMPLOYMENT

Injunction

Disciplinary inquiry – natural justice – bias – pre-judgment – contempt – orders for attachment and committal – costs – nemo iudex in sua causa – audi alteram partem – *contract of employment – computer records – deletion of computer files – sequestration of assets – whether plaintiff entitled to salary while suspended – whether defendants in breach of court orders – whether defendants' agent appropriate person to carry out investigation – whether plaintiff was agricultural worker – whether appropriate to award costs on a solicitor-and-client basis* – Industrial Relations Act, 1990 – *Code of Practice on Disciplinary Procedures (Declaration) Order 1996*

The plaintiff had been informed that the defendants' personnel manager proposed to conduct an enquiry into allegations that the plaintiff had made improper use of the defendants' stud facilities and resources. The plaintiff had brought proceedings claiming that the proposed course of the inquiry was unfair and that the personnel manager was not a suitable person to head the inquiry. Laffoy J granted the relief sought on 22 December 1998. Subsequently, when the plaintiff returned to work, the defendants questioned the plaintiff on a number of issues and suspended the plaintiff. The plaintiff in the present proceedings claimed that the defendants had acted in breach of the previous court orders. Budd J upheld the arguments of the plaintiff and ordered that the injunctions restraining the defendants from concluding the inquiry continue. Budd J also held that the defendants, due to their disregard of previous orders, be made liable for the costs of motions and the previous interlocutory hearing on a solicitor-and-client basis.

***Charlton v Aga Khan's Stud*, High Court, Budd J, 22/02/2000** [FL2458]

Negligence

Personal injuries – employer's liability – safe system of work – duty of care – negligence – contributory negligence – accident at work – appeal – findings of fact by trial judge – supervision – use of ladder – experienced workman – Civil Liability Act, 1961

The plaintiff had been injured in an accident at work while climbing a ladder. The plaintiff alleged that the employer had been negligent in not providing a safe system of work. The defendant claimed that the plaintiff was an experienced workman who had known of the dangers involved and was entirely responsible for the accident. The plaintiff's claim was dismissed in the High Court. On appeal, the Supreme Court held that notwithstanding the negligence of the plaintiff, the employer was also negligent in failing to provide a safe system of work. Accordingly, the defendant was held to be liable for the accident to the extent of 60%, while the plaintiff was found to have negligently contributed to the incident for the remaining 40%. The case was then remitted to the High Court for an assessment of the damages.

***McSweeney v McCarthy*, Supreme Court, 28/01/2000** [FL2416]

ENVIRONMENTAL

Land law

Injunction – dredging operation – destruction of habitat – wild birds – alternate compensatory feeding ground – environmental impact statement – role of Dúchas – whether respondent complying with terms of original order – whether exact boundaries of area in question had been set out

The appellant had issued proceedings against the respondent seeking an injunction restraining the respondent from continuing with certain works in the Boyne Estuary. On 10 September 1999, O'Sullivan J had granted the order sought. As further disputes arose, the matter then proceeded to the Supreme Court where it was held that proceedings be remitted to the High Court to determine whether the respondent was complying with the original court order. O'Sullivan J held that, although the respondent was in breach of the original court order, the infractions in question were of a more technical nature rather than a substantial one. Nevertheless, the injunction would continue until a map denoting the area to be worked upon had been agreed and clearly mapped out.

***Dubsky v Drogheda Port Co*, High Court, O'Sullivan J, 22/02/2000** [FL2401]

Solicitor's lien

Order for costs made against first and second defendants – appeal – plaintiff company in liquidation – plaintiff's solicitor seeking charging order – application by plaintiff's solicitor to secure costs awarded to plaintiff from orders relating to first and second defendants – other defendants proposing to issue garnishee proceedings to attach all sums due to plaintiff – Legal Practitioners Act 1876, *section 3*

The applicant had acted as the plaintiff's solicitor. The plaintiff was a building company which had been placed in receivership. The plaintiff had orders for costs made in favour of it against the first two defendants and orders of costs made against it in favour of the third, fourth and fifth defendants. The plaintiff's solicitor sought a charging order in respect of the property of the plaintiff by virtue of section 3 of the *Legal Practitioners Act 1876*. The Supreme Court held the application was properly made and the solicitor was entitled to a charging order in respect of the monies due and owing to it by the plaintiff under the orders of costs relating to the first and second defendants.

***Lismore Buildings Ltd v Bank of Ireland*, Supreme Court, 28/01/2000** [FL2405]

INSOLVENCY

Practice and procedure

Bankruptcy summons – service of summons – practice – application for substitution of service – public advertisement – petition for adjudication of bankruptcy – Irish Bankrupt and Insolvent Act 1857 – Bankruptcy (Ireland) Amendment Act 1872 – Bankruptcy Act, 1988 – Statute of Limitations, 1957 – Rules of the Supreme Court (Ireland) 1905 – Rules of the Superior Courts, 1986 – Rules of the Superior Courts, 1989

The petitioner sought a court order permitting the service of the petition for adjudication of bankruptcy by way of public advertisement. Laffoy J granted the order sought. The judge was satisfied that such an order should only be granted in circumstances where all the other

modes of service permitted under the relevant legislation had not proved feasible. In balancing the respective rights of the petitioning creditor and that of the debtor, the court was satisfied that it was just to permit the publication of such a notice by way of public advertisement.

***Bank of Ireland v DH*, High Court, Laffoy J, 20/03/2000** [FL2533]

INTELLECTUAL PROPERTY

Trade marks/patents

Intellectual property – community trade marks – distinctive character – trade mark devoid of distinctive character in English and French – distinctiveness needs to be proved in both countries

Ford's application for registration of *Options* as a community trade mark was refused on the basis that O*ptions* was devoid of any distinctive character in French and English. On appeal, which was dismissed, the applicant produced evidence to show that that trade mark had been used in the supply of the services concerned in Belgium, Denmark, the Netherlands, Portugal, Sweden and the UK, but not France. Under article 7(1) of the *Community Trade Mark Regulation*, trade marks which are devoid of any distinctive character shall not be registered, notwithstanding that the grounds of non-registrability relate to only parts of the community, unless, under article 7(3), the trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it. Before the court, the applicant asserted that distinctiveness acquired through use can be demonstrated in a substantial part of the EC fell under the article 7(3) exception. The Court of First Instance ruled that, in order to claim that a trade mark's distinctive character has been acquired by use, such distinctive character must be proved throughout the community, not just in a substantial part of it.

***Ford Motor Company v OHIM*, Case T-91/99, 30/03/2000** [FL2474]

JUDICIAL REVIEW

Planning

Local government – judicial review – locus standi – *objections by a third party – contents of site notice – defects in site notice – positioning of notice – whether applicant or members of the public misled – whether arguments on behalf of applicant were trivial – whether applicant had made out substantial grounds to seek judicial review* – Local Government (Planning and Development) Acts, 1963-76 – Local Government (Planning and Development) Regulations, 1994

The applicant had sought leave by way of judicial review to challenge a planning decision. Most of the grounds submitted by the applicant were in connection with the relevant statutory site notice. The applicant complained that there were a number of defects in the site notice that had the effect of misleading the public. This included an allegation that the proposed development had been insufficiently described. It was also contended that the contents of the notice did not conform to the relevant statutory regulations. O'Higgins J rejected the arguments of the applicant, holding that the grounds advanced by the applicant were not substantial. Accordingly, leave to seek judicial review was refused.

***Spring View v Cavan Developments Ltd*, High Court, O'Higgins J, 29/09/99** [FL2395]

LAND LAW

Conveyancing

Ownership of lands – Land Registry – dispute – possession – adjoining neighbours – mapping – rectification – extinguishment of original title – allegations of trespass – properties in question not corresponding with relevant folio maps – sub-division of original property – whether evidence of register conclusive – Statute of Limitations, 1957 – Registration of Title Act, 1964, sections 31(1), 72, 85

The parties in the present proceedings were neighbours with adjoining lands. A dispute arose as to the exact boundaries of each property as the properties as occupied seemed to differ from the boundaries as delineated in the relevant Land Registry folio maps. In the Circuit Court, an order had been made holding that the defendants were entitled to have the relevant Land Registry map rectified. The plaintiffs appealed against the order. Laffoy J held that the plaintiffs had not established any basis for resisting rectification, affirmed the order of the Circuit Court and dismissed the appeal.

***Boyle v Connaughton*, High Court, Laffoy J, 21/03/2000** [FL2531]

Planning

Local government – pre-existing use – injunction sought – unauthorised development – warehousing of dry goods – packaging and distribution – costs – whether sufficient evidence to grant orders sought – whether applicant had discharged onus of proof – whether development in question was exempt – Local Government (Planning and Development) Act, 1963 – Local Government (Planning and Development) Act, 1976 – Local Government (Planning and Development) Act, 1992, *section 19*

The planning authority brought proceedings seeking to restrain development which was alleged to be unauthorised. The respondents claimed that certain uses of the lands in question had been in existence prior to the enactment of the 1963 legislation and so was exempt and therefore did not require planning permission. Morris P held that although a serious issue had been raised, the applicant had not discharged the necessary onus of proof to warrant making the orders sought. In view, however, of the improper use of portacabins on the site, which the respondents had undertaken to remove, the costs of the application as between the applicant and the second respondent would be awarded to the applicant.

***Fingal County Council v RFS Ltd*, High Court, Morris P, 06/02/2000** [FL2488]

NEGLIGENCE

Road traffic

Tort – negligence – personal injuries – practice – equity – whether claim statute-barred – preliminary issue – delay – correspondence – settlement negotiations – whether actions and representations of defendants induced delay by plaintiff in issuing summons – Statute of Limitations, 1957

The plaintiff had been involved in a motor accident thereby sustaining injuries. The accident occurred in April 1995 and the plenary summons was not issued until December 1998. The plaintiff *prima facie* accepted that the action was statute-barred but contended that the delay in issuing the plenary summons was due to the actions of the defendants and that they were therefore estopped from denying the claim of the plaintiff. Kelly J was satisfied that the actions of the defendants' insurance company were such that it would now be inequitable for the claim to be denied on the basis of the *Statute of Limitations*. Accordingly, Kelly J struck out the relevant portion of the defendants' defence and instructed that the case now proceed to trial.

***Ryan v Connolly*, High Court, Kelly J, 29/02/2000** [FL2529] G

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Eurlegal

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

Defamation across borders in the European Union

In the area of defamation, as with all other civil actions, three sets of rules apply when suing a foreign defendant. When suing defendants domiciled in the EU, the rules set out in the 1968 *Brussels convention on jurisdiction and the enforcement of judgments* apply. In the case of defendants domiciled in a European Free Trade Area (EFTA) member state, the very similar rules in the *Lugano convention on jurisdiction and the enforcement of judgments in civil and commercial matters* apply. Finally, when suing a foreign defendant domiciled in another state, the old common law rules apply.

Suing a defendant domiciled in the EU/EEA

The *Jurisdiction of Courts and the Enforcement of Judgments Act, 1988* implemented the *Brussels convention* into Irish domestic law. The act took effect on 1 April 1989. Section 2 provides that the convention is to be treated like any other Irish statute, except that it is to be interpreted in accordance with the decisions of the European Court of Justice (ECJ). In addition, in interpreting the *Brussels convention*, regard can be had to the interpretative report, which was drawn up by Prof Jenard. The ECJ has jurisdiction to give rulings on the interpretation of the convention when a court designated in article 2 of the 1971 protocol makes a reference.

The *Brussels convention* was subsequently amended by the *San Sebastian convention* and this was given effect in Ireland by the *Jurisdiction of Courts and Enforcement of Judgments Act, 1993*. Austria, Sweden and Finland acceded to the *Brussels convention* in 1996. The *Jurisdiction of Courts and Enforcement of Judgments Act, 1998* implements this convention into Irish law. This act consolidates and replaces all the preceding Irish legislation. Annexed to the act is a consolidated version of the convention, containing all the amendments made to it.

Article 5 of the *Brussels convention* sets out a number of exceptions to the general jurisdictional rule established by article 2: that persons domiciled in a contracting state be sued in the courts of that state. One of the most significant of these exceptions is that for torts, contained in article 5(3). It provides that: 'A person domiciled in a contracting state may, in another contracting state, be sued ... in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred ...'.

A plaintiff thus has a choice of jurisdictions in a tortious dispute. He can elect to bring an action in the state of the defendant's domicile or in the courts of 'the place where the harmful event occurred'. In many cases, it is relatively easy to point to a single harmful event occurring in a single state. However, in the case of a trans-national tort, the phrase is more ambiguous. The phrase was left intentionally vague by the drafters of the convention. When elements of the harmful event take place in more than one jurisdiction, which one takes jurisdiction? It could be the place where the principal act took place, where the damage was suffered, the jurisdiction with which the tort had its closest connection or the jurisdiction where the last of a series of tortious acts occurred. Defamation is frequently a trans-national tort. Where a defamatory article appears in a newspaper which is printed in one jurisdiction, circulated in a number of other jurisdictions, and the defamed person is domiciled in a jurisdiction where the newspaper has a limited circulation, which forum should hear the case? Where has damage been suffered: where the newspaper is printed? where it is circulated? or where damage is done to the person's reputation? If the latter, what rules are to be applied to establish damage?

The framework established

Case 21/76 *Handelskwekerij GJ Bier BV and Stichtung Reinwater Foundation v Mines de Potasse d'Alsace SA* ([1976] ECR 1735) is one of the most important decisions of the ECJ on the interpretation of torts. It introduced a certain measure of clarity into the interpretation of article 5(3) of the convention and established a basic framework for ascertaining jurisdiction in multinational tort disputes.

The case concerned cross-border pollution. Mines de Potasse d'Alsace SA allegedly discharged 11,000 tons of chloride into the river Rhine on a daily basis. GJ Bier BV ran large garden nurseries near Rotterdam in the Netherlands, using water from the Rhine to water and irrigate its seedbeds. The high salinity of the Rhine due to the presence of the chlorine in the water damaged Bier's seedbeds. Bier brought an action against Mines de Potasse in the Dutch courts. The French defendant argued that a Dutch court was not competent to hear the dispute. If a tort had been committed, the place of the harmful event was France, where the alleged pollutant had been discharged into the Rhine. Thus, if article 5(3) could be invoked, France was the place of the harmful event. This argument was successful, at first instance. Bier appealed to the Hague Court of Appeal, which referred the matter to the ECJ. The Dutch court asked whether 'the place where the harmful event occurred' was to be construed as meaning the place where the damage occurred or where the event which caused the damage took place.

The ECJ held that 'the place where the harmful event occurred' was to be given an independent interpretation. The court noted that the special jurisdictional grounds in article 5, which exist by way of an exception to article 2, were introduced due to the existence 'in certain clearly defined situations, of a particularly close connecting factor between a dispute and the court which may be called upon to hear it, with a view to the efficacious conduct of the proceedings'.

The court held that there was a significant connection in relation to both the place of the causal event and the place of injury, as each could be helpful in relation to the necessary evidence and the conduct of the proceedings. The court found it inappropriate to opt for one

jurisdiction to the exclusion of the other, as there were significant connecting factors to both. The court held, therefore, that:

'Where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression "the place where the harmful event occurred" in article 5(3) ... must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it.

'The result is that the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage'.

Thus, the plaintiff has the option of suing the defendant in either the place where the damage occurred or in the place of the causal event giving rise to the damage.

Refinement of the rule

The rule in *Bier* can be criticised as giving rise to fragmentation of jurisdiction. In a number of decisions, the court has advocated caution in the use of the rule. It has limited the opportunities for 'forum shopping' and brought the rule into line with the primary purpose of the convention – to ensure certainty in the allocation of jurisdiction.

The court in Case 220/88 *Dumez Bâtiment and Tracona v Hessische Landesbank* ([1990] ECR I-49) made it clear that consequential financial loss suffered in one jurisdiction as a result of a tort in another jurisdiction did not found a claim under article 5(3). Ricochet victims are thus excluded. The court made a similar finding in Case C-364/93 *Marinari v Lloyds Bank Plc* ([1995] ECR I-2719). In that case, the ECJ held:

'Whilst it is recognised that the term "place where the harmful event occurred" within the meaning of article 5(3) of the convention may cover both the place where the damage occurred and the place of the event giving rise to it, that term cannot, however, be construed so extensively as to encompass any place where the adverse consequences of an event that has already caused actual damage elsewhere can be felt.

'Consequently, that term cannot be construed as including the place where, as in the present case, the victim claims to have suffered financial loss consequential upon initial damage arising and suffered by him in another contracting state'.

Specific application to defamation

The harm in *Bier* was material property damage. However, it is clear that the decision in *Bier* is not confined to cases of nuisance against land. The principle extends to all torts involving a physical injury to person or property and was arguably of wider application. In subsequent decisions, the court has extended the rule to cases involving other torts and modified it in its application to multi-state tortious disputes involving economic loss.

The key decision applying the rule to defamation is Case C-68/93 *Shevill v Presse Alliance* ([1995] ECR I-415). It extends and develops *Bier*. In the context of multi-state defamation, the two decisions must be taken together.

The first plaintiff, Fiona Shevill, domiciled in England with her main residence in Yorkshire, was employed at a bureau de change operated by the fourth plaintiff, Chequepoint SARL. Chequepoint SARL is a French enterprise operating a number of bureaux de change in France and elsewhere in Europe. The defendants publish the newspaper *France Soir*, a daily evening newspaper which has a large circulation in France (in excess of 200,000 copies daily), and a smaller daily circulation of approximately 15,500 copies outside France. In relation to this latter circulation, only 230 copies were sold in England and Wales, notably only five in Yorkshire where the first plaintiff resided.

The plaintiffs claimed damages for harm caused by the publication of a defamatory newspaper article in *France Soir* on 27 September 1989. It referred to an alleged investigation by French police into the laundering of money obtained from the sale of drugs by, in particular, the Paris bureau de change in which Ms Shevill was temporarily employed for three months in the summer of 1989, and to whom reference by name was made in the article. In November 1989, the defendants published a retraction and apology in respect of Ms Shevill and Chequepoint SARL. The action, subsequent to amendments to the statement of claim, related solely to publication in England and Wales, not France. The defendants sought to strike out the claim, arguing that there was no jurisdiction as no harmful event had occurred in England.

Before the Court of Appeal, it was argued by counsel for the defendant that none of the plaintiffs had suffered any actual damage so as to constitute a harmful event within the jurisdiction. There was no evidence that there was anyone who could possibly have been affected who knew Ms Shevill or who had access to any copies of the offending newspaper. These submissions were based upon the necessity of demonstrating for the purposes of article 5(3) of the convention that damage had actually been suffered, an approach which was inconsistent with the English law, which assumed that damage had been suffered once the libel had been established.

It was held by the Court of Appeal that, since the action was restricted to publication of the defamatory article in England and Wales, the court could assume jurisdiction under article 5(3) of the *Brussels convention* once it was shown that there was an arguable case on which each plaintiff could rely to establish a publication carrying with it the presumption of damage.

The defendant appealed to the House of Lords, arguing that the French courts had jurisdiction in the dispute under article 2, and that the English courts did not have jurisdiction under article 5(3) as the 'place where the harmful event occurred' was France and no harmful event had taken place in England. The House of Lords, considering that the proceedings raised questions of interpretation of the convention, decided to stay the proceedings pending a preliminary ruling by the ECJ.

In the course of *Shevill*, a number of jurisdictional approaches were examined. A strict application of *Bier* could lead to a multiplicity of actions. This spectre of celebrity forum shopping caused many to recoil from a strict application and argue that *Bier* could not be applied to defamation. Some commentators felt that *Bier* did not preclude the eventual adoption of specific rules for particular torts, such as a rule that in defamation the place where the harmful event occurred would be that of publication to a third party. No such rule was ever adopted. Another wrote of a defamatory statement written, broadcast or posted in one state, published in a second and causing damage to reputations in a third. He said that it is the defendant's act in the first state which should be held to be the harmful event.

Arising from the questions referred to it by the House of Lords, the ECJ identified two fundamental matters of interpretation. First, interpretative guidance was needed on 'the place where the harmful event occurred' in article 5(3), with a view to establishing which court(s) had jurisdiction to hear an action for damages for harm

caused to the victim following distribution of a defamatory newspaper article in several contracting states. Second, it had to be decided whether, in determining if it had jurisdiction as court of the place where the damage occurred pursuant to article 5(3), the national court was required to follow specific rules different from those laid down by its national law in relation to the criteria for assessing whether the event in question was harmful and whether specific rules were needed in relation to the evidence required of the existence and extent of the harm alleged by the victim of the defamation.

The court first examined the concept of 'the place where the harmful event occurred'. Article 5(3) of the *Brussels convention* provides special jurisdiction, by way of derogation from the general principle in the first paragraph of article 2 of the convention, that the courts of the contracting state of the defendant's domicile have jurisdiction. The court examined in some detail its decision in *Bier* as an interpretative aid to establishing the place of the harmful event in the international libel context. It stated that identical principles apply to defamation as to material damage and the place of the event giving rise to the damage no less than the place where the damage occurred could constitute a significant connecting factor from the point of view of jurisdiction. Each of them, depending on the circumstances, could be particularly helpful in relation to the evidence and the conduct of the proceedings. The court held that:

'In the case of a libel by a newspaper article distributed in several contracting states, the place of the event giving rise to the damage, within the meaning of those judgments, can only be the place where the publisher of the newspaper in question is established, since that is the place where the harmful event originated and from which the libel was issued and put into circulation'.

The court of the place where the publisher is established has jurisdiction to hear the whole action for all damage caused by the unlawful act. That jurisdiction will, as the court noted, generally coincide in any event with the article 2 jurisdiction based on the defendant's domicile.

The courts of the contracting state in which the publication was distributed and in which the victim claims to have suffered injury to his reputation have jurisdiction to rule on the injury caused in that state to the victim's reputation. The court held that the state in which the defamatory publication is distributed and in which the victim claims to have suffered injury to his reputation is best suited to assess and determine the corresponding damage.

The second limb of the judgment focused on whether a national court was required to follow specific rules different from those laid down by its national law in relation to the criteria for assessing whether the event in question is harmful and in relation to the evidence required of the existence and extent of the harm alleged by the victim of defamation. The defendants argued that the plaintiff had not suffered any damage so as to constitute 'a harmful event'. There was no evidence that the plaintiff's reputations had actually been harmed or that those who knew the plaintiff had access to any copies of the newspaper. The defendants argued that the principles in English law that assumed that damage is suffered once a libel is established should be disregarded in favour of a common European interpretation of article 5(3) and thus proof of actual damage to qualify England as the place where the 'harmful event' occurred. The court observed that the object of the *Brussels convention* was not to unify the rules of substantive law and of procedure of the different contracting states. This was clear from the convention itself and a number of the court's decisions. The effect was that it was for the substantive English law of defamation to determine whether the event in question was harmful and the evidence required to determine the existence and extent of the harm.

The observations made in *Bier* in regard to physical or pecuniary loss or damage have now been expressly applied to a case involving injury to reputation and the good name of both natural and legal persons due to a defamatory publication. In a libel scenario where a newspaper article is distributed in several contracting states, then, according to the court, the place of the event giving rise to the damage (causal event) can only be where the miscreant publisher is established, that is, the place where the harmful event originated and from which the libel was issued and put into circulation. The court of the place where the publisher is established has jurisdiction to hear the whole action for all damage caused by the unlawful act. That jurisdiction will, as the court noted, generally coincide in any event with the article 2 jurisdiction based on the defendant's domicile.

By similar reasoning to *Bier*, co-existent jurisdiction, at the option of the plaintiff, was also held to exist in the place where the damage occurred, otherwise article 5(3) of the convention would be rendered superfluous. Where does the damage occur in the case of an international libel published, for example, throughout each individual member state? The court has answered this question by stating that the damage caused by a defamatory publication occurs in the places where the publication was distributed and where the victim claims to have suffered injury to her reputation. A multiplicity of different fora will have jurisdiction over the harmful events within their own particular territory. The contracting state in which the publication was distributed and in which the victim claims to have suffered injury to his reputation has jurisdiction to rule on the injury caused in that state to the victim's reputation. The underlying rationale for such a conclusion was founded by the court on the sound administration of justice in that the state in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation is best suited to assess and determine the corresponding damage.

Application of the rule

Since the rule established by *Bier* and developed in *Shevill* was handed down, there have been many cases which have applied it. In the context of the identical rules in the *Lugano convention*, the English High Court in *Domicrest v Swiss Bank Corp* ([1998] 3 AII ER 577) applied *Shevill* in a case of negligent misstatement. Rix J held that:

'The place where the harmful event giving rise to the damage occurs in a case of negligent misstatement is, by analogy with the tort of defamation, where the misstatement originates. It is there that the negligence, even if not every element of the tort, is likely to take place; and for that and other reasons the place from which the misstatement is put into circulation is as good a place in which to found jurisdiction as the place where the misstatement is acted on'.

The principles in *Shevill* have also been applied in a number of Irish decisions. In *Murray v Times Newspapers*, (unreported, High Court, 12 December 1995; Supreme Court 29 July 1997), an Irish plaintiff argued that it was entitled to special damages for harm caused to its reputation in Ireland and the United Kingdom caused by an allegedly defamatory newspaper article published in the UK by a UK-domiciled defendant. Barron J (and subsequently the Supreme Court) held that article 5(3) did not entitle the

plaintiff to seek such damages in the Irish courts.

Barr J applied *Shevill* in the context of an allegedly defamatory statement broadcast on television in *Ewin & Ors v Carlton Television* ([1997] ILRM 223). The plaintiffs claimed damages in Ireland in respect of a television programme produced by Carlton and broadcast by ITN. The defendant sought to have the Irish proceedings stayed on the basis that the harmful event required by article 5(3) to found jurisdiction took place in the UK. However, the programme was seen in Ireland by approximately 111,000 viewers as it was distributed by cable and deflector companies, and in certain parts of the country could be received by television viewers whose sets received signals from Northern Ireland or Wales. Barr J applied the rule in *Speight v Gospay* ([1891] 60 LJQB 231) that the original publisher of a defamatory statement is liable for its re-publication or repetition to a third person was the natural and probable result of the original publication. Thus, applying *Shevill*, Barr J held that harm had been done in Ireland. Damages in the case would be limited to the harm done to their reputations in Ireland. The only universal jurisdiction where compensation on a worldwide basis could be claimed is the jurisdiction where the publisher is established. The plaintiffs had a choice of jurisdiction under article 5(3) and were free to choose Ireland. He set aside a suggestion that the defendants had been using the convention to oppress the defendants. He pointed out it could be argued that the motivation of the plaintiffs in choosing jurisdiction was not a matter for the court. In any case, the defendants had not advanced any evidence showing that the plaintiff had been guilty of oppressive or unconscionable behaviour in choosing Ireland.

A similar conclusion was reached by Kelly J in the cases of *Gerry Hunter v Gerald Duckworth & Co Ltd and Louis Blom Cooper* and *Hugh Callaghan v Gerald Duckworth & Co Ltd and Louis Blom Cooper* (unreported, 10 December 1999; see *Irish Times*, 17 January 2000). The plaintiffs were two of the Birmingham Six. They argued that statements in a booklet written by the second defendant and published by the first defendant had defamed them. The second defendant contested the jurisdiction of the Irish courts. He argued that he had not authorised publication of the booklet in Ireland and that for a person to be sued in a particular jurisdiction he must have responsibility for the alleged harmful event occurring in that jurisdiction. Kelly J rejected this argument. He pointed out that the author's contract with the publisher authorised the publisher to publish the work worldwide. Thus, applying the rule in *Speight v Gospay*, which had been approved by the court in *Ewin*, the natural and probable consequence of publication of the booklet was its republication in Ireland. Given the proximity of the two countries and the high level of interest in the subject in Ireland, it was almost inevitable that it would be republished here. The proceedings had been properly brought in Ireland and, applying *Shevill*, the plaintiffs could seek damages in respect of the alleged harm done to their reputations in Ireland.

Looking to the future

The *Brussels convention* is currently being reviewed. The European Commission in 1998 issued a communication setting out the text of a revised convention. The revised article 5(3) reads as follows (changes in italics):

'A person *habitually resident* in a contracting state may, in another contracting state, be sued: (3) in matters relating to tort, delict or quasi-delict in the courts for the place where the *event giving rise to the damage occurred or in the courts for the place where the damage or part thereof was sustained*'.

The proposed new article is identical to the previous provision save that the *Bier* principle would now be incorporated into the text of the article itself. However, it is now proposed to replace the *Brussels convention* with a *Regulation on jurisdiction and enforcement of judgments in civil and commercial matters*. In general, the proposed text of the regulation contains fewer changes to the articles on jurisdiction than did the original proposal for a revised convention. In this latest proposal, there is only one small change proposed for article 5(3). The regulation provides that article 5(3) will give jurisdiction to the court of the place not only where the harmful event has occurred but also those where it may occur. G

TP Kennedy is the Law Society's director of education. This is an abbreviated version of a paper presented to a conference hosted by the TCD School of Law on 'Recent developments in defamation and contempt of court' in January of this year.

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Recent developments in European law

FREE MOVEMENT OF WORKERS

Case C-337/97 *CPM Meeusen v Hoofddirectie van de Informatie Beheer Groep*, judgment of 8 June 1999. Dutch law grants student finance to Dutch students or foreign students resident in the Netherlands in respect of whom there is an international agreement or a rule of public international law in respect of their funding. Funding is available for studies in some Belgian institutions. The applicant was refused finance, as she did not meet the residence requirement. The applicant's mother was married to the director and sole shareholder of the company for which she worked. The ECJ held that she might still be considered a worker for the purposes of article 39 of the treaty and regulation 1612/68. The relationship between spouses did not rule out in the context of the organisation of an undertaking the existence of a relationship of subordination characteristic of an employment relationship. It was for the national courts to verify the existence of such a relationship. The applicant's mother worked in the Netherlands but resided in another state. The applicant argued that she was entitled to Dutch study finance on the basis of her mother's status as a worker. The finance was a social advantage under article 7(2) of regulation 1612 which should remain in place while the child was a dependent of the worker. The Dutch and German governments argued that this did not apply to frontier workers. The court held that the child of a frontier worker in these circumstances was entitled to equal treatment to children of Dutch workers and thus could be entitled to study finance. The court held that the same principles applied to those exercising their right of establishment.

INTELLECTUAL PROPERTY

Trademarks

Case C-173/98 *Sebago and Another v GB-Unic*, judgment of 1 July 1999. Sebago is a US company that was the proprietor of the trademarks, 'Docksides' and 'Sebago', registered for shoes. GB, a Belgian company advertised 'Docksides Sebago' shoes for sale in its hypermarkets. These shoes had been manufactured in El Salvador and purchased from a Belgian parallel importer. Sebago argued that since it had not authorised the sale of those shoes in the EU, GB had no right to sell them there. GB claimed that it sufficed to establish consent to show that similar goods bearing the same mark had already been lawfully marketed in the EEA with the owner's consent. The ECJ had to decide whether the consent of the trademark proprietor to the marketing in the EEA of one batch of goods exhausted the rights conferred by the trademark as regards the marketing of other batches of identical goods. In Case C-355/96 *Silhouette* the ECJ had ruled that national rules providing for exhaustion of rights in a trademark in respect of products put on the market outside the EEA under that mark by the proprietor or with his consent were contrary to article 7(1) of the *Trademarks directive*. Article 7 does not exhaust the proprietor's right to oppose the importation of goods from outside the EEA without his consent. He is entitled to control initial marketing in the EEA of goods bearing the mark. He would lose this protection if by consenting to the marketing in the territory of one batch of trademarked goods he exhausted his rights in respect of all identical or similar goods. Thus, consent must relate to each individual item of the product in respect of which exhaustion was pleaded.

LITIGATION

Brussels convention

Case C-260/97 *Unibank A/S v Flemming G Christensen*, judgment of 17 June 1999. In Denmark, written acknowledgements of indebtedness can be acted on in the same manner as a judgment, provided that they contain an express provision to that effect. Christensen, a Danish resident, had signed three such acknowledgements in favour of Unibank. The documents stated that they could be used as a basis for execution. The ECJ was asked whether an enforceable acknowledgement of indebtedness, drawn up without the involvement of a public authority, was an authentic instrument within the meaning of article 50. The court held that as the instruments under article 50 were enforced under the same conditions as judgments, the authentic nature of such instruments had to be established beyond dispute so that the court enforcing the instruments can rely on their authenticity. Instruments drawn up between private individuals are not inherently authentic. The involvement of a public authority or any other authority empowered for that purpose by the state of origin is necessary to endow them with the character of authentic instruments. The Jenard/Möler report on article 50 of the *Lugano convention* supports this interpretation.

MUTUAL RECOGNITION OF QUALIFICATIONS

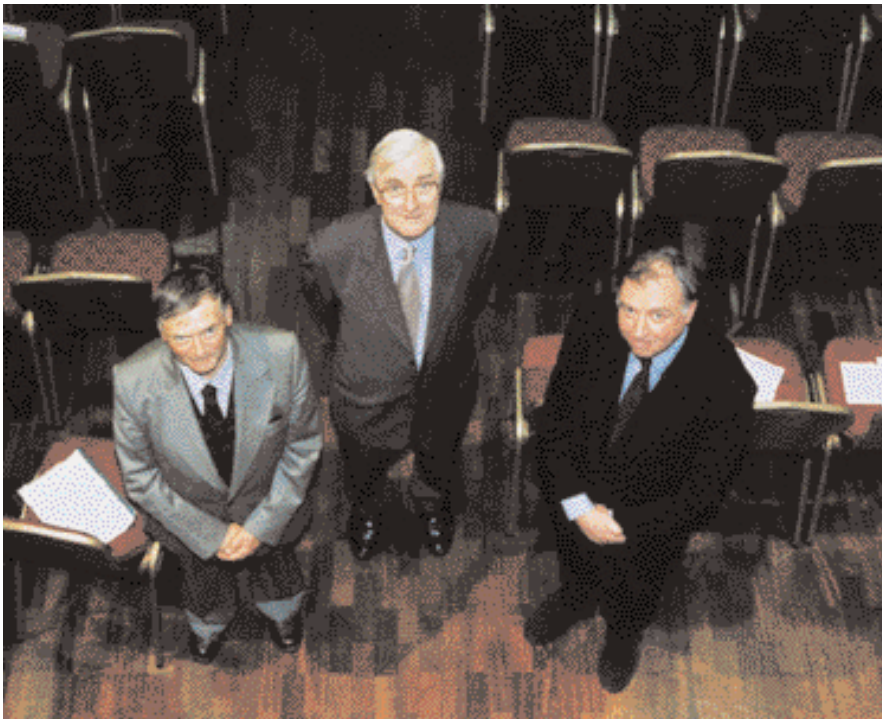
Case C-234/97 *Teresa Fernández de Bobadilla*, judgment of 8 July 1999. The applicant, a Spanish national resident in Madrid, has a post-graduate qualification in fine-arts restoration obtained in 1989 from Newcastle-upon-Tyne Polytechnic. She applied for the job of restorer of works of art on paper at the Prado Museum in Madrid. Spanish law restricts this position to graduates of the Faculty of Fine Arts or the School of Arts or any foreign qualification officially recognised by the competent body. She applied to the Spanish Ministry of Education to have her degree recognised as equivalent to the Spanish qualification. The ministry required her to take an examination in two parts on 24 specified subjects. The ECJ held that where a profession falls outside the scope of the mutual recognition directives (89/48 and 92/51), the competent authorities of the host state must take into account a qualification obtained in another state by comparing the specialised knowledge and abilities certified by that qualification with the knowledge and qualifications required by national law. If this reveals that the foreign qualification is equivalent, it must be recognised as such. If the qualifications only partially correspond, the competent authority can require the person to show that he had acquired the knowledge and qualifications that are lacking. The court concluded that where no general procedure for official recognition has been laid down at national level by the host state, it is for the public body seeking to fill the post to investigate whether the foreign qualification is equivalent to the national one.

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 fifteen 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 the Law School or from Ide Ni Riagain at the Academy of European Law.

Broadcast views
RTE Director General Bob Collins (*left*) and Paul O'Connor, the dean of UCD's law faculty, congratulate Madam Justice Louise Arbour from the Supreme Court of Canada following her lecture in the UCD/ RTE series of seminars on *Broadcasting, society and the law*



Things are looking up
Two speakers from the inaugural *Hugh M Fitzpatrick* lectures in legal bibliography, UCD Prof W Niall Osborough (*left*) and Magdalen College Fellow David Ibbetson, flank the event chairman, Mr Justice Hugh Geoghegan

Another volume for the collection?
At the launch of *Commercial and consumer law* at the Chester Beatty Library are (*left to right*) Mr Justice Frederick Morris, president of the High Court; the book's author, Patrick O'Reilly; and Louise Leavy, managing editor of Butterworths

Trust us
Pictured at the recent CLE seminar on the legal and taxation implications of the creation of trusts were (*left to right*) solicitors Paula Fallon, John O'Connor and Patricia Rickard-Clarke

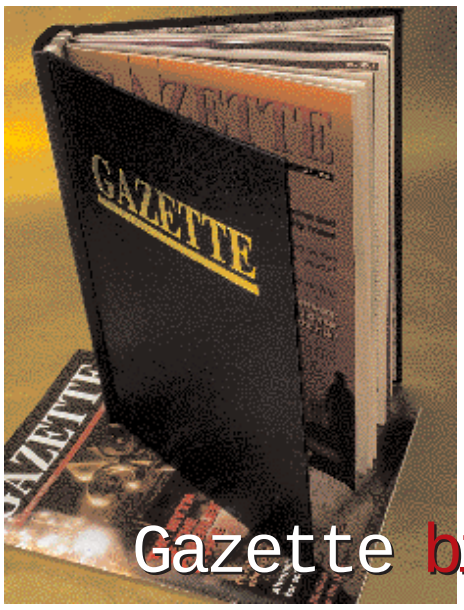
Not neglecting negligence
Attending the recent CLE seminar on medical negligence were (*above, left to right*) Barbara Joyce, CLE co-ordinator, Professor William Binchy of the Trinity Law School, Mr Justice Peter Kelly, Michael Boylan of Augustus Cullen & Son, and Geraldine Hickey of McCann FitzGerald

Reviewing the *Review*
Gathered at the launch of Conleth Bradley's *Judicial review* are (*left to right*) Attorney General Michael McDowell; Conleth Bradley; and Mr Justice Peter Kelly of the High Court. The launch was held at the Fitzwilliam Place offices of the publisher, Round Hall Sweet & Maxwell

Pictured in Paris
The Chief Justice of France, Guy Canivet (*centre right, with book*), joins Law Society immediate past president Pat O'Connor and other members of the Franco-Irish Lawyers' Association during their recent trip to Paris. The pictured gathering in the French Supreme Court was one of the highlights of the trip, which also included a guided tour of the *Palais de Justice* and a roundtable discussion comparing the *Irish E-commerce Bill* with the French law on the recognition of electronic signatures

Justices prevail
At the Southern Law Association dinner were (*left to right*) Circuit Court judge John P Clifford, Judge Patrick Moran of the Circuit Court, retired chief justice Tom Finlay, Southern Law Association President Simon Murphy and Circuit Court judge AG Murphy

A few good men with a few good bottles
At the Southern Law Association's annual dinner, held at Cork's Maryborough House Hotel on 25 February 2000, were (*left to right*) Southern Law Association President Simon Murphy, Law Society President Anthony Ensor, Dublin Solicitors' Bar Association President Richard Bennett, and Northern Ireland Law Society President John Meehan



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LOST LAND CERTIFICATES

Registration of Title Act, 1964
An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.
(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 12 May 2000)

Regd owner: James Bernard Heerey otherwise Bernard Heerey, Clonraw, Maudabawn, Cootehill, Co Cavan; Folio: 7302; 4161F; Lands: Clonraw; Area: 36.538 acres; **Co Cavan**

Regd owner: James O'Halloran, Limerick Road, Ennis, Co Clare; Folio: 48L; Lands: Part of the Townland of Clonroad Beg; **Co Clare**

Regd owner: Michael F Cummins and Margaret Cummins; Folio: 53874; Lands: Known as a plot of ground situate in the Townland of Mashanaglass, the Barony of Muskerry East, and the County of Cork; **Co Cork**

Regd owner: Helena Whelton; Folio: (1) 41391; Lands: Known as a plot of ground situate in the Townland of Knocknageehy and Gortagrenane, the Barony of Iband and Barryroe, and the County of Cork; Folio (2) 18031; Lands: Known as a plot of ground situate in the Townland of Knocknageehy, the Barony of Iband and Barryroe, and the County of Cork; **Co Cork**

Regd owner: John Francis Lynch; Folio: 13156; Lands: Known as a plot of ground situate in the Lands of Ballyburden Beg, the Electoral Division of Ballincollig, the Barony of Muskerry East and the County of Cork; **Co Cork**

Regd owner: Doctor Walter Hillebrand; Folio: 14087; Lands: Known as a plot of ground situate in the Lands of Ballincolla, the Electoral Division of Myross, the Barony of Carbery West (East Division), and the County of Cork; **Co Cork**

Regd owner: Thomas Mc Clintock, Carrowcannon, Falcarragh, Letterkenny, Co Donegal; Folio: 29280; Lands: Carrowcannon; Area: 5.753 hectares; **Co Donegal**

Regd owner: Sarah McHugh (half share), Luinniagh, Derrybeg, County Donegal; Folio: 27452; Lands: Stramackilmartin; Area: 5.381 acres; **Co Donegal**

Regd owner: Ridgeway Development Limited; Folio: 913F; Lands: Property situate in the Townland of Balrothery and Barony of Balrothery East; **Co Dublin**

Regd owner: Eileen Keelan (deceased); Folio: DN2020L; Lands: Known as No.8 Virginia Terrace situate on the south side of Navan Road in the Parish of Castleknock District of Cabra; **Co Dublin**

Regd owner: John Joseph Kelly & Mary Leonard; Folio: 52851F; Lands: Townland of Rathmooney and Barony of Balrothery East; **Co Dublin**

Regd owner: Thomas Mc Inerney and Company Limited; Folio: DN3497; Lands: Townland of Knocklyon and Barony of Uppercross; **Co Dublin**

Regd owner: Thomas Patrick Reid; Folio: DN45306F; Lands: Known as 120 Larkfield Gardens situate in the parish of Saint Peter and district of Rathmines; **Co Dublin**

Regd owner: BP Ireland Limited (now Statoil Ireland Limited); Folio: 8914; Lands: Townland of Stockens and Barony of Castleknock; **Co Dublin**

Regd owner: Jack McCarthy (deceased); Folio: 31684; Lands: Townland of Ballynageragh and Barony of Clanmaurice; **Co Kerry**

Regd owner: Irish Shell Limited; Folio: 13732; Lands: Curraghfarm and Barony of Offaly East; **Co Kildare**

Regd owner: Michael Harris; Folio: 2238F; Lands: Townland of Castlereban North and Barony of Narragh and Reban West; **Co Kildare**

Regd owner: John O'Rourke; Folio: 28202F; Lands: Townland of Osberstown and Barony of North Naas; **Co Kildare**

Regd owner: James Connors; Folio: 18204; Lands: Moneenroe & Coolbaun and Barony of Fassadinin; **Co Kilkenny**

Regd owner: John Bergin Junior (deceased); Folio: 14632; Lands: Knockanina & Cuddagh and the Barony of Maryborough West & Upperwoods; **Co Laois**

Regd owner: Maura Moore (deceased); Folio: 3875F; Lands: Mountrath and Barony of Maryborough West; **Co Laois**

Regd owner: Shannon Free Airport Development Company Ltd; Folio: 26895; Lands: Townland of Gortboy and Barony of Glenquin; **Co Limerick**

Regd owner: William O'Neill; Folio: 15450, 15449, 11423, 22859, 20461, 3697F; Lands: situate in the Townlands of Fanningston and Castleroberts and Barony of Coshma and County of Limerick; **Co Limerick**

Regd owner: Philomena Gibbons, Knockrooskey, Westport, County Mayo; Folio: 15894F; Lands: Townland of Knockroosky and Barony of Burrishoole; Area: 1.5530 hectares; **Co Mayo**

Regd owner: Thomas Hesnan, 29 West Road, Fairview, Dublin, and Balreask Old, Navan, County Meath; Folio: 26177; Lands: Balreask Old; Area: 0.25 acres; **Co Meath**

Regd owner: Peter Downey, 2 Belmont Terrace, Stillorgan, County Dublin; Folio: 12804; Lands: Newgrange; Area: 41.938 acres; **Co Meath**

Regd owner: Patrick McKenna, Mill Street, Smarmore, Drogheda, County Louth; Folio: 21809; Lands: Mullaghwillin; **Co Meath**

Regd owner: Hugh McEnaney, Leonsgarve, Carrickmacross, Co Monaghan; Folio: 17877; Lands: Leonsgarve or Leons; Area: 6.188 acres; **Co Monaghan**

Regd owner: John Creighton, Carrownalasson, Four-Mile-House, County Roscommon; Folio: 792; Lands: Townland of Carrownalassan and Barony of Ballintober South; Area: 5.9564 hectares; **Co Roscommon**

Regd owner: John Flannery; Folio: 4406; Lands: Killadangan and Barony of Ormond Lower; **Co Tipperary**

Regd owner: John Devitt; Folio: 19331; Lands: Rosegreen and Barony of Middlethird; **Co Tipperary**

Regd owner: John & Elaine Williams; Folio: 6111F; Lands: Figlash and Barony of Iffa & Offa East; **Co Tipperary**

Regd owner: Mark Rowe; Folio: 17084F; Lands: Townland situate in the parish of Ballynakill Division, Farronshoneen; **Co Waterford**

Regd owner: Charles Foley and Michelle Forsey; Folio: 3076F; Lands: Townland of Farranshoneen and Barony of Gaultiere; **Co Waterford**

Regd owner: Laurence Moran, Wooddown, The Downs, Mullingar, County Westmeath; Folio: 1445; Lands: Wooddown; Area: 5.344 acres; **Co Westmeath**

Regd owner: T Murray & Son Limited, Roscommon Road, Athlone, Co Westmeath; Folio: 8560F; Lands: Bogganfin; Area: 0.381 acres; **Co Westmeath**

Regd owner: Anthony & Lorraine Dempsey; Folio: 9410F; Lands: Killagoley and Barony of Ballaghkeen South; **Co Wexford**

Regd owner: Dunbur Developments Limited; Folio: 12913F; Lands: Townland of Dunbur Lower and Barony of Arklow; **Co Wicklow**

Regd owner: Pierce Perkins and Edith Perkins; Folio: 3074F; Lands: Townland of Kilcoole and Barony of Newcastle; **Co Wicklow**

Regd owner: Francis Cullen; Folio: 5612; Lands: Townland of Kilmartin and Barony of Newcastle; **Co Wicklow**

WILLS

Callaghan, Kathleen (otherwise known as Catherine Nuala Callaghan), late of 44 Maretimo Gardens East, Blackrock, Co Dublin. Would any person having knowledge of a will made by the above named deceased who died on 8 December 1999, please contact Messrs O'Keeffe & Lynch, Solicitors, 30 Molesworth Street, Dublin 2, tel: 01 676 1537, reference: EA

Connors, Simon, late of 53 Slievenamon Road, Drimnagh, Dublin 12. Would any person having knowledge of the whereabouts of the original will dated 19 July 1994 of the above named deceased who died on 2 April 1996, please contact Brendan Garvan & Company, Solicitors, 6 Exchequer Street, Dublin 2, tel: 01 677 9326

Donnelly, Dan, late of 10 The Elms, Clane, Co Kildare. Would any person having knowledge of a will executed by the above named deceased who died on 19 September 1999, please contact James A Boyle, James A Boyle & Company, Solicitors, The Woods, Clane, Co Kildare, tel: 045 868 045, fax: 045 893 055

Lynham, Mary (deceased), late of 1 Oaklands Drive, Ballsbridge, Dublin 4 and formerly of 27 Newgrove Avenue, Sandymount Avenue, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 16 January 2000, please contact Arthur O'Hagan, Solicitors, 9 Harcourt Street, Dublin 2, tel: 01 475 8701 or fax: 01 478 1583 ref: MC

McElhargey, Monica (deceased), late of Glen, Carrigart, Co Donegal. Would any person having knowledge of a will executed by the above named deceased who died on 2 January 1999, please contact Anne Colley & Company, Solicitors, 6 Main Street, Dundrum, Dublin 14, tel: 01 296 0488 or fax: 01 296 0490

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Neville, Denis, late of 37 North Summer Street, Dublin 1 and also late of 7 Abbey Hall, New Ross, Wexford. Would any person having knowledge of a will executed by the above named deceased who died on 12 March 2000, please contact McKeever Rowan, Solicitors, Enterprise Building, 5 Harbourmaster Place, International Financial Services Centre, Dublin 1, tel: 01 670 2990, fax: 01 670 2988, e-mail: byoung@law.mckeever-rowan.ie

Nolan, Elizabeth (otherwise Lil), late of 51 Sperrin Road, Drimnagh, Dublin 12. Would any person having knowledge of a will executed by the above named deceased who died on 31 October 1999, please contact Bergin, Burke & Ryan, Solicitors, 63 Mary Street, Dublin 1, tel: 01 878 0230 or 01 878 8231, fax: 01 878 0233

O'Connor, Michael Gerard (deceased), late of 43 Sweetmount Park, Dundrum, Dublin 14. Would any person having knowledge of a will executed by the above named deceased who died on 28 March 2000 at St Vincent's Hospital, Elm Park, Dublin 4, please contact Brian Matthews & Company, Solicitors, 7 Main Street, Dundrum, Dublin 14, tel: 01 295 1187, fax: 01 298 0280

EMPLOYMENT

Solicitor, mid-thirties, six years' PQE in conveyancing, litigation and District Court work, seeks employment in Tipperary, Kilkenny, Waterford or East Cork. **Reply to Box No 40**

Locum solicitor required for Waterford City practice for the months of July & August 2000. **Reply to Box No 41**

Apprentice required for busy two-partner practice in Dublin 4. Varied and responsible work load. Position would ideally suit candidates with some experience. **Reply to Box No 42**

Newly-qualified solicitor with experience in probate, conveyancing and litigation seeks position in Dublin area. **Reply to Box No 43**

Locum solicitor required for Dublin city practice for a three to four month period. Experience required in conveyancing. Reply to Arthur P McLean & Company, Solicitors, 31 Parliament Street, Dublin 2, or tel: 01 677 2519

Seeking commercial solicitor with three years' PQE for commercial law unit of prestigious firm in Blackrock, Co Dublin. Salary commensurate with experience. Please phone 087 637 1067 / 087 224 7707 or e-mail CV to Harvest Recruitment at workwise2000@eircom.net

Locum solicitor with experience required for general practice in Mullingar (August to February). Apply with CV to J J Macken, Solicitors, Bishopsgate Street, Mullingar, Co Westmeath

Mature solicitor, based in West of Ireland, with limited PQE seeking to re-enter the profession and gain experience, willing to work for modest remuneration in return for practical experience. Available for locum/assistant position in general practice from June to September. Computer and technology literate. MS Word, Microsoft Works and Clarisworks proficient. Touch typing/word processing 20-30 wpm. Own car. **Reply to Box No 44**

Bright, ambitious, young solicitor wanted minimum one to two years' PQE, Dundalk area, to work in a young technologically efficient practice. Salary and benefits will not be an issue for the right applicant. Experience with computers desirable, but not essential. Business-minded applicant with typing skills essential to head and run on a day-to-day basis a busy office specialising only in litigation and conveyancing. Apply in strictest confidence with CV to Gary Matthews, Solicitor, The Doyle Suite, Donovan House, 5 Adelphi Court, Long Walk, Dundalk, Co Louth, or preferably submit CV by e-mail to info@gary-matthews.com

Highly experienced solicitor (nine years' PQE) seeks move within Dublin – part-time position. Experience in all areas of general practice – preference for litigation. **Reply to Box No 45**

Paris – international French law firm seeks apprentice solicitor or recently qualified solicitor to carry out a training period of three to six months in its Paris office. The applicant will be expected to have established French language skills and will be required to work mainly in the areas of European law and in the area of the firm's publications. Most of the work to be performed by the successful candidate will be through English. Candidates should address a copy of their CV to Louis Vogel, Vogel & Vogel, 6 Avenue Pierre 1er de Serbie, 75116 Paris, France

Solicitors required for both conveyancing and litigation (may suit part-time). Excellent prospects. Apply with full CV to Guilfoyles, Solicitors, Courthouse Chambers, 95 Main Street, Midleton, County Cork

Locum required over the summer vacation May-July. For further details please respond to Declan J O'Connell & Company, Solicitors, Gandon House, Main Street, Lucan, County Dublin, tel: 01 621 4066/67

Solicitor required for general legal practice in busy Galway office, with one to two years' post-qualification experience. Knowledge in all areas of practice desirable, with emphasis on conveyancing, probate, tax and litigation. Computer literacy desirable. Position to commence June 2000. Send CV to Horan & Son, Solicitors, 23 Eyre Square, Galway

Legal executive wanted with minimum two to three years' conveyancing and probate experience essential for busy dynamic practice. Excellent conditions and salary. Please contact Geraldine or Barry at MacCormack Solicitors, 7 Castle Crescent, Clondalkin Village, Dublin 22, tel: 01 459 3356 or fax your CV to 01 459 3547

Solicitor with excellent PQE and tons of enthusiasm seeks litigation position doing District Court and/or criminal work in Dublin area. Phone 087 617 5079

Assistant solicitor required by busy office in Sligo. Experience in conveyancing, litigation and probate desirable. May suit recently-qualified solicitor. Please apply to Howley Carter & Company, Wine Street, Sligo, tel: 071 62211

Solicitor required for Donegal Town and Ballyshannon, County Donegal practice. Litigation and conveyancing. Two years' post-qualification experience preferred. Salary: market rate. **Reply to Box No 46**

Locum conveyancer urgently required by legal office of Dublin-based telecommunications company. Please telephone in confidence: 01 701 5930 and quote reference EGH

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

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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, *http://www.davidlevene.co.uk*

Legal practice located in the Mid-West with a substantial client base seeks qualified solicitor as a partner - final arrangements to be agreed.

Please contact:
Dennehy & Co.
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74, O'Connell Street, Limerick.
Tel: (061) 316407
Fax: (061) 316408

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 in 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 K J Neary

Full ordinary seven-day intoxicating liquor licence sought. Please contact Mannion Aird & Company, Solicitors, Clifden, Co Galway, tel: 095 21044 or fax: 095 21756

Solicitors' practice located in south-west for sale. Enquiries from principals only to Donovan Caulfield Lavin, Chartered Accountants, 1 Mount Kennett Place, Henry Street, Limerick, tel: 061 411000

Busy north Cork solicitors' practice for sale. Good client base. Contact Andrew Moynihan, Barrett Accountants, Kilbarry House, Dublin Hill, Cork, tel: 021 300174

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TITLE DEEDS

Landlord and Tenant Acts, 1960-1994* and *Landlord & Tenant (No 2) Act, 1978

To: person or persons for the time being entitled to the interest of William Holmes Orr and Catherine Jane Orr the premises hereinafter described under the lease.

Description of property all that and those the dwellinghouse, outoffices and premises situate on the west side of the street leading from Athy to Carlow called Preston's Gate or Emily Row, containing in front from north to south 29ft in the rear, 38ft 6ins and from front to rear 139ft 9ins, which said premises are situate in the town of Athy and County of Kildare.

Particulars of applicants lease dated 13 October 1880 and made between William Holmes Orr, Catherine Jane Orr of the one part and James Cooper of the other part for the term of 61 years from 1 November 1880 subject to the annual rent of £16 and to the covenants and conditions therein contained.

Take notice that applicants John Fennin and Claire Finnan of Emily Square, Athy in the County of Kildare, being persons entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, propose to purchase the fee simple in the property described above.

Signed: HG Donnelly & Son, 5 Duke Street, Athy, Co Kildare, solicitors for the applicant.
14 April 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 Mary Thompson of 47 & 48, Lower Sheriff Street, Dublin 1

Any person having interest in the freehold estate in the following property 47 & 48 Lower Sheriff Street, Dublin 1, take notice that Mary Thompson intends to submit an

CONTINUING LEGAL EDUCATION
MAY/JUNE 2000

SEMINAR	VENUE	DATE
PROBATE PRACTICE	Blackhall Place	17/24/31 May
EMERGING TRENDS IN ADOPTION	Blackhall Place	25 May
TIME MANAGEMENT	Blackhall Place	30 May
DISTRICT COURT PRACTICE & 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

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

application to the county registrar for the county of 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, 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 the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Signed: Mary Thompson, c/o Grainne Griffith & Company, Solicitors, Unit 2, Woodfall House, Watermill Road, Raheny, Dublin 5
13 April 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 property situate at 36 & 36A, (also known as 36 1/2 Thomas Street, Dublin 8): an application by Dill Limited

Take notice that any person having any interest in the freehold estate of the following property: the hereditaments and premises comprised in indenture of lease dated 3 November 1920 and made between James Cassidy Esq, of the first part, Mrs Josephine Napier, the Misses Eva Mary Cassidy, Kathleen Cassidy and Frances Cassidy and Matthew J McCabe, Esq, of the second part and exchange buildings limited of the third part and therein described as all that and those the shops, house, offices, yards and premises partly known as no 36 Thomas Street and partly known as 36 1/2 Thomas Street in the City of Dublin together with the yards, premises and outoffices at the rear thereof all of which said premises are more particularly described on the map hereunto annexed and thereon edged red and are situate lying and being in the parish of St Catherine and City of Dublin.

Take notice that Dill Limited 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 that any party asserting they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Dill Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county 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 aforementioned property are unknown or unascertained.

Signed: Cahill & Company, Solicitors, 23 Lower Leeson Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1989*, Maureen O'Keeffe, applicant unknown and unascertained, respondent: notice of application

Whereas the applicant is the owner of all that and those piece or plot of ground with the dwellinghouse constructed thereon at Lower Liberty Square in the town of Thurles, Barony of Eliogarty and county of Tipperary being the property believed to be held under a long lease executed in or about the year one thousand eight hundred and twenty one Ellen Boyton and held subject to a rent of £3 but indemnified in respect of £1.50 thereof.

And whereas the applicant is a person entitled under the *Landlord and Tenants Act, 1967 to 1989* to acquire the fee simple interest in the said hereditaments and premises and is desirous of so doing.

And whereas the person or persons required by the acts to convey or join in conveying the fee simple in said premises are unknown and unascertained.

Take notice that we as solicitors for the applicant hereby apply to the county registrar for county Tipperary to have the matter determined by her arbitration and for an award:

a) determining that the applicant is entitled to acquire the fee simple in the said hereditaments and premises under the said acts
b) determining the purchase price to be paid in respect of the acquisition
c) appointing such person as she may think fit to execute a conveyance of the fee simple in the said premises for and on behalf of the unknown and unascertained respondent
d) ordering that the purchase price be paid into court before the execution of such conveyance
e) as to the costs of this application and arbitration
f) granting such further or other relief as may be necessary in the circumstances of the case.

Take notice the application herein will be made to the county registrar sitting at the courthouse, Clonmel, county Tipperary on 17 May 2000 at the hour of 2.30pm or on the first opportunity thereafter.

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26/28 South Terrace, Cork Tel:021 431 9200
Fax:021 431 9300

Signed: Patrick J O'Meara & Company, solicitors for the applicant, Thurles, County Tipperary
6 April 2000

Notice 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*, Brendan Brady, applicant, the unknown or unascertained owner or owners, respondent: an application by Brendan Brady

Take notice that any person having any interest in the freehold estate of the following property: 73 Dame Street situate in the parish of St. Andrew and county of the city of Dublin.

Take notice that Brendan Brady intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid 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, the applicant Brendan Brady intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Signed: Dairine Mac Fadden, Mac Fadden Solicitors, The Village Court, Rathfarnham, Dublin 14 (solicitors for the applicant)
5 April 2000

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Opening the floodgates

'Appearances can be deceptive. Many of those in whom we are asked to place our trust are not what they seem'

Kevin Neary, best known as the man who placed the newspaper ads that eventually led to the establishment of the Flood Tribunal, was born in Newry, County Down, in 1963 and went to St Colman's College, Newry, and University College, Dublin. At UCD, he studied law and completed a BCL. He returned to Northern Ireland where he joined his father's firm of Donnelly Neary & Donnelly, where he was apprenticed to his future partner, Tim Donnelly. He qualified as a solicitor in Northern Ireland in 1986 and in the Republic of Ireland in 1994. He was appointed as a notary public by the lord chief justice of Northern Ireland in 1997. His interests include art, architecture and walking in the Mournes.

What attracted you to a career in law?
Apparently, I first told my father when I was six or so that I wanted to work in his office and 'do joined-up writing'. I am still trying to master that particular skill. My father's enjoyment of his job clearly influenced me.

Which living person do you most admire, and why?
This is an impossible question. Unfortunately, in the present political climate, there are few enough politicians to admire except John Hume. Perhaps I would pick an observant writer, as they have the ability to catch the mood of a time, and so I choose the American writer Richard Ford.

What is the best piece of advice you ever got?
Appearances can be deceptive. Many of those in whom we are asked to place our trust are not what they seem.

Which case do you wish you had been involved in?
Brown v the Board of Education.

Best decision you ever made?
Moving home. When I was graduating from college, my choice was whether to stay in Dublin or go home to what I then saw as the back-end of nowhere. I now realise that I have the best of both worlds, living in the beautiful village of Rostrevor, which is after all only 60 miles or so from Dublin.

Worst decision you ever made?
No comment.

How do you cope with stress?
Having an active social life helps me maintain a sense of perspective on my professional life.

Kevin Neary: Land law could do with root-and-branch reform

If you could make one change to the legal system, what would it be?
I am a conveyancer by trade. I have an abiding interest in and respect for common law traditions. However, my own day-to-day frustrations come to mind. When the separate systems of transfer for registered and unregistered land are compared, one can't help but feel that the finer points of the *Statute of Uses* or the rule in *Tulk v Moxhay* and the like have little place in a modern economy. So my choice would be a root-and-branch reform of land law, accompanied by compulsory registration of land throughout Ireland. In the majority of cases, the title to a piece of land or a building should be capable of being recorded on a single sheet of paper.

Time management tips?
Install a fully-networked computer system incorporating case management software.

Pet hate?
I have a little list: house-price bores, polenta, brown paper bags. G