Gazette LawSociety

Regulars

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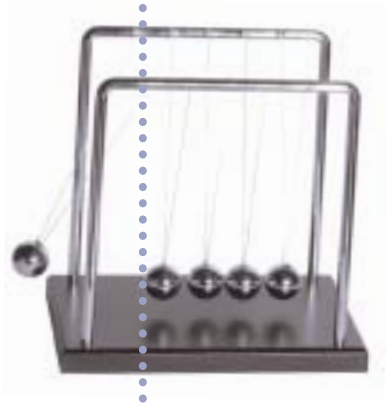

Cover Story

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AG's reform proposals get warm welcome

'The attorney general may be a little out of touch with just how well disposed to reform the legal profession is. If there is really an open ear in government to law reform proposals, there will be no shortage of them from the solicitors' profession', Law Society Director General Ken Murphy told listeners to RTE radio's *Morning Ireland* programme recently.

He was responding to a front-page report in *The Irish Times* in which Attorney General Michael McDowell called on the legal establishment to reform itself and described its failure to do so as a 'moral blot'. The attorney general also said that Irish lawyers were 'too trigger-happy' in opting for litigation and it might be time for a forum on the legal and justice system.

In his radio response, Murphy welcomed the general thrust of the attorney general's

Ken Murphy: solicitors are eager for reform

remarks but felt that he might not be aware of initiatives already being taken by the profession. For example, the Law Society produced a major paper on judicial case management which it submitted to the president of the High Court earlier this year. In addition, the society has had experts from neighbouring jurisdictions come and talk to it about litigation reform there.

'But it isn't solely a question of procedures and legal culture, however. It is also a question of resources, and the attorney general cannot hide from the fact that it is still an under-resourced system. Until the correct number of judges, courtrooms and back-up staff are put in place, there will continue to be delay', said Murphy.

The society decided to make its views known directly to McDowell and sought a meeting with him. In the following week, representatives of the Law Society comprising the president, Ward McEllin, director general, Ken Murphy and deputy director general, Mary Keane, had a lengthy and constructive meeting with the attorney general in his office. A variety of law reform initiatives were discussed and it was agreed that further consideration would be given to how a forum on the legal and justice system might be established.

Society urges court rate compensation for abuse victims

The Law Society has declined an invitation to participate in the construction of a government scheme for compensation to be awarded to victims of childhood abuse because it views the basis of the scheme as wrong in principle.

Section 15 of the *Residential Institutes Redress Bill, 2001* provides that the minister for education and science will make regulations detailing the amounts of awards to be made to children who suffered abuse. The department invited the society to nominate a solicitor to serve on an expert group to determine the amounts of the awards that the state would make.

A full debate on the matter took place at the Law Society Council meeting of 6 July. The Council's decision was that the society should decline the invitation to nominate a solicitor to serve on this expert group.

In writing subsequently to the department, the society made it clear that it has the utmost sympathy for the victims of physical, emotional and sexual abuse suffered while in the care of state and religious-run schools and institutions. The victims should be fully compensated financially insofar as mere money can ever represent the slightest redress for what they have suffered.

However, the society has very serious concerns about the proposed fixing of a schedule of monetary awards for different categories of abuse and injuries. This approach is wrong in principle. Justice requires that any board or tribunal should address the individual wrong done to the individual claimant on a case-by-case basis. The society would support a tribunal, of the nature of the Hepatitis C Tribunal, where cases are dealt with on such a basis.

The society concluded that it was clearly better that victims have an alternative to bringing each individual case to the High Court. The compensation awarded, however, should be on the same basis and in the same amount as would be awarded by the High Court.

USEFUL INFORMATION ON LAW SOCIETY WEBSITE

The Law Society's Probate, Administration and Taxation Committee wishes to remind members that the society's website contains much valuable information, including practice notes, a check-list designed for personal representatives, probate office checklists and so on. The website address is www.lawsociety.ie.

LINK-UP FOR LEGAL SOFTWARE SUPPLIERS

UK legal technology supplier Technology for Business (TFB) has agreed a distribution deal with Irish software supplier Legal IT. The deal means that Legal IT will be able to supply TFB's flagship *Partner for Windows* practice management system to the Irish legal market.

PROFITABILITY SEMINAR

A seminar on profitability in Irish law firms, staff remuneration and retention, and information management will be held in the Law Society in October. The seminar is being hosted by Outsource and was attended by over 50 delegates last year. Further details can be obtained from Outsource on 01 664 3402 or from info@outsource-finance.com.

INTERNATIONAL CORRUPTION SYMPOSIUM

An international symposium on the OECD convention on combating bribery of foreign public officials will be held in Bruges, Belgium on 20-21 September. The conference, organised by the American Bar Association, the International Bar Association and the CCBE, will bring together experts on the OECD convention and other anti-corruption initiatives. It will include discussions on money laundering and bank secrecy laws. For information, contact Julie Hulsey on +202 662 1727 or by e-mail at hulseyj@staff.abanet.org.

"Legal IT are delighted to announce this new partnership. We chose TFB because they are both a well-established company and the leading supplier to the UK market. More importantly, their Partner for Windows Product is a market leading practice management system that is perfectly suited to the Irish market."
Margaret Rogers, Managing Director Legal IT, pictured above with Simon Hill, Managing Director TFB.

Leading legal IT supplier, TFB moves to Ireland

Press release: Sunbury-on-Thames, 17 August 2001.

Technology for Business Plc (TFB), the leading UK legal IT supplier today announced that it has finalised a distribution agreement with Irish software supplier, Legal IT. The announcement follows TFB's recent acquisition of Avenue Legal Systems in June 2001 and its purchase of CB Systems (Legal) in Scotland earlier this year. With offices in Cork and Dublin, Legal IT is a specialist supplier of software and services, with a client base of over 70 practices across the Republic and Northern Ireland.

The synergies between the two companies make the agreement an attractive prospect with both companies offering a turn-key solution comprising a comprehensive and tailored package for lawyers.

For further information contact:

Legal IT,
18 Church Avenue, Rathmines, Dublin 6.
Tel: 01 4128 565

Enterprise House, Mary Street, Cork.
Tel: 021 4321 829 Fax: 021 4321 841
Email: info@legalit.ie

More details of TFB's extensive range of products are available on **www.tfbplc.co.uk**

Technology for Business

legal i.t.

Society's 'concerns' over ECHR incorporation bill

The Law Society has told a Dáil committee of its concerns over the *European Convention on Human Rights Bill*, which the government published just before Easter. Council member James MacGuill, chairman of the society's task force on implementing the convention into Irish law, and law reform executive Alma Clissmann attended hearings of the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights in July, at which MacGuill presented the Law Society's submission.

The bill itself is short, consisting of only nine sections. It does not give the convention force of law, but inserts it in a somewhat unclear position between the constitution and enacted legislation, which may be declared to be incompatible with the convention, but is not repealed or invalidated by it. This is left to be remedied by the amendment of the offending legislation by the government of the day, and the applicant may get an *ex gratia* payment as a remedy.

The Law Society task force feels that the mechanism of incorporation is too minimalist and will not give the same standard of protection in this jurisdiction as has already been achieved in the UK and Northern Ireland, a view shared by the Bar Council and the Irish Council for Civil Liberties. The society also voiced concerns on a number of points.

James MacGuill, chairman of the society's ECHR task force

- The courts are excluded from the definition of a 'public authority', which means that they are not obliged to conform to convention standards, for example, in relation to giving reasons for their decisions, dealing with cases within a reasonable time, and considering convention points on their own motion
- The bill implies that domestic remedies must first be exhausted, a cumbersome and lengthy route to obtaining an effective remedy. The society believes that it should be possible to rely on convention rights as an alternative and that it should not be necessary to prove by prior proceedings that no other remedy is available
- Damages are often not an appropriate remedy, for example, in relation to someone held in custody, or in relation to a situation requiring injunctive relief
- The society also made many technical submissions in relation to limitation periods, jurisdiction of the District Court to deal with convention points of law, the need for free legal aid, the authority of decisions of the Court of Human Rights in Strasbourg, actual procedural matters in how convention points of law will be raised and dealt with in the courts (would the case stated procedure apply, for example?), and possible conflict in the role of the attorney general as notice party in the public interest and advisor to the government
- The society reviewed the *ex gratia* payment system envisaged and made suggestions in relation to the remedying and prevention of breaches of convention rights in the legislative process. It also made recommendations on the training of the judiciary, the legal profession and the many civil servants who will be required to take convention rights into account in their future dealings with the public.

The bill is scheduled to be enacted by the end of next month. Copies of the Law Society submission can be obtained from Alma Clissmann at the Law Society, tel: 01 6724831 or e-mail a.clissmann@lawsociety.ie.

SUPERIOR COURT JUDGMENTS IN THE PINK

The first issue of the *Pink sheets* for 2001 is being circulated with this issue of the *Gazette*. The *Pink sheets* are a subject index with short keyword entries to all the reserved written judgments of the High Court, Supreme Court and Court of Criminal Appeal. They were published jointly by the Law Society and Bar Council from the mid-1970s to 1996. The new *Pink sheets* will be published three times a year, the third part being an annual consolidation that will include entries for all judgments circulated during the year. As before, they are a joint publication by the Law Society and the Bar Council. The *Pink sheets* entries are provided by the FirstLaw on-line service.

VOLUNTEER LAWYERS NEEDED

The Citizens Information Centre in Swords urgently requires volunteer solicitors for its extremely busy legal advice service, which operates every Thursday evening from 7-8pm. The service is currently staffed by local lawyers who volunteer their time once a month. The Swords CIC would particularly like to hear from those who have experience in family law matters. If you can help out, call Deirdre on 01 840 6877 or 840 9714.

LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME

Unit prices: 1 August 2001
Managed fund: 386.8p
All-equity fund: 112.978p
Cash fund: 185.856p
Pension protector fund –

Gazette Yearbook and diary coming soon!

The *Law Society Gazette* will be publishing its all-new *Yearbook and diary* later this year. The new publication replaces the old Law Society yearbook and is the only officially-endorsed Law Society desk diary product. The good news is that it will be of the highest quality; the better news is that it is cheaper than any of its predecessors! All sales and advertising profits will go to the Solicitors' Benevolent Association.

Packed full of invaluable information for solicitors, the *Gazette yearbook and diary* will include details of Law Soceity member services, law terms, useful contacts in government departments and state-sponsored bodies, information on the euro changeover and much more. It will even give you a step-by-step guide to placing an advertisement for a lost land certificate or lost will in the magazine.

Order your copy now by turning to page 44 and filling out the form.

Letters

Concealment and 'unconscionable' actions

From: Niall Browne, Dublin

This letter is to show that it may be necessary, if concealment is actually found during the course of a solicitor's work on the papers from the other side, to go beyond the regular legal issues of contract or tort and so on, and to be prepared to fight (for a client) using fraud as a basis and an issue.

Solicitors may not be aware that case law exists concerning concealment and unconscionable actions. Some of that case law was used by the Supreme Court in 1998 in a majority judgment, where some matters had only come to light during a High Court hearing in which I was one of the solicitors. Those matters included concealment and some very suspicious actions, which were named as 'unconscionable' by the Supreme Court in 1998.

Therefore, if a solicitor comes across concealment and suspected fraud, then it is a source of hope to know that this matter is in a Supreme Court judgment and is also in several UK cases, and that it was dealt with on an unconscionable basis and that the judgment heading names it as fraud.

A lot of the lead-up to the High Court was concerned with the issue of contract, and it

DUMB AND DUMBER

From: Wendy O'Brien, legal secretary, Dublin

Many years ago, I worked in the 'private client' department of a very large and reputable firm of solicitors. Word-processing was in its infancy at the time and a colleague of mine, who fancied herself as a bit of a computer wizard, was asked by her boss as a matter of urgency to change the wording in a deed which was to be signed by his clients, with whom he was engaged in a meeting. He told her that one of the parties to the very substantial deed was to be changed to a company name as opposed to an individual person, and, accordingly, where the word 'his' occurred throughout the deed it was to be changed to 'its'. Rather than waste time, his secretary decided to use the then very new and sophisticated feature of 'search and replace' on her computer. The job was done in no time and the deed was handed back into the meeting for signing.

You can imagine her embarrassment (and even more so her boss's) when he burst out of the meeting very red faced and pointed out that everywhere in the deed where the word 'this' occurred it had been replaced by the word 'tits'!

I suppose you could congratulate the girl on keeping abreast with modern technology, but the moral of the story has to be to use your space bar!

From: James Seymour, Brian Lynch and Associates, Galway

Please find enclosed an excerpt from a letter I received from a colleague in the south. They obviously believe that thanking someone is never enough!

'Dear Mr Seymour … We enclose our cheque for ___ and would like to take this opportunity of taking you for your assistance in this matter'.

From: Lorraine Byrne, Fitzsimons Redmond, Dublin

We acted for a plaintiff who sustained serious injuries when she slipped and fell on an icy, uneven road. We instructed an engineer to carry out an examination of the *locus*, and in his report to us when detailing how the accident occurred he stated:

'Mr X drove the car into the entrance of the house and Mrs X left the car to open the gate. Mrs X slipped on an icy surface and staggered some distance across the road, eventually falling across a sleeping policeman'.

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

The following are supposedly all genuine replies that women have put on English Child Support Agency forms, in the section for listing 'father's details':

- Regarding the identity of the father of my twins, child A was fathered by [name removed]. I am unsure as to the identity of the father of child B, but I believe that he was conceived on the same night
- I am unsure as to the identity of the father of my child as I was being sick out of a window when taken unexpectedly from behind. I can provide you with a list of names of men that I think were at the party if this helps
- I do not know the name of the father of my little girl. She was conceived at a party [address and date given] where I had unprotected sex with a man I met that night. I do remember that the sex was so good that I fainted. If you do manage to track down the father, can you send me his phone number?
- I don't know the identity of the father of my daughter. He drives a BMW that now has a hole made by my stiletto in one of the door panels. Perhaps you can contact BMW service stations in this area and see if he's had it replaced
- I cannot tell you the name of child A's dad as he informs me that to do so would blow his cover and that would have cataclysmic implications for the British economy. I am torn between doing right by you and right by my country. Please advise
- I do not know who the father of my child was, as all squaddies look the same to me. I can confirm that he was a Royal Green Jacket
- [Name given] is the father of child A. If you do catch up with him, can you ask him what he did with my AC/DC CDs?
- From the dates it seems that my daughter was conceived at Euro Disney. Maybe it really is the Magic Kingdom
- So much about that night is a blur. The only thing that I remember for sure is that Delia Smith did a programme about eggs earlier in the evening. If I'd have stayed in and watched more TV rather than going to the party at [address given], mine might have remained unfertilised.

Wendy O'Brien wins the bottle of champagne this month.

required readiness on the part of most professionals to be prepared to give more time and more help to the client, because just to attend that High Court hearing made it clear that there might be something further to be fought for, something as serious as fraud. Even though it was obvious to everybody sitting in the High Court that something more serious than contract or a regular legal issue was involved, it required preparedness to stay with it, preparedness from every professional who was on the legal team and who was with that team.

The Supreme Court eventually showed that it was going to stand behind any professional who did stay with it.

Unless I am mistaken, we do not seem to have in Ireland the equity case law dealing with unconscionable actions, concealment and fraud – at least, all of those together. The Supreme Court judgment named three UK cases dealing with unconscionable actions and concealment. The heading itself, in the reported judgment of my client's case, has the word 'fraud'. Unless I am mistaken, it is only since that case that we now have a Supreme Court majority judgment dealing with it. It is published. It is in the *Irish Law Reports Monthly*.

This situation means that if a solicitor is aware of concealment of facts by the other side's client, there is case law for him to rely on – case law that will give hope to both himself and his client.

Practise what you preach!

From: Patrick O'Connor, Swinford, Co Mayo

The attorney general, Michael McDowell, suggested in a speech at the 21st anniversary conference of the Legal Aid Board in Tralee at the end of June that the legal system is not working and is 'simply unjust'. Many lawyers within the legal profession will have sympathy with the views expressed by the attorney general and would welcome the establishment of the forum suggested by him.

Regretfully, there are too few judges to deal with the very heavy and increasing workload placed upon them. It is the government, and not the legal profession, that has within its own powers the facility to alleviate the burden in the judiciary. The attorney general is well placed to advise the government on the need for additional judges. The recently published *Courts and Court Officers Bill* is a vehicle available to the government to do what is necessary to increase the number of judges.

Perhaps the attorney general might also consider, as a small gesture towards the reform that he suggests is needed within the legal system, changing the regulations within his own office which prevent the employment of one branch of the legal profession (solicitors) from acting as advisors to him and the government. One small step towards reform and equality within the legal profession itself might further enhance the considerable reputation of Michael McDowell!

Please, sir, can I have some more?

From: Leo Mangan, Mangan O'Beirne, Dublin

On holidays I have been reading Dickens's *Bleak House*. The opening pages of chapter 19 provide a wonderful description of the long vacation. This may be suitable for publication in the next *Gazette*.

Woolf at the door: do we need

English civil court procedure has undergone a complete overhaul in recent years. A similar initiative looks likely here, but how far should we go? wonders Roddy Bourke

Lord Woolf's reforms in England and Wales have provoked much discussion about whether there should be similar 'root and branch' reform in civil litigation in this jurisdiction. 'The Morris committee', chaired by the president of the High Court and convened by Mr Justice Kearns, met during the spring to consider reforms in civil litigation. The group included representatives from the Law Society and from the Bar.

In its written report to the Superior Courts Rules Committee, the group has concluded that less drastic, though substantial, changes would be appropriate in this country. Among the recommendations are changes in discovery, admissions and lodgments procedures. The report also recommends reforms to the exchange of experts' reports, and a type of judicial case management for appropriate, probably larger, cases.

The Woolf reforms in England and Wales have abolished and replaced the entire rules of civil procedure. Responsibility for management of litigation has been transferred from the parties and their lawyers to the courts. Vague letters before action or blanket denials are not permitted. There are strictly-enforced penalties for delay (the rules force the parties to press on with cases according to timetables, or to settle or abandon them). In many cases, judges conduct case management conferences. These examine and plan progress to settlement or trial. In particular, parties must narrow down issues and disputes of fact well in advance of trial. Procedure in lower-value claims is simpler than in other cases, on the basis that costs should bear some relation to what is at stake in a case.

Woolf is not the only, or indeed the first, major attempt at case management and other reforms to civil litigation. There is a long history of judicial case management in the United States of America, particularly in respect of complex litigation. Many other common-law countries have implemented changes that attempt to streamline litigation.

Roddy Bourke: Woolf reforms still relatively untested

Would Woolf work in Ireland?

The Morris committee has concluded that radical reform along the lines of Woolf would not be appropriate in Ireland. An important reason for this is that intensive 'hands on' judicial case management in large numbers of cases would require a substantial increase in judicial resources. Another reason in the committee's mind may have been that such wide-ranging reform would be a culture shock here. Other than the abolition of juries, and recent rules on experts' reports and discovery, our civil court rules have been largely unreformed since the days of Queen Victoria.

In contrast, prior to the Woolf reforms, court procedure in England and Wales had been reformed substantially in previous decades. Another reason for not implementing a similar wholesale change here is that the Woolf reforms are still relatively new and untested. Some English practitioners have reported that the rules do not reduce costs and are unnecessarily complicated. In these circumstances, more limited reform may work better in Ireland, provided that rules are implemented with vigour.

Case management by judges

Although not going down the Woolf route, the Morris report recommends that in cases of particular complexity where pre-trial management by the court is justified, a judge should be appointed for this purpose.

Net begins to tighten on the c

The appointment of a new director of corporate enforcement could mean hard times – and hard time – ahead for white-collar crooks, writes Pat Igoe

It was bespectacled tax collectors with files under their arms that finally brought Al Capone to heel and put him on a diet of cold porridge.

Here in Ireland, in possibly less dramatic times, the Criminal Assets Bureau has become a role-model for some neighbouring countries in confiscating the proceeds of crime. It has shown that there is more to criminal law than catching murderers, bag-snatchers and dole cheats.

Since the middle of the summer, the CAB has been joined by the director of corporate enforcement, a corporation sole with responsibility for ensuring that companies and their officers treat the law with respect, rather than contempt or indifference. The director's powers can be described as awesome. They serve notice that this time the *Companies code* is not just something for lawyers. Now, company directors and other officers who continue to commit any of the wide variety of criminal offences contained in the *Companies Act* of 1963 and the amending acts at last risk being seriously investigated and seriously prosecuted.

Principal officer in the Department of Enterprise, Trade and Employment, Paul Appelby, has been appointed as director. He is charged with the prevention, investigation and prosecution of corporate wrong-doing. His job also enables him to ask the court for injunctions, where necessary. He has a broad role in

a litigation revolution too?

Case conferences would be held in such cases. With the senior legal representatives of the parties participating, the judge would define the issues that are to be determined at trial, resolve any outstanding preliminary matters and plan the conduct of the trial. This stocktaking would focus the attention of the parties on the issues really in dispute. Presumably, in really complex cases with potentially enormous discoveries, more than one case management conference could be held, including a conference relatively early in the proceedings to identify a plan for the orderly conduct of the litigation.

No more delay?

The committee urges that rules of court should be strictly enforced. The scope for delay is probably the major problem in Irish civil litigation. This can only be addressed by the judges enforcing time limits and other rules, and by parties availing of such judicial willingness to enforce rules by bringing motions to combat delay.

Cards on the table

The committee advocates greater and earlier disclosure in litigation. Pleadings need to be much more detailed. The present culture of vague pleadings encourages drift and does not facilitate earlier settlement of cases. Substantial changes to the rules for admissions of facts and documents are proposed, and the committee recommends that in every plenary cause of action parties should be obliged to serve notices to admit facts. The report also proposes modernisation of the rules governing interrogatories – these are too cumbersome at present and so are rarely used. The committee recommends that the current regime for disclosure of experts' reports be extended to all plenary cases (not just personal injuries cases) but that the obligation to disclose should be confined to reports in their final form.

Reforming discovery

Our system of discovery evolved in the era of scrivenry clerks. Since then, the photocopier and computer have spawned mountains of paper in litigation. Also, some rules (such as the *Bula* requirement to list all privileged documents in every case) have led to much expense and difficulty with little resulting benefit. The committee has recommended that discovery reforms similar to those adopted in England should be considered in this jurisdiction, particularly those that limit discovery to documents that are of real relevance to the issues in dispute. It recommends reform of the *Bula* rule to require listing of privileged documents in most instances by category of document rather than by individual listing. The report recommends that the model affidavit of discovery in the rules should set out in plain, modern English the obligations of the person swearing the document.

'Other than the abolition of juries, and recent rules on experts' reports, our civil court rules have been largely unreformed since the days of Queen Victoria'

Case management and other reforms in civil litigation procedures are likely to occur soon, as the judges and the rules committees respond to the pressing need to adapt the civil litigation system to the modern world. Solicitors, as the lawyers mainly responsible for the management of litigation, should be adequately consulted and their views considered in advance of any changes. There are solicitor members of the rules committees, and solicitors also participated in the Morris committee.

To build on this, however, the rules committees and judges should circulate to the professional bodies all draft changes of procedure well in advance of proposed promulgation. They should also consider publishing draft proposals and rules on the courts services website. This would ensure broad consultation and more effective rules. G

Roddy Bourke is a member of the Law Society's Litigation Committee and was a member of the Morris committee.

orporate Capones

supervising corporate Ireland.

His role is about compliance and enforcement. From now on, somebody *is* watching. And reporting each year to the minister for enterprise, trade and employment in addition to 'accounting to' an appropriately established committee of the Dáil or Seanad.

The act also places the Company Law Review Group on a permanent basis and sets out that its agenda in monitoring company law and making recommendations to the minister will be reviewed every two years.

New director of corporate enforcement Paul Appelby

It is well known that the *Companies Act, 1963* contains widespread criminal sanctions, most of which have been … well, under-used. Company law has been skirted around, abused, ignored. Not by all, but by enough 'major players' in Irish business to seriously jeopardise this country's international reputation as a place for doing business. Evidence given at the Dublin Castle tribunals on a small number of matters which have come to public attention has merely confirmed what our taxi drivers and hair-cutters have been telling us for years.

Enter the *Company Law Enforcement Act, 2001*, which was published as a bill in July 2000 with 101 sections and 50 pages of provisions. When signed into law on 9 July 2001, it had 114 sections and 64 pages of provisions. Some of them may be of interest to

jurisdiction-hoppers.

A few figures. In the late 1990s, a ridiculous 13% of companies filed their annual returns on time in the Companies Office. That's 87% non-compliance with the most basic of company rules – to file your annual returns on time. And that was at the venial end of the spectrum. Yet, out of a total of 137,654 companies and well over a quarter of a million Irish company directors at the end of 2000, we had just four disqualified directors and 113 restricted directors. Expect a dramatic change in attitude or a dramatic jump in the figures.

The main provisions of the act's ten parts include significant improvements in:

- Investigations of companies and their officers
- Seeking restrictions and disqualifications of directors
- Winding-up and insolvency provisions
- Measures to improve compliance with obligations to file returns in the Companies Office, and
- Controls on auditors.

The director takes over the role of the tánaiste and minister for enterprise, trade and employment in initiating and conducting investigations into the behaviour of companies and their officers. He is a civil servant and 'shall be independent in the performance of his or her functions'.

Investigations into the affairs of such companies as Ansbacher Cayman, National Irish Bank, NIB Financial Services Limited, Michael Lowry's Garuda Limited and Ciaran Haughey's Celtic Helicopters will be taken out of the political arena. Tánaiste Mary Harney explained that 'it was judged to be more cost-effective, and less politicised, if the decision on whether to initiate a company law investigation or a criminal investigation in any particular case was centralised with the director'.

'Laws that are not enforced are ignored. The warning signs to dog-owners erected by local authorities under the Litter Pollution Act, 1997 are striking – but who's watching?'

Attorney General Michael McDowell, who chaired the committee that ultimately led to the act, insists that the new regime will be sensitive to commercial realities and to the needs of small business. It will not be a Frankenstein's monster let loose across the land.

Whereas section 145 of the 1963 act merely requires companies to keep the minutes of general meetings and directors' meetings indefinitely (do all 250,000-plus directors know this?), the new act enables the director of corporate enforcement to demand production to him of a company's books. It requires companies to 'give to the director such facilities for inspecting and taking copies of the contents of the book or books as the director may require'.

The definition of 'related

Justice and the solicitor: can

Everybody talks a lot about justice, writes Eamonn Hall, but what exactly is it – and is the legal profession doing enough to uphold it in all its forms?

Justice is a bond of society. It is a cardinal virtue and the people demand it. The courts are our courts of justice and the function of the law is to uphold justice.

So, what is justice? In a sense, it is the exercise of authority and power in the maintenance of right. One of my favourite definitions (and I paraphrase the writer Daniel Webster) is that justice is the ligament of society which holds civilised beings and civilised nations together. Webster in his *Life and letters of Joseph Story* (1851) wrote: 'Wherever [justice's] temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race, and whoever labours on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, commits himself in name and fame, and character, with that which is and must be as durable as the frame of human society'.

Yes, solicitors can be justly proud of their contribution to justice. However, sadly, and due to the provenance of human frailty, it would be wrong to suggest that there have not been occasions when the legal system has failed to achieve justice for clients.

In this context, it is appropriate to ask what the lawyer's duty to a client is. As representatives of our clients, we provide them with an informed understanding of their legal rights and obligations. When we act as advocates, we zealously assert their position under the adversarial system. When we act for the state as prosecutors, we must not suppress evidence capable of establishing the innocence of the accused. When we negotiate on behalf of a client, we may do so to the advantage of the client, but remain conscious of the concept of honest dealing. We must never forget that we are officers of the court, with duties to the client as well as to the legal system, the court, the judges, the court officials and our peers.

In general terms, we should not bring or defend proceedings unless there is some basis for doing so. We should not institute frivolous proceedings, but in criminal defence proceedings it is appropriate to demand proof of every aspect of the case.

In the context of justice and service to our clients, I recently came across an article in the *Irish Times* written some 23 years ago by the then well-known journalist Don Buckley. The article referred to one of the then strongest critics of the profession, the young solicitor Pat McCartan (now a judge of the Circuit Court after many years as one of Dublin's leading criminal defence lawyers).

companies' that can also be investigated will now include companies that have a 'commercial relationship' with the investigated company. And such a relationship exists 'where goods or services are sold or given by one party to another'. A goods trail and a money trail can be followed.

The courts are empowered to order that a company pay the costs of the investigation 'to such extent as the court may direct' – in other words, without limit. It is not yet clear the extent to which the director can be or should be self-financing. Also, individuals who are convicted on indictment and ordered to pay damages or to restore property may personally be ordered to pay up to one-tenth of the costs of the investigation. Exit the company-abusing phoenix?

Sections in this act *will* be challenged. Anticipation of such challenges is clear from a reading of the act. The *Companies Act* of 1990, which provided the legal machinery for the various high-profile investigations and inspections of the past decade, is amended in important respects.

It is now explicit that a required statement may not be used in evidence in proceedings for a criminal offence, other than perjury in the statement. In Britain, a person under investigation under the *Criminal Justice Act 1987* is required to provide answers under section 2. But these answers are inadmissible in proceedings other than for giving false information or for making a statement inconsistent with answers already given. Here, the parliamentary draftsmen must bear in mind both the constitution and the *European convention on human rights*. Anyway, answers can still lead to a trail that can yield admissible evidence.

The act also provides for the director to take prosecutions directly in summary cases and to refer cases to the director of public prosecutions. He can seek restriction or disqualification orders against company directors and also injunctions restraining companies and their officers from continuing certain practices. Also, personal liability of directors becomes a realistic possibility.

Value for money

The director here will have a complement of nearly 40 staff, including solicitors, accountants and seconded gardaí. The annual report will be presented to the Dáil and Seanad by the minister for enterprise, trade and employment, which will encourage at least annual focus on the effectiveness and value for money of the new measures.

Laws that are not enforced are ignored. The warning signs to dog-owners erected by local authorities under the *Litter Pollution Act, 1997* are striking – but who's watching? With proper resources and determination, it can be confidently predicted that the law relating to the conduct of companies will no longer be a dog's lamp-post. G

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A continuing legal education (CLE) seminar on the Company Law Enforcement Act, 2001 *will be held at Blackhall Place and UCC on Tuesday 18 September 2001.*

we be proud of ourselves?

Incidentally, some three years earlier, the then minister for justice, Patrick Cooney, publicly commented that the training of barristers and solicitors was outdated and that both branches of the profession would, if necessary, have to be dragged howling and kicking into the 20th century.

In that 1978 article, Mr McCartan was described as the antithesis of the conservative traditional solicitor and as a person who wanted the profession completely reformed. He was described as being in partnership in Dublin with other solicitors who ran their practice as a co-operative. He was also described as a founder member of the Irish Association of Democratic Lawyers, which was formed in 1977 to press for radical reform of the legal profession, including a change from being a profession serving the interests of the middle classes to meeting the legal needs of all the community.

Eamonn Hall: solicitors in Ireland can be proud of serving both justice and the *bona fide* legal needs of the community

'There is no appreciation of the concept of providing legal services as a right for all people, not just something a few can afford to pay for', he is quoted as saying. 'Legal facilities should be provided on the same basis as the state provides health and social welfare services'.

In the same article, McCartan is quoted as expressing the hope that the development of legal aid would break the private monopoly in legal services. He noted that in 1978 there were only 45 solicitors in the criminal legal aid scheme out of about 1,000 solicitors in Dublin, reflecting – as he saw it – the profession's lack of interest in this area of practice. He considered that the government should employ lawyers on a full-time basis to run any extension of the criminal legal aid scheme and the then promised provision of legal aid for civil cases, thereby weakening the existing organisation of the profession on private enterprise lines.

In the same article, the then president of the Law Society, Joseph Dundon, stated that solicitors had a sense of social responsibility, but he was characterised as representing the view of the 'established, powerful Law Society, supported by the overwhelming majority of his profession'. The article considered that Pat McCartan's view of the profession was shared only 'by a handful of solicitors … but probably echoed the opinion of many members of the public'.

That 1978 criticism of the legal profession may or may not have been justified at the time but, arguably, it is not justified in 2001. Within the law, within the confines of the legal system, solicitors in Ireland can, in general, be proud of serving both justice and the *bona fide* legal needs of the community. G

Dr Eamonn Hall is company solicitor of Eircom plc.

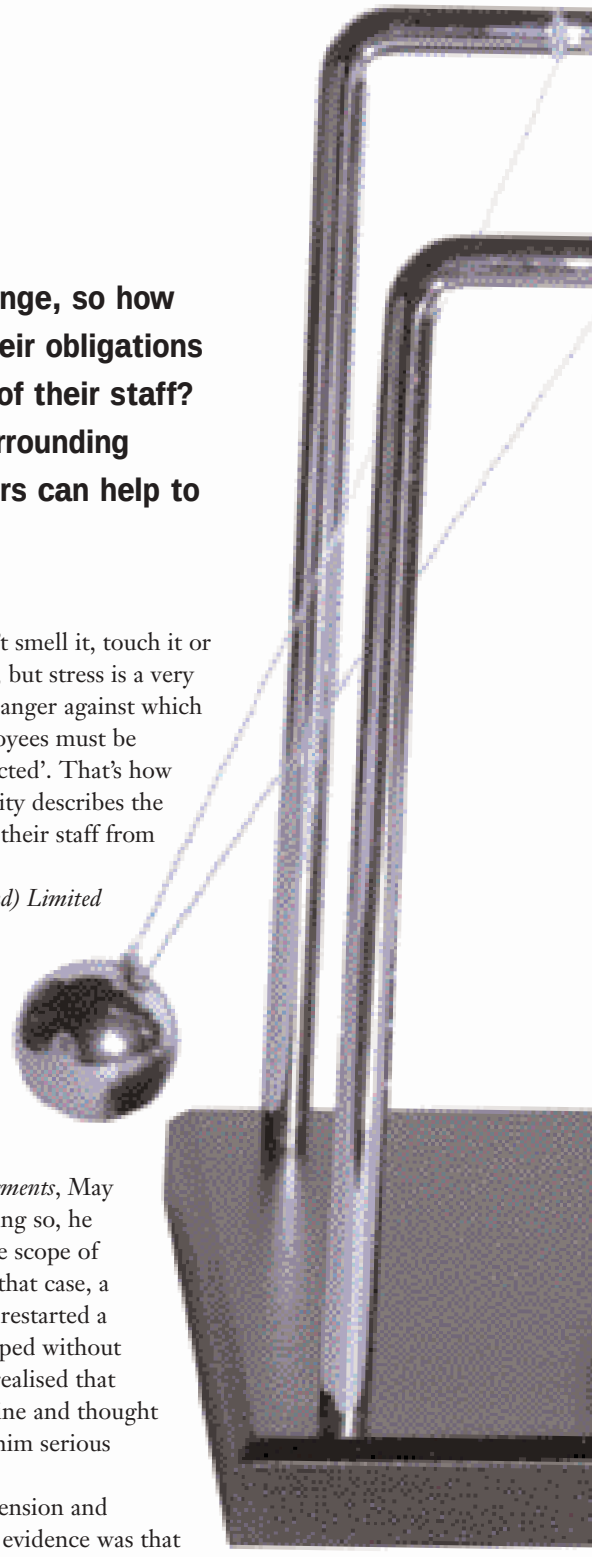
PRESSU

One man's stress is another man's challenge, so how are employers supposed to understand their obligations when it comes to the health and welfare of their staff? Jane Deane examines the legal issues surrounding stress in the workplace and how employers can help to reduce the risk

'We can't smell it, touch it or see it, but stress is a very real danger against which employees must be protected'. That's how the Health and Safety Authority describes the duty on employers to protect their staff from stress in the workplace.

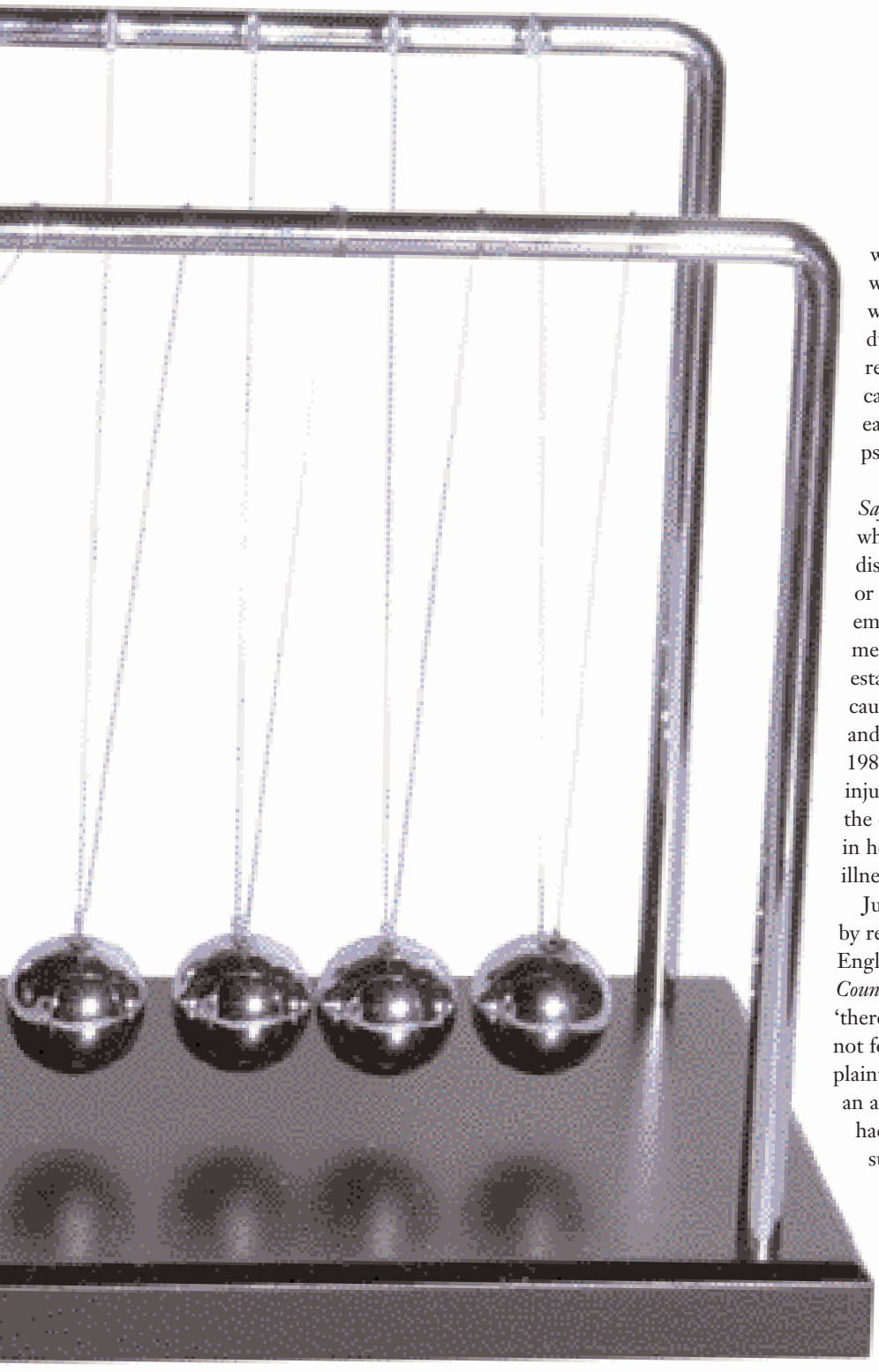
In *Curran v Cadbury (Ireland) Limited* (Circuit Court, 1999), Judge Bryan McMahon held that the duty of the employer was not confined to protecting an employee from physical injury but extended to protecting the employee from non-physical injury (see *Personal injury judgments*, May 2000 *Gazette*, page 37). In doing so, he clearly defined and limited the scope of liability for mental illness. In that case, a worker in a chocolate factory restarted a machine which had been stopped without notification to her. She then realised that there was a fitter in the machine and thought she had killed him or caused him serious injury.

'She was filled with apprehension and probably irrational guilt. Her evidence was that



MAIN POINTS

- Health and safety legislation
- Recent case law on work-related stress
- Creating a stress-free workplace



STRESS AND THE LAW

URE POINTS

when she arrived at the scene where the fitter was, she was blinded with panic', said the judge, who held that the employer was in breach of the duty of care owed to its employees, that it was reasonably foreseeable that the breach could cause to the employee a great fright which could easily result in a psychiatric illness, and that psychiatric illness was in fact caused.

McMahon J also referred to section 2 of the *Safety, Health and Welfare at Work Act, 1989*, which defines personal injury as including 'any disease or any impairment of a person's physical or mental condition', making it clear that an employer is obliged to avoid both physical and mental injury arising in the workplace. The establishment and development by the courts of causes of action often reflects changing scientific and social thinking. McMahon J's reference to the 1989 act clearly shows that as regards personal injury in the workplace, the courts must now act in the context of the common recognition, reflected in health and safety legislation, that psychiatric illness is every bit as real as physical illness.

Judge McMahon further explained his decision by referring in his judgment to the decision of the English courts in *Walker v Northumberland County Council* ([1995] 1 All ER 737), maintaining that 'there is no reason to suspect that our courts would not follow this line of authority'. In that case, the plaintiff was employed as a social services officer in an area with a high number of childcare cases. He had a very heavy workload with little back-up or support, suffered a nervous breakdown and was out of work for three months. He returned to work and after six months and had another nervous breakdown. Walker claimed that his employer was negligent in subjecting him to a volume of work which would endanger his health. It was held, in awarding him stg£200,000, that his first

WHAT THE HEALTH AND SAFETY LEGISLATION SAYS

Section 6 of the *Safety, Health and Welfare at Work Act, 1989* provides that there is a duty on every employer to ensure 'as far as reasonably practicable' the safety, health and welfare at work of all employees. The common-law duty of care imposes an obligation on employers to ensure a reasonably safe place of work, safe systems of work, safe tools and equipment, and safe colleagues.

The scope of that duty has been extended over the years in Ireland from physical injury, to mental injury arising out of physical injury (either to the claimant or to another), to pure mental injury. While that development is clear, the problem for employers now is to understand what falls within the ambit of mental injury.

breakdown was not reasonably foreseeable but that it was foreseeable that the second breakdown might occur if he was subjected to the same volume of work.

Very little judicial authority

The judge held that the employer had a duty to provide the plaintiff with assistance after he had returned to work after his initial breakdown, saying that 'there has been little judicial authority on the extent to which an employer owes to his employees a duty not to cause them psychiatric damage by the volume or character of work which the employees are required to perform'. He concentrated, therefore, on what he said was 'clear law' that an employer has a duty to provide his employee with a reasonably safe system of work and take reasonable steps to protect him from risks which are reasonably foreseeable. The judge noted that whereas the law on the extent of an employer's duty has developed almost exclusively in cases involving physical injury to the employee as distinct from injury to his mental health, there is no logical reason why risk of psychiatric damage should be excluded from the scope of an employer's duty of care. Most importantly, Coleman J said that stress is not caused by a single event but by a slow process.

In *Curran v Cadbury*, McMahon J pointed out that the Irish authorities had clearly established that the duty to compensate for nervous shock in negligence cases extended only to recognised psychiatric illnesses, in this case post-traumatic stress disorder. He referred to *Hosford v John Murphy and Sons Ltd* ([1998] ILRM 300) and confirmed that the law will not compensate victims for general grief or sorrow. In referring to *Kelly v Hennessy*, ([1995] 3 IR 253), he confirmed that an employer's duty did not extend to avoiding psychiatric illness brought about over a period of time.

In *McHugh v The Minister for Defence and the Attorney General* (unreported, High Court, Budd J, 28 January 2000), the differentiation between 'normal stress' and a 'recognised psychiatric illness' was also raised. The plaintiff's claim was that in the course of his work as soldier serving in the Lebanon he was exposed to traumatic incidents, such as the sight of mutilated corpses, and as a result he developed a psychiatric illness. He had not received any training in dealing with the traumatic incidents to which he was exposed. His claim was not that he had been caused stress but that, because his symptoms had not been recognised, he was not treated and so his stress developed into chronic post-traumatic stress disorder, a recognised medical condition. The Army psychologist in his evidence pointed out that stress is normal and is only abnormal above a certain level. The defendant's negligence was not that McHugh suffered from stress but that the defendant failed to ensure that the plaintiff received medical attention despite his abnormal and out-of-character behaviour. As in *Curran v Cadbury*, reference was made by Budd J to the medical evidence submitted and the foreseeability of the damage caused.

In *Kerwin v Aughinish Alumina*, a High Court decision last year, the plaintiff, an acting supervisor, suffered intimidation at the factory along with other supervisors. He agreed with management that he would resign from his position, bring an unfair dismissal claim and would be reappointed thereafter. He was taken back after the unfair dismissal claim as a welder rather than as a supervisor. This was held to be in breach of the agreement reached and he was awarded £50,000 for stress and associated health problems.

In *McGrath v The Garda Commissioner*, the plaintiff, a garda, had been suspended following failure to account for monies received. McGrath had challenged the various attempts made to hold internal disciplinary investigations and, having succeeded, he then challenged the validity of his suspension. He made four claims, including a claim for damages for personal injuries and for the loss and stress he suffered by reason of his loss of standing in the community arising from his suspension. Morris J referred to the established negligence of the defendant and a failure on the part of the commissioner or those to whom he had delegated the function of performing the appropriate duties to carry out those duties with reasonable care, as a result of which McGrath

LEADING CASES ON WORKPLACE STRESS

- *Curran v Cadbury (Ireland) Limited* ([2000] ILRM 343)
- *Walker v Northumberland County Council* ([1995] 1 All ER 737)
- *Hosford v John Murphy and Sons Ltd* ([1998] ILRM 300)
- *Kelly v Hennessy*, ([1995] 3 IR 253)
- *McHugh v The Minister for Defence and the Attorney General* (unreported, High Court, Budd J, 28 January 2000)
- *Kerwin v Aughinish Alumina* (High Court, 2000)

CREATING A STRESS-FREE WORKPLACE

Section 12 of the *Safety, Health and Welfare at Work Act* imposes an obligation on employers to put in place a safety statement specifying the way in which the safety, health and welfare of staff will be secured at work. Employers should identify whether stress is a hazard of any job within the business and, if it is, assess the risk and put measures in place to eliminate or control the risk presented or its effects.

A full safety statement is a defence which shows that the employer has taken reasonable steps to avoid injury to employees from work-related stress. (There is an inherent irony in this defence in that highlighting stress as a hazard in a safety statement shows that it is foreseeable, thereby potentially increasing the chances of liability being imposed on the employer.)

Clear grievance procedures should be put in place to ensure informal access to management, a formal procedure where necessary, and the identification of a final decision-maker. Stress is by its nature difficult to perceive and employers therefore rely heavily on communication with staff. A good grievance procedure entails an open communication policy which employees can avail of whenever they have concerns or feel unable to meet the demands placed on them.

All employees should be dealt with as individuals, taking into account their external worries and pressures as well as job-related demands. What is stressful for one employee may not be a problem for another, and indeed one employee may thrive on the pressure that causes another great strain, illness or injury. Performance reviews should take place regularly and consist of two-way communication, giving employees the chance to assess how they are progressing without the fear of demotion or career stagnation if they admit an inability to meet all of the work demands on them.

Clear, fair disciplinary procedures should be also in place. The irony is that the stressed employee, the employee in respect of whom the employer should take particular care, is the employee most likely to find themselves disciplined for lack of performance, absenteeism and on occasion misconduct (it is not impossible or uncommon that the stressed manager reacts to the uncontrolled pressure under which he finds himself by bullying and making undue demands on those employees who report to him).

Employers should ensure that they have sufficient liability insurance covering stress-related illnesses. It is also imperative that they comply with the *Organisation of Working Time Act, 1997* as regards daily, weekly and annual breaks. And they should ensure that staff take their full entitlement to maternity and adoptive leave, safe in the knowledge that their careers will not be affected as a result.

suffered and continued to suffer loss. The court awarded £40,000 to compensate the plaintiff for the stress, anxiety and the general disruption to his enjoyment of life.

No reference is made in the judgment to whether the stress and anxiety compensated was reasonably foreseeable either generally or in relation to the plaintiff in particular. Neither was any reference made to medical evidence or indeed to any medical or psychiatric illness. Despite the clarity of the differentiation in *Curran v Cadbury* and in *McHugh* between abnormal stress beyond a certain level on the one hand and what was described in *McHugh* as 'normal stress' on the other, the judgment in *McGrath* suggests that a claim may now be successful if the defendant's negligence is established and the plaintiff claims that anxiety was caused by that negligence.

Work-related stress arises from the daily pressures and demands which have become very much a usual part of the human experience. The very fact that stress statistics are so high suggests that the condition is not caused by exposure to distress or trauma outside the range of normal human experience. While the distinction between physical injury and psychiatric injury may well be artificial, it is arguable that a clear distinction should be made between recognised psychiatric illnesses and the stress or anxiety suffered as a result of a slow process of increasing strain and pressure which is difficult to perceive and which depends so greatly on the psychological strength and past history of the sufferer. The extent of the damage suffered by any individual may not be directly as a result of work. It may be that various other factors conspired to contribute to the level of strain and pressure on the individual.

Clear guidelines needed

If liability is to be imposed on employers for mental strain not amounting to a recognised psychiatric illness, then the claimant must be asked to show: clear evidence of the damage suffered and the extent of that damage; a clear causative link between the damage suffered and the employment; and that the damage to the claimant was foreseeable by the employer. Furthermore, we need clear guidelines on the extent to which the courts will accept psychological rather than medical evidence.

Work will always be capable of stressing us out. An employer's duty is not to guarantee a stress-free environment but to take reasonable steps to protect employees from exposure to stress and from the ill effects of unreasonably stressful working conditions. G

Jane Deane is a solicitor with the Dublin law firm Arthur Cox.

A case against the South Yorkshire Police for post-traumatic stress disorder arising out of the Hillsborough stadium disaster was recently settled out of court for a considerable sum. Gillian Kelly argues that this was a further attempt to limit liability for psychiatric injury in the UK

Haunted by H

MAIN POINTS

- Main symptoms of post-traumatic stress disorder
- English case law on PTSD
- International criticism of House of Lords' stance

Martin Long, a former police sergeant who developed symptoms of post-traumatic stress disorder nine years after the Hillsborough stadium disaster in April 1989, has recently been awarded around £330,000 in an out-of-court settlement with the South Yorkshire Police. Mr Long suffered a mental breakdown as a result of his rescue operations at Hillsborough.

The concept of psychiatric injury *per se* is not new. It has been known to the military establishment for many years. Each generation has developed its own terminology – shell-shock, neurasthenia, war neurosis, and, most recently, post-traumatic stress disorder. This last term has achieved common currency after being accorded a diagnostic heading in 1980 by the American Psychiatric Association. Courts of the common law jurisdictions have also become increasingly aware of the disorder as a valid head of claim in damages for personal injuries.

Assessment of psychiatric suffering is difficult. It requires subjective appraisal of how the quality of a victim's life may be affected. Courts have been challenged to develop assessment procedures which are both rigorous and fair – that is, which adequately compensate genuine sufferers while minimising the possibility of abuse. Only a minority of people exposed to a traumatic event actually develop PTSD (between 10% and 15%), but the disorder can affect even the strongest and most courageous of people. PTSD is a recognised and documented psychiatric condition which must be properly diagnosed and treated, and presented to the court by way of expert psychiatric evidence.

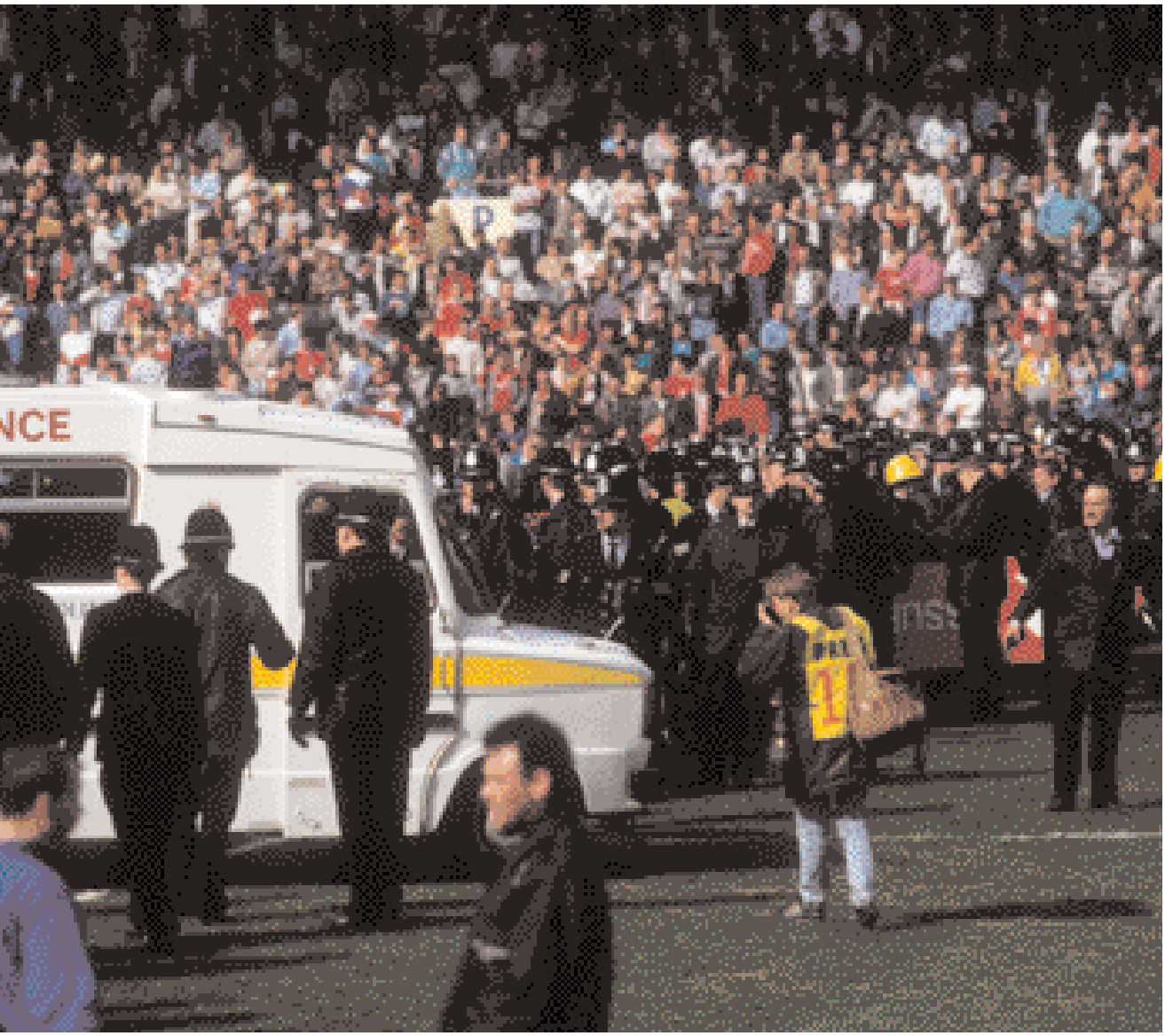
This article poses the question as to why the South Yorkshire Police settled Martin Long's case out of court, for a considerable sum, and speculates as to the underlying reasons for such a course of action.

It seems to me that this was more than just an out-of-court settlement, that there were compelling reasons – social, judicial and economic – which led the parties to settle the case rather than bring it before an English court. In the 1991 decision in

Alcock v The Chief Constable of South Yorkshire Police ([1991] 4 All ER 907), the civilian psychiatric casualties of Hillsborough were denied compensation by the House of Lords for their injuries. That decision provoked on-going public anger and indignation. Again, in the 1999 decision

PTSD and the UK courts

Hillsborough



in *White v The Chief Constable of South Yorkshire Police* ([1999] 1 All ER 1), the House of Lords denied compensation to police officers who suffered psychiatric injury while on duty at Hillsborough. An acknowledged influence on the *White* judgment was the fear that a decision in favour of the police officers would sit uneasily with the denial of compensation to the civilian victims of the same disaster. The *White* decision has been severely criticised by the public, and also by legal commentators and by the courts of Ireland and Australia.

So, had Mr Long's case proceeded, the English courts would have been in a no-win situation. An award of compensation to Mr Long would have rekindled the public discontent provoked by the decisions in *Alcock* and *White*, and set a legal precedent for similar claims. A denial of compensation to Mr Long would fuel further indignation and severe criticism, not only from the public but also from legal scholars and practitioners in England and other common-law jurisdictions.

Whatever its provenance, litigation of this intensity is bound to reach the House of Lords. The Lords has already pronounced on the civil liability for Hillsborough, and does not wish to re-open what it considers to be a closed book. But here is the prospect of a delayed reaction to the Hillsborough disaster, and a resultant claim in damages – a matter which would compel their lordships to confront the judicial frailty of their judgment in *White*.

Both parties to the proceedings in question must have been keenly aware of the dilemma that this case would present to an English court. The more sensible option, therefore, would seem to be an out-of-court settlement of Mr Long's claim.

The decision in *White v The Chief Constable of South Yorkshire Police* changed the law in the English jurisdiction governing psychiatric injury to rescuers. Now, in order to recover damages for post-traumatic stress disorder sustained as a result of rescue operations, the rescuer must have been subjected to a risk of physical injury during the course of the rescue. Such risk may be actual or apprehended.

The great Judge Cardozo of the New York Court of Appeals said in 1921: 'Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognises them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperilled victim; it is a wrong also to his rescuer' (*Wagner v International Railway Co* [1921] 232 NY 176 at 180).

Lord Hoffmann, in his judgment in *White v The Chief Constable*, dismissed Judge Cardozo's words as 'a florid passage' and expressed the opinion that if liability for psychiatric injury were extended to rescuers who were not exposed to physical injury, 'it may be said that this would encourage people to offer assistance'.

Misconceptions about the act of rescue

What an affront to a person who has assumed a risk to himself – either voluntarily or by virtue of his employment – in order to rescue victims of another's negligence, and what a profound misconception of the rescue process. The act of rescue is automatic. It does not qualify as a decision, but rather a split-second reaction to an immediate situation. A rescuer does not address the possibility of physical danger to himself; there is no time. Even less time is there to ponder the question of damages in the event that he might suffer psychiatrically as a result. And were such a feat of wisdom and foresight to be performed, then the moment is gone and he is not, and never was, a rescuer.

Underlying the English rationale in this area is the fear of a flood of claims, and the admitted desire to rein in the extent of liability for psychiatric injury. Vigilance is indeed necessary and understandable, and courts have a duty in this regard to avoid subjecting defendants to the possibility of unlimited claims in damages. This said, the entitlement of any plaintiff to an award in damages for personal injury must be a matter of evidence and not of policy, and the evidentiary process is well equipped to deal with unfounded and exaggerated claims. This was made clear by Judge Bryan McMahon in his Circuit Court judgment in *Curran v Cadbury (Ireland) Ltd* ([2000] ILRM 343).

Recent decisions from the High Court of Australia indicate that the courts of that jurisdiction view the House of Lords' position with similar caution as do the Irish courts, and that they too are declining to place artificial barriers in the way of deserving plaintiffs. The preconditions on recovery of damages for psychiatric injury imposed by the House of Lords have been severely criticised by legal academics in Australia. Dr Peter Handford, associate professor of law at the University of Western Australia and co-author of *Tort liability for psychiatric*

WHAT IS POST-TRAUMATIC STRESS DISORDER?

PTSD results from direct or proximate perception of a major tragedy. Symptoms include feelings of alienation, low self-esteem, acute anxiety, and flashbacks and nightmares of the incident. This frequently results in a professional and social dysfunction and sometimes in substance abuse and even violence.

Delayed reaction to a traumatic event, such as that suffered by Mr Long, is a recognised feature of post-traumatic stress disorder, and, according to the American Psychiatric Association, occurs at least six months after the disaster. The prognosis is not good for such patients, many of whom have been shown to be more seriously affected by the disorder, and to undergo a longer and more difficult recovery process than those who manifest early symptoms.

damage (The Law Book Company and Sweet & Maxwell, 1993), has recently described these measures as 'a damaging and unjustified limitation on the scope of the law as previously understood'.

While the House of Lords appears to be going its own way, other common-law jurisdictions remain true to the spirit of Judge Cardozo, that 'a wrong to the imperilled victim … is a wrong also to his rescuer' and that a rescuer who suffers pure psychiatric injury in an attempt to save the victims of another's negligence is just as deserving of compensation as are those whose lives he saved. The House of Lords, despite its judicial efforts to the contrary, must be keenly aware of this. It is also aware that, were it to adjudge Martin Long's psychiatric injury as being worthy of compensation, it would be setting an undesired legal precedent with the consequent risk of a flood of similar claims. It would also rekindle the public discontent at the denial of compensation to other psychiatric casualties of Hillsborough, which is still simmering after ten years. Were their lordships to refuse compensation to Martin Long based on their new, stricter principles, then they would engage the sustained criticism of the public and of legal practitioners and scholars both in England and other jurisdictions.

Professor Jane Stapleton observed in 1994, that 'once the law has taken a wrong turning or otherwise fallen into an unsatisfactory internal state in relation to a particular cause of action, incrementalism cannot provide the answer' (*The frontiers of liability*, vol 2, OUP).

It was thus that *Martin Long v The Chief Constable of South Yorkshire Police* was never aired in the courts of England. It might also be conjectured that any future delayed psychiatric reactions to Hillsborough might settle in the same way and for the same reasons. Clearly, the *White* decision has brought the law in England into an unsatisfactory internal state which will not stand up to either scrutiny or logic. Until it is addressed, cases such as Mr Long's will continue to shake their dreaded locks at the House of Lords, and continue to settle – out of court. G

Gillian Kelly is a barrister and author of Post-traumatic stress disorder and the law *(Round Hall Sweet & Maxwell, 2000).*

THE IRISH APPROACH

The Irish courts engage in no such judicial semantics as do the House of Lords. They employ a more objective approach to such cases, based on a proper judicial application of the laws of negligence to all the facts of the case. The Irish courts are also acutely aware that no immutable rule can establish the extent of liability for every circumstance of the future. This case-by-case approach leads to a more equitable outcome than that based on hard, policy-driven requirements. It is very evident that the rescuer's situation at law would be differently viewed by an Irish court. His case would be decided on its facts, and on the evidence of medical experts and of other witnesses in all the circumstances of the case; it would be irrelevant whether or not he had been exposed to physical danger during the rescue.

Staying ahead

Keeping up-to-date in a changing work environment has never been more important for the legal profession, and continuing professional development (CPD) is a good way to do it. But how many lawyers are actually committed to CPD, and what's holding people back? A recent survey of Irish law firms set out to find the answer

MAIN POINTS

- Need for CPD in the legal profession
- Results of a survey of Irish law firms
- Lack of time a major obstacle to CPD

The Irish legal profession is experiencing a period of dynamic growth. The speed of change means that practitioners must constantly keep abreast of changes in current laws and the enactment of new laws, as well as legal precedents in the courts. The large volume of regulations and directives emanating from the European Union also increases the regularity with which lawyers must adapt to working within ever-changing legal parameters. This reinforces the need for law firms to develop comprehensive continuing professional development (CPD) programmes to ensure that professional skills are kept up-to-date and relevant to meet changing organisational and environmental requirements.

In broad terms, CPD may be defined as the maintenance and enhancement of the knowledge, expertise and competence of professionals throughout their careers. Indeed, CPD is becoming a particularly important employee retention tool in a booming knowledge-based economy, where retention of skilled professionals is regularly cited as being in the top three strategic issues.

The realisation that skilled employees make a significantly greater contribution to organisational growth, productivity and profit has motivated firms across all industry sectors to devote an increasing share of their resources to CPD programmes. Recent studies show that a firm's reputation for CPD is a key factor in attracting skilled people. However, responsibility for CPD does not reside with the organisation alone; professional associations and the individual also have an important role to play.

CPD THE KEY ISSUES

- **Focus of CPD:** should CPD focus on individual needs and requirements or organisational priorities?
- **Responsibility for CPD:** does responsibility for CPD rest with individuals, organisations or professional bodies?
- **Nature of CPD:** should participation in CPD activities be mandatory or voluntary in nature?
- **Content of CPD:** should CPD be primarily knowledge-driven or skills-driven?

At the individual level, a shift towards greater career self-management, combined with the increasingly transient nature of the employment contract, highlights the need for employees to seek out career growth opportunities. The Chartered Institute for Personnel and Development, for example, suggests that CPD should be owned and driven by the individual and that the responsibility to ensure that CPD takes place rests primarily with that person. Nevertheless, a lack of understanding of the value of CPD, a lack of finances to carry it out, or a deficiency in other resources (such as time and access at an organisational level) may act as barriers to the development aims of practitioners, particularly among younger members.

Across organisations, awareness of the perceived benefits of CPD varies considerably. It is clear, however, that the sustainability of CPD interventions depends on the creation of appropriate knowledge-management systems to encourage participation in CPD and the transmission of shared knowledge throughout the organisation. Furthermore, linking CPD to succession planning and career management systems allows an organisation to anticipate future staffing needs and strategic business requirements.

Despite a multitude of business articles outlining the benefits of CPD, many firms are sceptical of its much-heralded benefits. Similarly, many organisations do not sell the benefits of CPD to staff and there are few attempts made to link CPD with the specific needs of the firm. A short-term training outlook focusing on essential and crucial training issues often prevails, precipitating the emergence of a negative learning culture and the dominant view of training as a cost rather than an investment. Finally, a fear may exist that well-developed staff may be poached by rival firms, fuelling the reluctance of

of the game

Video gains: Minister of State at the Department of Health and Children Mary Hanafin at a Law Society CLE video-link conference

senior management to invest in CPD programmes.

At a professional level, there is general agreement that well-developed CPD programmes are essential for the maintenance of high standards of professionalism, quality and customer service. Equally, it is clear that professional bodies are increasingly given the important role of organising training events for their members in light of the changing nature of employment and psychological contracts. Professional bodies are probably in the best position to control entry into the profession and are instrumental in recognising and promoting identifiable professional qualifications.

Membership of professional bodies also allows practitioners to keep in touch with changes occurring within the profession. The Law Society of Ireland, through its continuing legal education (CLE) programme, has tried to ensure that Irish lawyers are kept up-to-date with changes in the profession by organising regular seminars at venues throughout the country.

The focus of development is a key consideration in the provision of CPD. In many cases, it may be difficult to reconcile individual interests and organisational priorities. However, the extent to which this is possible depends on the work context and the degree of job flexibility allowed by senior management to individual employees. The integration of learning and work is indicative of a collaborative approach to CPD within an organisation. It involves an assessment of an individual's skills and abilities against the organisation's strategic goals and priorities. It identifies areas for future development, allowing people to add greater value to the organisation and giving them a chance to develop a portfolio of skills, making them more marketable, and perhaps more professionally desirable, in the long run.

The issue of mandatory participation in CPD is a contentious one. Proponents argue that compulsory attendance at CPD courses in certain professions (law, medicine) should be required in order to reduce levels of negligence and maintain high standards. Certainly, the evidence in Scotland has shown that the introduction of mandatory CPD has led to a marked decrease in legal negligence claims. However,

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TABLE 1: FREQUENCY OF CPD ACTIVITIES IN LAW FIRMS

	Monthly	Six monthly	Ad hoc	Not involved	Total
1 – 5 staff	0%	25%	41.6%	33.4%	100%
6 – 10 staff	19.8%	0%	60.4%	19.8%	100%
15+ staff	100%	0%	0%	0%	100%

the introduction of a mandatory system may foster a negative learning environment among legal professionals where it may be perceived as 'training for the sake of training'.

How the study was carried out

In this exploratory study, 150 questionnaires were distributed on a geographical basis to law firms affiliated to the Law Society of Ireland. The questionnaires sought to ascertain the attitudes of solicitors to CPD and the frequency and types of CPD engaged in by those firms. Some 45 questionnaires were returned, a response rate of 30%. Of those participating in the study, 80% worked in law firms employing less than six trained legal professionals. A further 11% worked for firms employing between six and ten trained legal professionals, with the remaining 9% being employed by firms with over 15 trained legal professionals. No responses were received from law firms employing between 11 and 15 trained legal staff.

The results in **Table 1** show a reasonably high level of participation among law firms in CPD activities. It shows that larger firms are more likely to be involved in CPD and are also more likely to organise CPD on a more frequent basis than smaller ones. In all cases where law firms were engaged in CPD, senior staff were involved.

Among non-participants in CPD, lack of time was frequently cited as a barrier to involvement. If one considers the general increase in overtime and late hours that lawyers work, combined with the time spent commuting to work, this may have a significant adverse impact in discouraging participation in certain forms of CPD, such as weekend seminars, night classes or simply taking a day off work.

In terms of CPD strategies used by the legal profession, **Table 2** shows that conferences and seminars are the most commonly-used strategy by both small and large firms. Books and professional journals are used to a significant degree by both small and larger firms, with a great reliance placed on this strategy by smaller firms. The study shows that larger firms are more likely to use formal coaching/mentoring relationships as a CPD strategy than smaller ones, and are also much more likely to make use of the Internet, legal databases and CD-ROMs.

TABLE 2: TRAINING INTERVENTIONS IN CPD ACTIVITIES

	Small firms 1 – 5 staff %	Larger firms 5+ staff %
Books/journals	72	56
Conferences/seminars	72	78
Coaching/mentoring	8	67
CD-ROM	22	44
Legal databases	19	67
Internet	14	56

'Skilled employees make a significantly greater contribution to organisational growth, productivity and profit'

The responses appear to indicate a demand among practitioners for the provision of more skills-based development courses. Three management areas were given the highest priority: administration, communication and time management skills. The two remaining priority areas focused on customer service issues and one specific area within the profession – legal research skills. Given the historical emphasis on knowledge acquisition in the legal profession, this suggests that perhaps more emphasis needs to be placed on developing a more practical skills-based approach to CPD.

TABLE 3: PRIORITY AREAS WHERE CPD IS REQUIRED

Rank	Item
1	Administrative skills
2	Communications skills
3	Time management skills
4	Customer service skills
5	Legal research skills

The study shows that CPD is gaining in importance among members of the Irish legal profession. It establishes that there is a high level of interest in – and commitment to – continuing professional development among lawyers. The extent of this commitment and interest is, however, strongly contingent on the size of the law firm. Time and money are the two main barriers to investment in CPD for many small firms. Larger law firms are more likely to have the financial resources and time available to fund and encourage CPD initiatives than is the case with sole practitioners or small firms. Indeed, in many small firms, CPD activities were organised in a very ad hoc, reactive manner, without any attempt to relate these to the strategic priorities of the firm.

There is also evidence of a traditional approach being taken to CPD in the types of interventions used to deliver CPD solutions. Relatively few of the smaller law firms have formalised coaching/mentoring schemes in place to facilitate CPD and they tend to rely largely on conferences and seminars and the use of books and journals to keep up-to-date with changes. Furthermore, it appears that practitioners are calling for a broader focus to CPD, in that the delivery of specific legal knowledge should be coupled with a focus on the development of a range of core management and personal skills. G

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A recent Law Reform Commission report recommends that clear language be used when drafting legislation. Michael King applauds that suggestion and offers some insight into how legal language came to be so tortured

MAIN POINTS

- LRC's recommendations on statutory drafting
- Relationship between drafting and interpretation
- Understanding how legislative texts are constructed

Statutes and

The recent publication of the Law Reform Commission's report, *Statutory drafting and interpretation: plain language and the law*, 17 months after its consultation paper on the same topic is, hopefully, a sign that change is finally in the air and a new era of more easily-readable legislation is about to dawn.

Such publicity as the report has attracted has tended to focus on its criticism of archaic vocabulary. This is understandable, given that it is the aspect of legal writing that the general public is probably most conscious of. But it is somewhat surprising that the news stories about the LRC report did not mention one of its most interesting aspects – the commission's recommendation that new interpretation legislation should be enacted.

This recommendation is noteworthy because it is the relationship between statutory drafting and judicial interpretation that gives legislative writing its unique character. It is probable that legislative writing has become increasingly defensive because of the traditional preference of judges for a literal approach to interpretation. Given that certainty – and therefore the avoidance of litigation – is one of the objectives of legislation, it is not surprising that legislative draftsmen have tended to choose forms of expression that are tried and tested. In order to permit an approach to interpretation in cases of ambiguity that would make a literal approach impossible, the report recommends new legislation and includes a proposed draft of legislative provisions.

The recommended approach, which in the context of EU legislation is sometimes described as a 'schematic' or 'teleological' approach, is to try to determine what the legislature intended when passing a law. This involves consulting other material to aid understanding. In the absence of clear guidelines as to what other material to use, many judges have preferred the literal approach, which does not allow for the use of anything other than the legislation itself.

The LRC report recommends that judges should, as a first resort, be allowed to refer to 'intrinsic aids to construction', such as material in the same document as the legislation but which is not part of it. Examples might be margin notes, cross-headings, long and short titles and preambles. It recommends that as a last resort judges should have access to 'extrinsic aids to construction', such as Oireachtas committee reports, treaties, explanatory memoranda, LRC reports and ministerial speeches in the Dáil. It is hoped that as a result of these proposed changes legislative draftsmen will in future feel less impelled to try to 'box the judge into a corner', as one writer put it.

Another of the report's recommendations is 'that a comprehensive programme of reform of Irish law, with a view to replacing existing statutory provisions with alternatives expressed in plain language, be undertaken' (chapter 7.12). In this regard, the LRC says that it supports the initiatives currently underway in the Office of the Parliamentary Counsel and the Statute Law Revision Unit. Such a programme will be a huge undertaking and is unlikely to be completed for many years. So, for the foreseeable future, the existing body of legislation will remain in place in its present form and people will just have to cope with its attendant difficulties.

Making sense of statutes

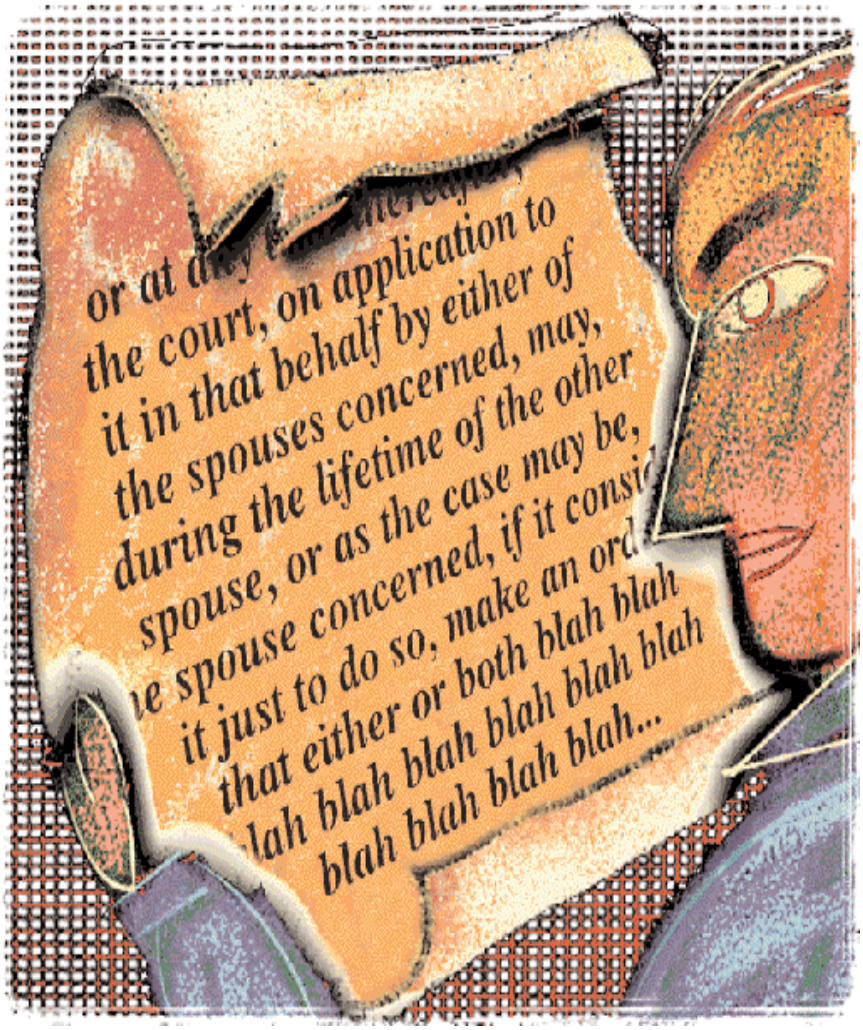
So, why are statutes difficult to read then? The answer lies in the relationship between drafting and interpretation, because it is this relationship that has led to those aspects of legislation that require the 'mental gymnastics' referred to in the

LRC consultation paper.

One way to understand these is to analyse them from a linguistic perspective. There have been comparatively few linguistic analyses of legal language – linguists have tended to avoid the area, probably because they recognise that legal texts have their own internal logic that is not readily apparent to readers who are not trained in law. In other words, it is very difficult to analyse a text you don't understand. One exception is Professor Vijay Bhatia of the City University of Hong Kong, whose *Analysing genre: language use in professional settings* (Longman, 1993) contains an interesting section on the analysis of legislative texts. Bhatia identifies a number of features that characterise legislative provisions, and these are discussed below.

Sentence length. One of the most noticeable features of legislative writing is what most people would regard as the excessive length of some sentences. For example, section 11(1) of the *Consumer Information Act, 1978* consists of one sentence of 156 words. There are many instances of legislative sentences that are much longer. In contrast, a typical sentence in written scientific English has been found to contain 27.6 words. The LRC recommends that in general legislative sentences should not contain more than 20-25 words.

'Nominalisation'. This is the process whereby a noun phrase is derived from an underlying clause. In the following example from section 32 of the *Sale of*



limitations

Goods and Supply of Services Act, 1980, the noun phrases are in bold:

'that person … shall … be answerable to the hirer for **breach of the agreement** and for any **misrepresentation made by that person** with respect to the goods in **the course of the antecedent negotiations**'.

The following re-written version shows the underlying clauses from which the noun phrases have been derived:

'that person … shall … be answerable to the hirer **because he breached the agreement** and **misrepresented facts** with respect to the goods **while they were negotiating the matter earlier**'.

Nominalisation is common in all forms of 'official' writing. It has two main advantages. It is an efficient way to express ideas (the re-written version above is ambiguous because 'he' could refer either to 'that person' or 'the hirer') and it helps to give a text the impersonal quality deemed suitable for such writing. But a lot of it, especially in combination with use of the passive voice, makes texts seem 'dry' – a criticism often levelled at legal English.

Complex prepositional phrases. A complex

prepositional phrase is a preposition/noun/preposition sequence that can be replaced by a simple preposition. Typical examples are 'by virtue of', 'for the purpose of', and 'in accordance with'. These could be replaced with 'by', 'for' and 'under' respectively. But it is not always possible to replace a complex preposition with a simple one without causing ambiguity. This is one reason why they are so common in legislative texts. Not all preposition/noun/preposition sequences are complex prepositions. For example, phrases such as 'with the approval of', 'in agreement with' and 'within the scope of' can't be replaced by simple prepositions.

'Binomial' and 'multinomial' expressions. These are very common in legal texts, examples being 'jointly and severally', 'in whole or in part', 'plant and machinery', 'under or in accordance with', 'the freehold conveyed or long lease granted', 'by the government or by any government public or local authority or by any person other than the person claiming relief'. Such expressions are an effective linguistic device for making a text precise and all-inclusive, but, as the LRC points out, they are often used unnecessarily when there is no real difference in meaning between the various elements.

Initial case descriptions. These specify the circumstances to which the main part of a section or sub-section applies. They are easily recognisable because they appear at the beginning of some legislative provisions and take the form of an adverbial clause, often beginning with 'where', 'if' or 'when'. Section 35(3) of the *Succession Act, 1965* has a typical example set out in bold below:
'**Where, in any contentious matter arising out of an application to the Probate Office, the High Court is satisfied that the Circuit Court has jurisdiction in the matter**, the High Court may remit the matter to the judge of the Circuit Court where the deceased, at the time of his death, had a fixed place of abode and the said judge shall proceed in the manner as if the application had been made to the Circuit Court in the first instance'.

Qualifications. The main substantive part of a legislative provision is only a framework which, if read on its own, could be taken to be of universal application, or indeed may be meaningless. It is the qualifications that give a provision its precise meaning. In the following example, section 45(4) of the *Courts and Court Officers Act ,1995*, the qualifications are in bold:
'**Notwithstanding the rule of law against the admission of hearsay evidence and the privilege attached to documents prepared for the purpose of pending or contemplated civil proceedings,** the Superior Courts Rules Committee or the Circuit Court Rules Committee may, **with the concurrence of the minister**, make rules allowing for …'.

Syntactic discontinuities. What is most characteristic of legislative writing is the way in which qualifications are inserted into a sentence. The task of the legislative draftsman is to make the main substantive provision more precise. This is done by inserting qualifications, but if they are not placed judiciously, they can be ambiguous. Hence, the tendency to insert qualifications next to the word or phrase that they are meant to qualify, even if this causes discontinuities in the syntax. In the following example, section 50 of the *Sale of Goods and Supply of Services Act, 1980*, the main substantive provision, which is in bold, is split by a very lengthy qualification:
'**The minister may by order provide that**, subject to such conditions as may be specified in the order, in the case of a contract of sale of goods or for the hire of goods under a hire-purchase agreement or under a letting agreement to which *section 38* applies …, **there shall be a specified period within which the customer shall be entitled to withdraw his acceptance of the contract**'.

Section 18(10) of the *Family Law (Divorce) Act, 1996* shows how the main substantive provision can be broken by a series of discontinuities:
'On granting a decree of divorce or at any time thereafter, **the court**, on application to it in that behalf by either of the spouses concerned, **may**, during the lifetime of the other spouse, or as the case may be, the spouse concerned, if it considers it just to do so, **make an order that either or both of the spouses shall not**, on the death of either of them, **be entitled to apply for an order under this section**'.

Discontinuities such as these are common in legislative writing. They often occur in noun phrases, binomial expressions and complex prepositions – in very complicated passages there are syntactic discontinuities within syntactic discontinuities. It is this feature of legislative writing more than any other that causes the 'mental gymnastics'.

'The blind pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity'

Moving statutes?

Syntactic discontinuities may be a by-product of the legislative draftsman's quest for precision, but they can make a text unintelligible. As GC Thornton warns in *Legislative drafting* (Butterworths, 1979): 'The blind pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity'.

In its consultation paper and report, the LRC addressed the problems that many of these features of legislative writing cause for the reader, and it is in this context that it has recommended a programme of plain language reform. It is hoped that this will eventually lead to texts that are more accessible and easier to understand. In the meantime, we must continue to work with existing legislation. An understanding of how legislative texts are constructed will, I hope, make those texts somewhat easier to read. G

Michael King is a solicitor and applied linguist.

The shape of thi

As more and more apprentices pass through the Law School, the solicitors' profession is set to change like never before. TP Kennedy crunches some numbers to profile the solicitors of tomorrow

MAIN POINTS

- 1,000 apprentices currently in the system
- Greater percentage of female apprentices
- County-by-county breakdown

Over the last three years, record numbers of apprentices have passed through the Law Society's Law School. The effects of this were felt from 1999 onwards, when the new professional practice course (PPC), catering for between 300 and 360 students, replaced the old-style professional course of some 98 students.

The high point was reached last year, with two professional practice courses – one with 300 students and one with 360. In late spring of this year, we had the highest number of apprentices at any one time – approximately 1,300. With the apprentices on the 1999 PPC qualifying from August, this number has now fallen to approximately 1,000. We have recently analysed this number to discern any emerging trends.

Qualification dates

Of interest to many is the number of those joining the profession in the coming years. The 1999 PPC (298 apprentices) will be qualifying between August 2001 and February 2002, depending on time served in the office prior to attending the course. The spring 2000 PPC (300) will be qualifying between June and September 2002. The autumn 2000 PPC (360) will be qualifying between February and May 2003. Finally, the 2001 PPC (352) is due to qualify between February and March 2004. These figures are approximate and do not include lawyers transferring from other jurisdictions.

Gender imbalance

Historically, men have been in the majority in the solicitors' profession. Though the number of women qualifying has markedly increased, the male majority persists. The last annual report gives a gender breakdown of 63% men to 37% women in the profession. However, among apprentices, women are very much in the majority. At present, 59% of apprentices are women and 41% are male.

The male/female breakdown varies from course to course, but the trend is a growing female percentage. The most marked imbalance was on the autumn 2000 PPC, with a 64% female majority. The 2001 PPC shows a modest male resurgence, with the female majority dropping to 56%. On previous trends, the female majority is likely to rise again for the 2002 PPC.

Looking back at the admissions statistics since 1995, each year has seen a female majority, rising from 56% in 1995 to 61% in 2000. The apprentice figures confirm this trend and show an even larger increase in women joining the profession. The chart below shows the percentage trend from 1995, with projections based on the current apprentice statistics through to 2004.

Figure 1: Current gender profile

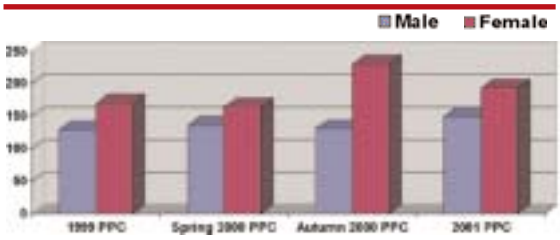
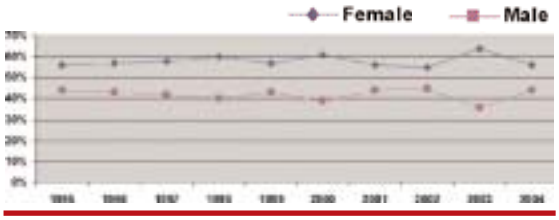


Figure 2: Future projections

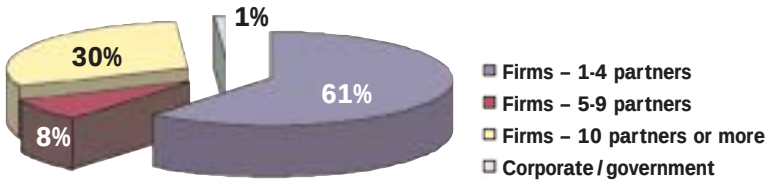


The forward projections do not take into account lawyers transferring from other jurisdictions and barristers requalifying. These figures differ from those qualifying in Ireland. Between 1995 and 2000, 311 qualified as solicitors through this route. Of this number, 58% were male and 42% were female.

Type of firm employing apprentices

One of the main points of interest was to discover the profile of firm from which apprentices are coming. For this purpose, we divided firms into four

Figure 3: Where do apprentices work?



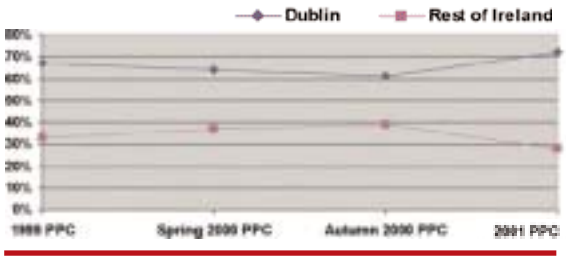
ngs to come?

categories: 1) firms with ten partners of more; 2) firms with five to nine partners; 3) government bodies/in-house legal departments, and 4) firms with four or less partners. There were few surprises in these figures. 61% of apprentices are drawn from firms with four partners or less. The largest number of firms also falls into this category. The next largest category was firms with ten partners or more. They account for 30% of all apprentices. These firms recruit large numbers of apprentices, and the largest five firms collectively account for 20% of all apprentices. Relatively few apprentices are drawn from firms with five to nine partners – only 9%. The most surprising figure is the dearth of apprentices in the corporate or government sector – ten in total, almost 1% of all apprentices.

Geographical spread

The real surprise came when we examined the geographical spread of apprentices. While we anticipated large numbers in Dublin, its

Figure 4: Beyond the Pale



preponderance took us by surprise. Some 66% of apprentices work in Dublin firms. The figure varies by course, but the trend appears to be towards an even higher number working in Dublin: 72% of the 2001 PPC come from Dublin firms.

After Dublin, the only other counties with significant numbers of apprentices are Cork (9%), Galway (4%) and Limerick (4%). Broadly speaking, 83% of apprentices work with firms in the larger metropolitan areas and only 17% in other areas.

Outside of these counties, Mayo is an honourable exception with a total of 16 apprentices, about 2% of the total number. At the other end of the list is Offaly, with only 2 apprentices – roughly 0.2% of apprentices.

The number of apprentices on a county-by-county basis is given in **Table 1**. Counties are listed by number of apprentices.

The bigger picture

In terms of those joining the profession on an annual basis, the largest proportion are those who have completed an apprenticeship. However, significant

Table 1: Apprentices by county

County	Number of apprentices	Percentage of total number of apprentices	Total number of firms in county
Dublin	659	65.8%	990
Cork	88	8.8%	219
Galway	42	4.2%	95
Limerick	36	3.6%	83
Mayo	16	1.6%	49
Clare	14	1.2%	43
Louth	14	1.2%	50
Wicklow	14	1.2%	46
Kerry	11	1%	52
Sligo	11	1%	25
Cavan	10	1%	26
Meath	9	.9%	38
Waterford	9	.9%	34
Kildare	8	.8%	55
Wexford	8	.8%	40
Donegal	7	.7%	43
Tipperary	7	.7%	63
Carlow	6	.6%	16
Westmeath	6	.6%	27
Monaghan	5	.5%	18
Roscommon	5	.5%	24
Kilkenny	4	.4%	23
Leitrim	4	.4%	13
Laois	3	.3%	18
Offaly	2	.2%	41

Table 2: Foreign lawyers admitted

	1995	1996	1997	1998	1999	2000	2001 (projected)
Transferring English solicitors	23	24	39	35	39	42	26
Transferring NI solicitors	7	7	15	19	21	18	13
Transferring EU lawyers	0	3	0	1	1	1	0
Transferring lawyers from: New York, Pennsylvania, New Zealand	0	0	0	0	1	5	3
Transferring Irish barristers	1	2	2	0	2	3	1
Apprentices	306	358	196	263	321	281	419
Total	337	394	252	318	385	350	462

numbers of other lawyers are also admitted on an annual basis. These fall into several different categories: 1) solicitors from Northern Ireland, England and Wales, who are admitted on submission of appropriate documents; 2) Irish barristers in practice for three years or more, who are required to attend some courses and take some examinations; 3) lawyers from EU states, who are required to take transfer examinations; and 4) lawyers from New York, New Zealand and Pennsylvania, who are also required to take a transfer test. G

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Immigration law handbook (second edition)

Margaret Phelan. Blackstone Press, Aldine Press, London W12 8AA, England. ISBN: 1-84174-149-3. Price: stg£35.

What will strike the Irish immigration lawyer, used to dealing with mainly old, very general immigration legislation which often refers to non-Irish as 'aliens', is the sheer size of this book. Containing the texts of UK legislation, regulations and rules, mainly at domestic level, but also selected extracts from EU and international law, it runs to 710 closely printed pages. While called an *Immigration law handbook*, it also deals with UK citizenship rights, and the law and rules governing asylum and refugees.

This second edition of the *Immigration law handbook*, edited by barrister Margaret Phelan, became necessary because of sweeping changes to immigration and asylum law and procedure in the UK in 1999. It is aimed at practitioners and advisers in the UK and compiles the law and rules as at 1 October 2000. It does not comment on the laws, except to give the genesis of any altered or inserted provisions, or to note the date on which a particular provision came into effect.

By just gathering together all the relevant legislation and rules, it is a useful reference tool which the Irish immigration lawyer is likely to use occasionally. The brief section containing EU treaty provisions and legislation is helpful, but allowance has to be made for different applications in the two jurisdictions. That section is selective, excluding, for example, the association agreements between the EU and third countries.

At a practical level, Irish immigration and asylum lawyers need to know something of UK immigration and asylum law. Under Irish law, people may be refused entry to Ireland if it is thought by our immigration authorities that they propose to travel without permit to the UK. A UK refusal stamp on a passport can cause problems for someone trying to come to Ireland. Given the special arrangements which apply for travel between Ireland and the UK in the so called 'common travel area' and the exceptionally close communication between Irish and UK immigration authorities, the Irish practitioner will need to refer from time to time to UK law to explain an immigration decision or assess the impact of travel within or to the common travel area on a client. The *Handbook* will be a valuable resource for this.

One quibble about the book is that the index is sparse. A search for 'common travel area' and 'Ireland' revealed nothing, though the body of the book contains both legislation and regulation relating to both. Apart from that reservation, the *Immigration law handbook* is a reliable compilation of United Kingdom immigration, asylum and citizenship law which will be a valuable resource in explaining the machinery of immigration law and practice in the UK. G

Noeline Blackwell is the principal of the Dublin law firm Blackwell & Co.

BOOKS PUBLISHED

Fundamental social rights: current European legal protection and the challenge of the *EU charter on fundamental rights*
Cathryn Costello (editor)
Irish Centre for European Law (2001), Trinity College, Dublin 2.
ISBN: 1-897606-31-1. Price: £20 to non-members, £15 to members.

***Liber memorialis*: Professor James C Brady**
Oonagh Breen, James Casey, Anthony Kerr (editors)
Round Hall Sweet and Maxwell (2001), 43 Fitzwilliam Place, Dublin 2.
ISBN: 1-85800-215-X.
Price: £98.

Davy STOCKBROKERS

Calculating earn

It's back to basics this month as Jack O'Keeffe explains one of the core measures at the heart of share valuation – the price/earnings ratio

Jack O'Keefe: analysts spend a considerable amount of time and effort estimating the future earnings of companies

If you read the financial pages of the newspapers or listen to the business news on TV, you may have heard terms such as 'company X is trading at 12 times earnings' or 'company Y is trading on a multiple of seven', and wondered what on earth they meant. These terms refer to a company's price/earnings (p/e) ratio, which is also known as the multiple.

The p/e ratio is one of the most important tools used in the markets. Portfolio managers and investment analysts use it to measure and compare the valuation of one company with another. Increasingly, private investors use p/e ratios to compare one share with another.

A solid understanding of the p/e ratio and how it applies to share valuation will be invaluable to you if you plan to invest in the markets.

Why is the p/e ratio important?

The p/e ratio allows you to compare a company's share price with its annual earnings. Essentially, it tells you how many years it will take, at current earning levels, to earn an amount equal to the market value of the company. Put another way, the price/earnings ratio is the multiple of earnings that an investor is prepared to pay for a share in a particular company.

Before we look at an example, it is important to understand how the p/e ratio is calculated. This is a two-step process.

Step 1: calculate the earnings per share (EPS).

Annual earnings, or after-tax profits, is the amount of money a company has available to re-invest in the company or to distribute to shareholders as dividends each year. EPS is calculated by dividing the earnings or after-tax profit figure by the number of shares in issue.

You can find the EPS figure in each public company's annual report or interim report, as well as in company research reports published by stockbrokers.

Step 2: to calculate the p/e ratio itself, divide the share price by the EPS figure.

Say we have determined that company X has a p/e ratio of ten. This means that we would expect company X to earn an amount equal to its market value in ten years.

Let's take a real example. The EPS for CRH, the building materials company, for the year ending December 2000 was 121.6 cent. The share price on 10 August 2001 was €19.35. This would give a p/e for CRH of 15.9 times (also written as 15.9x).

How do we interpret the p/e figure?

A high p/e ratio relative to other companies in the same sector normally indicates that the market expects the company to do well in the future.

The p/e ratio is calculated using **current** earnings per share. With a high p/e ratio, the market expects excellent **future** earnings to justify the relatively high share price. Put another way, if the p/e ratio is above average for the sector, the market generally expects profits to rise above the average too.

To understand the relevance of the multiple or p/e ratio when investing in the stock market, let's take another example (see **Table 1**).

Company A is a solid 'blue chip' company trading at a price of €20 with a historic multiple of 15x. Its earnings per share is €1.33 (€20 divided by 15). The expected growth rate of company A's earnings per share is 12%. Say the company announces that the demand for its products has declined by half. As a result, the company's broker predicts a revised EPS growth rate of 6% this year, which is half of the expected growth rate. However, company management expresses its confidence that this is a temporary setback and that normal growth rate will be resumed in the future.

If the market considers the company to have competent management that will deliver on its promise, the downside may be limited. The multiple may suffer on the news and fall to 10x. The share price will then drop to €13.33 (10 multiplied by €1.33). This equates to a 33% decrease in the share price.

Now consider **Company B**. This company is also trading at 20 but has a historic multiple of 30x due to its outstanding growth prospects and expectations of future EPS growth rates of 30% year on year. Company B's earnings per share is thus €0.6667 (€20 divided by 30). What happens when Company B announces that market conditions have changed and its broker predicts that instead of a 30% growth in earnings per share, the EPS growth rate will be reduced to 15% for the year – half of the expected rate?

Depending on market reaction, let's say the share price drops to €10 (€0.6667 multiplied by 15) reflecting the new lower multiple of 15 which is a result of reduced earnings expectations. This is a share price decrease of 50%.

What can we learn from

ings per share

these examples? Both companies announced a drop of 50% in the expected growth in their earnings. However, the company with the higher expectations of increasing earnings into the future – Company B – suffered the largest drop in share price. Company B was trading on a higher multiple to reflect these higher expectations, and the investor was consequently running a higher risk.

The factor that caused the share price to slip in companies A and B was the reduced *growth* rate in earnings per share. But what might happen to these companies' share prices if actual earnings fell and the companies incurred a loss? Try a few examples and you will quickly understand the fluctuation of share prices.

Examples of actual multiples in 2000 include: Bank of Ireland 16.4x, Elan 21x, Ryanair 12.5x and Kerry Group 14.7x.

An international example is Microsoft. When the technology giant was growing by leaps and bounds, its p/e was more than 100 times earnings. Microsoft's revenues are now growing at a slower pace and its multiple is only around 40x.

Price versus value

In a previous article, we outlined the difference between the price of a share and its value. To recap: the *price* of a share is determined in the markets by the supply and demand for that share. By contrast, the *value* of a share is a subjective estimate of future earnings based on a number of variables such as the financial strength of a company, the quality of its management, its historical performance, and its position within its market or sector.

The psychological rationale when buying a share is that you expect that share to be worth more in the future. Stockbrokers and investment analysts spend a considerable amount of time and effort estimating the future earnings (per share) of various companies. These earnings estimates (EPS forecasts) are then used in conjunction with the p/e ratio to estimate the likely future share price of a company.

Remembering the relationship between the multiple (p/e) and EPS, if earnings are increasing and the multiple stays constant, then the share price should increase accordingly. Let's say **Company C** has a current share price of €30 and earnings per share of €2. An analyst might predict that earnings per share will be €2.20 in 2001 and €2.60 in 2002. Now, let's suppose that the p/e ratio for Company C is 15 times earnings and that the company is an established player in a mature industry so the p/e is likely to stay at 15 times earnings. Taking analysts' EPS forecasts into account, you might predict a share price of €39 in two years (€2.60 EPS in 2002 x 15 = €39).

Try making different assumptions about industry trends, economic outlook and management quality and use different multiples and EPS forecasts to arrive at various share-price scenarios.

As you have learned by now, estimating future share values – whether by you or your broker – is very much a subjective exercise. But knowing how the experts do it will help you to both understand and challenge your investment decisions. It will also make the myriad of research and brokers' reports about public companies a lot more comprehensible.

But be careful. When you read something like 'company X is trading at 9x earnings, a 20% discount to its peers', it doesn't necessarily mean the shares are a buy. You should ask yourself: why is it trading at a discount? For instance, is the sector overvalued? A high p/e ratio could mean that the company is overvalued due to excessive market optimism, or that the share price has increased on speculation that a takeover is likely.

Be consistent in your approach

Although the p/e ratio is an extremely useful tool for comparing shares in various companies, it is important to compare like with like. For instance, there is a normal EPS figure and an adjusted EPS figure (adjusted for the effect of dilution – if more shares are issued, earnings per share will be reduced or diluted). Provided you are consistent in your approach, your analysis and findings will be relevant.

The perils of ignoring the p/e ratio

The p/e ratio has its shortcomings like any other measure, but it is important to make some attempt at estimating future earnings and multiples rather than investing blindly. In the technology boom of 1999/early 2000, many investors and commentators ignored the p/e ratio when analysing companies and share values. This was primarily because many of the new tech companies had no historical earnings and little prospect of near-term future earnings.

Had they taken the approach outlined above and analysed shares by concentrating on the earnings potential, they might have curtailed the hype and hysteria that drove share prices of loss-making companies to levels that were totally unjustified. G

TABLE 1: RELATIONSHIP BETWEEN SHARE PRICE AND EARNINGS EXPECTATIONS

COMPANY A	Share price	Shares in issue	After-tax profits	EPS	EPS growth rate	P/E (multiple)
Pre-profit warning	€20	900m	€1.19bn	€1.33	12%	15x
Post-profit warning	€13.33	900m	€1.19bn	€1.33	6%	10x
COMPANY B	**Share price**	**Shares in issue**	**After-tax profits**	**EPS**	**EPS growth rate**	**P/E (multiple)**
Pre-profit warning	€20	850m	€0.56bn	€0.6667	30%	30x
Post-profit warning	€10	850m	€0.56bn	€0.6667	15%	15x

To calculate the p/e ratio:
Step 1 – calculate the earnings per share (EPS).
Step 2 – divide the share price by the EPS figure.

Jack O'Keeffe is a director of investment services at Davy Stockbrokers in Dublin.

Tech trends

By Maria Behan

Great for printing out letters home

Have you got kids going to university this autumn? If you'd like to send them off with an inexpensive printer that can help them keep up with all those reams of term papers, you might want to check out the new entry-level ink-jet printers from Epson. Ideal for cramped student quarters, they're designed to take up as little room as possible. And they're also made to be reliable (which is more than can be said for students). Featuring solid if unspectacular 720 by 720 dpi resolution, the C20 can handle black-and-white jobs at 6.5 pages per minute and colour jobs at 3.5 ppm. *Both the C20SX (which comes with a parallel port) and the C20UX (which comes with a USB connection) are priced at around £73.*

One step beyond Bond

The new Accompli 008 combines voice, data and Internet tools in one sleek flip-case that would do James Bond proud. Motorola, its manufacturer, has dubbed it 'the ultimate in communications gadgetry' and – at least for the moment – we're inclined to agree. This dual-band phone doesn't just connect you to e-mail messages and web information (which you can actually see, thanks to the large, stylus-controlled touch-screen display), it doubles as a personal organiser. Not just any personal organiser, but one that can read your handwriting – whether you're composing in English, Spanish, French, German or even Chinese. The Accompli can synchronise data with your desktop PC or PIM devices, weighs in at 155g, and offers between 160 to 270 minutes of talk time and somewhere in the range of 90 to 145 hours of stand-by time. *Available at mobile phone outlets for roughly £200.*

IBM unplugged?

Gadget geeks and neat freaks alike will delight in IBM's new Rapid Access wireless keyboard and mouse kit. The two devices communicate with your PC (it works with most industry-standard PCs) via an included radio receiver, allowing for a completely cordless, clean-desk environment. The keyboard provides lots of features (including 17 buttons that can be used to quickly launch applications or perform commonly-repeated tasks) in a small space (up to two inches narrower than standard keyboards). The keyboard and mouse are capable of using 12 different channels to talk to your PC, so you won't wind up turning on the VCR when you're trying to surf the Net. *Available for £95 from computer outlets.*

Covering your assets

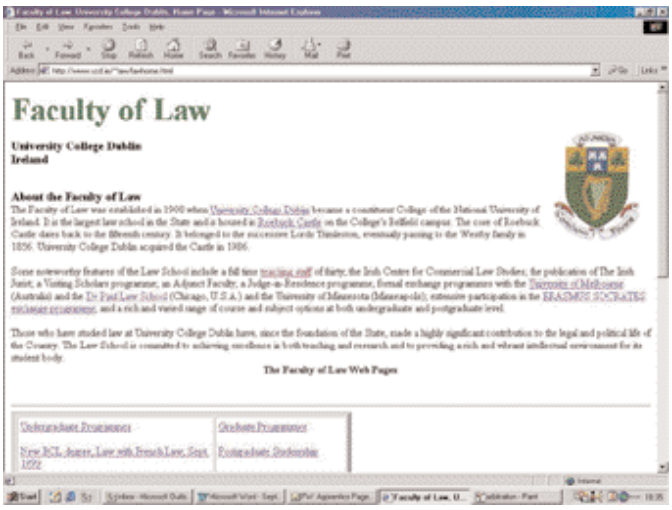
Few solicitors need to be reminded of the need to keep records, but some may need to be reminded that options for keeping up with those records – and keeping them safe – have improved in recent years. Data & Records Management Ltd specialises in the storage of documents and computer media such as diskettes, compact disks and computer tapes. Vital records are stored in state-of-the-art storage vaults, complete with a gas-suppression system (to protect against fire) and bar-code tracking that keeps documents organised and easily retrievable. *Pricing depends on your storage needs. Contact Data & Records Management Ltd on 01 670 4367 or visit their website at* www.drm.ie.

Sites to see

The Chartered Institute of Arbitration (*www.iol.ie/~ciarb*). This site links to both the home page of the London institute and that of its Irish branch. Both seek to promote arbitration as an alternative to litigation, and these pages provide information on how the arbitration process works, as well as on forthcoming events and courses.

DineQuick.com (*www.dinequick.com*). This free on-line reservation system lets you choose a restaurant by name, location, cuisine or price. It allows you to snag a table at the last minute, which may save your bacon when you've forgotten to plan an anniversary celebration or a client dinner. And since a small portion of the proceeds go to UNICEF, you can feel almost virtuous about gorging yourself.

Daft.ie (*www.daft.ie*). If you're selling your home or trying to help your kids find an affordable flat-share in Dublin, Cork, Galway or Belfast, you might want to check the ads on this site (or even place one yourself). Conveniently, the site offers an e-mail alert service that lets you know as soon as an ad comes in that meets your specified criteria.



University College Dublin Faculty of Law (*www.ucd.ie/~law/lawhome.html*). The home page of UCD's law faculty provides information on the law school and its staff, as well as links to programmes such as the Erasmus Socrates scheme and *The Irish jurist* legal periodical.

Report of Law Society Council meeting held on 25 May 2001

Motion: Professional indemnity insurance cover

'That this Council approves an increase in the minimum amount of compulsory professional indemnity insurance cover to euro 1,300,000 and amendments to related matters as appropriate with effect from 1 January 2002.'

Proposed: John D Shaw
Seconded: John P Shaw

The Council noted that the purpose of the motion was to take account of the introduction of the euro currency with effect from 1 January 2002. The motion was approved, as notified.

Motion: *Solicitors' accounts regulations*

'That this Council approves the Solicitors' accounts regulations, 2001.'

Proposed: Gerard Doherty
Seconded: Owen Binchy

The motion was adjourned for consideration at the July Council meeting in order to facilitate an extension of the time-limit for receipt of submissions from local bar associations.

Courts and Court Officers Bill, 2001

David Martin outlined the contents of the bill, the primary feature of which was the increases in the jurisdictions of the courts. There were concerns that the District Court might not be in a position to deal with the increased levels of work. The view was also expressed that District Court fees would have to be increased substantially to match increased work levels. The president confirmed that this point had been raised with the minister. In relation to the appointment of judges, the director general noted that section 7(a) of the bill provided that the government would consult with the attorney general after the evaluation process, with the attorney general already having been involved in the deliberations of the Judicial Appointments Advisory Board and also being involved in the deliberations at the cabinet. He confirmed that the society had queried this excessive level of involvement in its public statements in the media.

Study by the Competition Authority of the professions

The director general outlined the background to the government's announcement on 24 April that the Competition Authority would conduct a study of the professions. He noted that, as the announcement was made on publication of the OECD report on regulatory reform in Ireland, it could be expected that the elements of the study relating to the legal profession might deal with issues such as conveyancing by banks and other financial institutions, advertising, costs, the relationship between solicitors and barristers, the business forms in which lawyers can practise and education and entry into the legal profession. In a recent meeting with the Competition Authority, the society had submitted that the legal profession should be excluded from the study, as it had already been subjected to comprehensive review by the Fair Trade Commission in 1990.

The director general said that it had been suggested to the Competition Authority and to the department that, because of a clear political agenda, the study could not be regarded as totally independent. Both the Competition Authority and the department had denied that this was the case and had asserted that nothing would be taken as given. However, the director general believed that there were certain preconceptions about the legal profession that, while incorrect, could prove difficult to dispel.

Limited liability partnerships

Laurence K Shields presented a paper outlining the rationale for the introduction of limited liability partnerships (LLPs) in Ireland, which it was proposed would be submitted to government.

Hugh O'Neill expressed reservations regarding the proposal, which he felt was potentially divisive in its exclusion of sole practitioners. Kevin O'Higgins said that the introduction of LLPs could create a two-tiered profession, one category with personal liability and the other without. John Dillon-Leetch said that the proposal could diminish the role of solicitors in society by defining them as a business, rather than a profession, and that LLPs could operate to cloud the independence of the profession.

Michael Irvine said that the society had a duty towards those solicitors' practices that were involved in global business and required measures to protect themselves against international financial institutions and multinational organisations.

John Fish said that the proposal offered a benefit not just to large firms, but to all solicitors' firms, in providing a means of protecting innocent partners against a 'doomsday' scenario. He cautioned against any confusion with the issue of the liability of individual partners for their own negligence. Geraldine Clarke said that it could prove to be more beneficial for small firms than for large firms, as many partners in small firms lived in dread of the possibility of full liability for a significant negligence case being visited upon their personal assets.

Laurence K Shields said that the vehicle of an LLP protected innocent partners from the acts of a negligent partner. A sole practitioner, who could not become an LLP, was liable in full for his own negligence. A negligent partner in a firm of solicitors would similarly be liable in full for his own negligence. Under the proposal, it was simply the innocent non-negligent partners who were protected and who would not be liable for the negligence of other partners.

The Council adjourned the proposal for further consideration at its July meeting.

Personal Injuries Assessment Board

The Council discussed the government announcement regarding the establishment of a Personal Injuries Assessment Board. It was agreed that a task force should be established to consider the proposal and to examine the area of personal injuries litigation generally, with a view to identifying aspects that would benefit from reform.

The Council approved the membership of the task force, comprising the president, the director general, David Martin, Joe Deane, Patrick Groarke, Michael Houlihan, Stuart Gilhooly, Michael Boylan, Roddy Bourke, Ernest Cantillon, Noel T Smith, Gerard Doherty and Mary Keane.

Minimum Wage Act, 2000

The Council approved the insertion of a notice in the *Gazette* reminding solicitors and apprentices, or solicitors and people intending in the future to enter into indentures of apprenticeship, that the *National Minimum Wage Act, 2000* applied to the relationship between them, as did regulations made pursuant to the act.

European Convention on Human Rights Bill, 2001

James MacGuill presented a draft submission by the ECHR task force on the bill, which was approved by the Council for presentation to the Department of Justice, Equality and Law Reform. G

Report of Law Society Council meeting held on 6 July 2001

Motion: *Solicitors' accounts regulations*

'That this Council approves the Solicitors' accounts regulations, 2001.'

Proposed: Gerard Doherty
Seconded: Owen Binchy

Gerard Doherty outlined proposed amendments to the draft regulations, arising from submissions received from bar associations and the main accountancy bodies. He said that it was proposed to circulate the amended draft regulations to the bar associations, together with a letter from the president identifying the principal amendments proposed. It was envisaged that the consultation process would be concluded in advance of the September Council meeting and the motion was adjourned for approval at that meeting.

Motion: *Pro bono*

'That this Council approves the recommendations contained in the report of the Pro Bono *Task Force.'*

Proposed: John Costello
Seconded: Michael Peart

John Costello outlined the contents of the report and noted that its primary recommendation was the establishment of a charity, involving solicitors and barristers but independent of both the Law Society and the Bar Council. It was envisaged that the charity would provide assistance only to community groups, voluntary organisations or charities, although its operation might be reviewed after a period. Some Council members expressed concerns that the proposed scheme would, effectively, 'fill the gaps' in the civil legal aid system and could be used to prolong the inadequacies in the current system.

The director general expressed concern regarding a recommendation that envisaged the conduct of 'social policy test cases, constitutional actions or human rights cases', which, he felt, could be controversial or have political implications. He noted that the American Bar Association identified examples of worthwhile *pro bono* work already being conducted by lawyers and ensured that they received positive publicity.

Geraldine Clarke said that, in a survey conducted by the CCBE, in all countries where a *pro bono* scheme operated, the state had used it as an excuse not to increase the level of subsidisation of free legal aid. Donald Binchy said that the society had consistently sought the expansion of the civil legal aid scheme. He was worried that the proposal could further delay the introduction of a comprehensive scheme. John Costello said it was envisaged that the charity would seek volunteers from the profession to participate in the scheme and he believed it would supplement *pro bono* work already being done by the profession, rather than subventing the civil legal aid scheme. He noted that, in England and Wales, the Lord Chancellor's Department had allocated funding of £700,000 to a similar scheme for the current year. The Council agreed that, while many aspects of the proposal were meritorious, more time should be taken to consider the matter.

Limited liability partnerships

The Council approved a paper outlining the rationale for the introduction of limited liability partnerships in Ireland, for submission to government.

National Minimum Wage Act, 2000

The Council considered and approved a memorandum entitled 'Masters, apprentices and the *National Minimum Wage Act, 2000*' for issue to the profession. It dealt with the payment of apprentices while attending PPC2, a possible obligation to pay apprentices while on PPC1, retrospection, payment of course fees, recommended rates of pay for apprentices and the *Organisation of Working Time Act, 1997*.

Apprentices' Fees Order

The Council considered and approved a new *Apprentices' Fees Order* for submission to the president of the High Court for approval. The effect of the order was to increase the PPC1 fee by £250 to £4,500 and the PPC2 fee by £520 to £2,520.

Proceedings by the director of consumer affairs

On behalf of the Conveyancing Committee, Philip Joyce obtained the approval of the Council for the society to participate as a notice party in proceedings brought by the director of consumer affairs, in which the Construction Industry Federation, the Irish Home Builders' Association and HomeBond were also notice parties. The purpose of the director's proceedings was to have certain unfair terms in building contracts declared void, including certain aspects of stage payments.

Compensation for victims of abuse

The Council considered a request from the Department of Education and Science for the nomination of an experienced solicitor to serve on an expert group to advise on the compensation to be awarded to victims of abuse in childhood. The Council noted that the proposal envisaged the setting of scales of awards for different categories of abuse, rather than addressing the individual wrong done on a case-by-case basis. Concern was expressed that the scales would be fixed to suit the economics of the department, rather than the justice of any individual situation. The Council agreed that the president should decline to nominate a representative on the expert group, should state the society's principled objection to the fixing of scales of awards and its support for a compensation tribunal awarding compensation on a case-by-case basis.

Brussels II

David Bergin outlined the implications of a regulation converting the *Brussels II convention* into Irish law. The Family Law Committee believed that the regulation would significantly impact on the practice of family law in Ireland, undermine the constitutional position of the family and would encourage divorce planning and 'forum shopping'. It would prompt parties to litigate earlier in family law disputes and militated against recent legislation encouraging parties to engage in mediation. He confirmed that the society had communicated its concerns to the minister. G

In *Briefing* this month ...

LEGISLATION UPDATE: 16 JUNE – 17 AUGUST 2001

ACTS PASSED

Adventure Activities Standards Authority Act, 2001
Number: 34/2001
Contents note: Provides for the establishment of the Adventure Activities Standards Authority to regulate the safe provision of adventure activities. The legislative framework was recommended in the *Report of the Interdepartmental Working Group on a Review of the Safety Regulation of Adventure/Activity Centres in Ireland,* June 1999
Date enacted: 16/7/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Agriculture Appeals Act, 2001
Number: 29/2001
Contents note: Provides for the establishment of the Agriculture Appeals Office to review on appeal decisions of officers of the minister for agriculture, food and rural development in relation to entitlement to benefit under certain specified schemes set out in the schedule
Date enacted: 9/7/2001
Commencement date: 9/7/2001

Carer's Leave Act, 2001
Number: 19/2001
Contents note: Provides for a new entitlement for employees to avail of temporary unpaid carer's leave to enable them to care personally for people who require full-time care and attention; protects the employment rights of employees who avail of this leave; amends certain enactments and provides for related matters
Date enacted: 2/7/2001
Commencement date: 2/7/2001

Children Act, 2001
Number: 24/2001
Contents note: Covers three main areas of law: 1) provides the basis for a new juvenile justice system; 2) re-enacts and updates provisions in the *Children Act 1908* protecting children against people who have the custody, charge or care of them; and 3) provides for a family welfare conference and other new provisions for dealing with out-of-control non-offending children. Replaces the provisions of the 1908 act and other enactments relating to juvenile offenders; amends and extends the *Child Care Act, 1991*
Date enacted: 8/7/2001
Commencement date: Commencement order/s to be made, subject to s2(2) (per s2(1) of the act); commencement order/s to be made for parts 2 and 3 (per s2(2)(a) of the act); commencement order to be made for s77 (per s2(2)(b) of the act); commencement order to be made for s88, in so far as it relates to junior remand centres (per s2(2)(c) of the act); commencement order/s to be made for part 10 (per s2(2(d) of the act); commencement order to be made for part 11 (per s2(2)(e) of the act)

Company Law Enforcement Act, 2001
Number: 28/2001
Contents note: Establishes the post of director of corporate enforcement and provides for his or her appointment, the terms and conditions of the appointment and the functions and powers of the director; transfers to the director the functions of the minister for enterprise, trade and employment relating to the investigation and enforcement of the *Companies Acts*; establishes a statutory Company Law Review Group to monitor, review and advise the minister on matters relating to company law; amends in various ways the *Companies Act, 1963*, the *Companies Act, 1990*, and various other acts. The main provisions of the act follow on the recommendations in the *Report of the Working Group on Company Law Compliance and Enforcement*, 1999
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s2 of the act)

Dormant Accounts Act, 2001
Number: 32/2001
Contents note: Provides for the transfer of monies from dormant accounts and the intestate estates fund deposit account to a fund to be known as the dormant accounts fund; confers functions on the National Treasury Management Agency in relation to the control and management of the fund; provides for the disbursement of monies (including the repayment of monies to persons entitled thereto) from the fund; establishes the Dormant Accounts Fund Disbursements Board and defines its functions; amends the *State Property Act, 1954* in relation to the intestate estates fund deposit account, and provides for related matters
Date enacted: 14/7/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Euro Changeover (Amounts) Act, 2001
Number: 16/2001
Contents note: Provides for the substitution, with effect from 1/1/2002, of convenient amounts expressed in euro and cent for amounts expressed in Irish pounds and pence in certain legislative provisions set out in schedule 2 of the act. The amounts being replaced relate to certain fees, charges and so on, levied by government departments or bodies, and to certain thresholds where the amounts are or may be paid in cash or need to be easily remembered. Money amounts in the tax or social welfare codes, or in certain other major codes, such as road tax, are not dealt with in this act
Date enacted: 25/6/2001
Commencement date: 25/6/2001

Health Insurance (Amendment) Act, 2001
Number: 17/2001
Contents note: Amends and extends the *Health Insurance (Amendment) Act, 1994*
Date enacted: 27/6/2001
Commencement date: Commencement order/s to be made (per s15(3) of the act)

Horse and Greyhound Racing Act, 2001
Number: 20/2001
Contents note: Establishes Horse Racing Ireland to replace the Irish Horseracing Authority and take over certain functions from the Racing Regulatory Body (Turf Club & National Hunt Steeplechase Committee); provides for increased funding for the horse and greyhound racing industries on a permanent and guaranteed basis and provides for related matters. Amends and extends the *Irish Horseracing Industry Act, 1994*, *the Greyhound Industry Act, 1958* and the *Betting Act, 1931*
Date enacted: 2/7/2001
Commencement date: 2/7/2001 for sections other than ss8 and 19 for which commencement orders are required (per s8(2) and s19(2)); establishment day order to be made (per s3 of the act)

Human Rights Commission (Amendment) Act, 2001
Number: 35/2001
Contents note: Amends section 5 of the *Human Rights Commission Act, 2000* to increase the number of members of the commission
Date enacted: 16/7/2001
Commencement date: 16/7/2001

Irish National Petroleum Corporation Limited Act, 2001
Number: 26/2001
Contents note: Provides for the sale of the shares of the minister for public enterprise in the Irish National Petroleum Corporation Limited and the disposal of certain assets and liabilities of the corporation, including the sale of certain of its subsidiaries; provides that the minister may guarantee certain obligations of the corporation pursuant to the sale and purchase agreement and provides for related matters
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s13(2) of the act): 16/7/2001 appointed as the commencement date for the whole act (per SI 328/2001)

Local Government Act, 2001
Number: 37/2001
Contents note: Provides for a modern statutory framework for local government; a single, common legislative code will apply to all local authorities replacing provisions contained in acts dating back to 1836; consolidates with amendments certain enactments relating generally to local authorities (see scheds 3 and 4 of the act for lists of repeals and amendments)
Date enacted: 21/7/2001
Commencement date: Section 7 of the act provides that commencement order/s are to be made for all sections except for part 2 (ss9-11) for which an establishment day order is to be made (per s9), section 161 for which a commencement order is to be made (per s161(2)), and chapter 3 (ss39-45) (direct elections of cathaoirleach and leas-chathaoirleach) of part 5 of the act which will come into operation in 2004 (per s39(1))

Mental Health Act, 2001
Number: 25/2001
Contents note: Sets out the criteria for, and the procedures to be followed in the event of, involuntary detention of persons with a mental disorder for psychiatric care and treatment; provides for the establishment of a Mental Health Commission which will arrange for an independent review of all involuntary detentions by one or more mental health tribunals which will operate under its aegis; replaces the existing

office of the inspector of mental hospitals with the office of the inspector of mental health services who will be employed by the commission; repeals in part the *Mental Treatment Act, 1945* and provides for related matters
Date enacted: 8/7/2001
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act, 2001
Number: 33/2001
Contents note: Amends the *Ministerial and Parliamentary Offices Acts, 1938 to 1998*, the *Oireachtas (Allowances to Members) Act, 1938* and certain other acts to make further provision for the remuneration, allowances and superannuation payable to and in respect of certain holders and former holders of ministerial, parliamentary and judicial offices; provides for the transfer of previous pensionable service of persons who hold such offices; and provides for related matters
Date enacted: 16/7/2001
Commencement date: 16/7/2001 for all sections except for ss37, 39(c) and (d) and 40, which are taken to have come into operation on 26/6/1997; ss7, 11 and 39(a) and (e), which are taken to have come into operation on 17/9/1997; and ss3, 4, 5, 6, 22, 23, 24, 27(1), 28, 31, 34(a) and 36, which are taken to have come into operation on 25/9/2000 (per ss1(2) to 1(5) of the act)

Motor Vehicle (Duties and Licences) Act, 2001
Number: 22/2001
Contents note: Gives effect to increases in motor taxation with effect from 1/4/2001 and provides for related matters. Amends and extends the *Finance (Excise Duties) (Vehicles) Act, 1952*, the *Road Traffic Act, 1961* and the *Finance (No 2) Act, 1992*
Date enacted: 3/7/2001
Commencement date: 3/7/2001

Nitrigin Éireann Teoranta Act, 2001
Number: 21/2001
Contents note: Provides for the transfer of the state-guaranteed debt of Nitrigin Éireann Teoranta (NET) to the minister for finance. Also provides for the repeal by ministerial order of the *Nitrigin Éireann Teoranta Acts, 1963 to 1993*, which legislative changes would be required in the event of a future sale by NET of its 51% shareholding in Irish Fertiliser Industries Ltd
Date enacted: 3/7/2001
Commencement date: 3/7/2001. Commencement orders to be made for ss5 and 6 of the act (per s5(2) and s6(2) of the act)

Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001
Number: 30/2001
Contents note: Amends and extends the *Ministerial and Parliamentary Offices Act, 1938* by the substitution for section 10 (inserted by section 5 of the *Oireachtas (Miscellaneous Provisions) and Ministerial and Parliamentary Offices (Amendment) Act, 1996*) of a new section 10 providing for parliamentary parties leaders' allowances
Date enacted: 14/7/2001
Commencement date: 14/7/2001

Prevention of Corruption (Amendment) Act, 2001
Number: 27/2001
Contents note: Amends and extends the law on corruption, and enables Ireland to ratify three international agreements: 1) the convention drawn up on the basis of article K3(2)(c) of the *Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of members states of the European Union*, done at Brussels on 26/5/1997; 2) the *Convention on bribery of foreign public officials in international business transactions*, drawn up under the auspices of the Organisation for Economic Co-operation and Development and adopted at Paris on 21/11/1997; and 3) the *Criminal law convention on corruption*, drawn up under the auspices of the Council of Europe and done at Strasbourg on 27/1/1999. Amends the *Prevention of Corruption Act 1906*; makes provision in relation to corruption occurring partially in the state, corruption occurring outside the state, corruption in office and offences by bodies corporate, and provides for related matters
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s10(3) of the act)

Sex Offenders Act, 2001
Number: 18/2001
Contents note: Requires the notification of information to the Garda Síochána by persons who have committed certain sexual offences; creates a new civil court order against sex offenders whose behaviour in the community gives the Garda Síochána reasonable cause for concern that the order is necessary in the public interest; creates a new offence where sex offenders seek or accept work involving unsupervised contact with children without informing the employer of their conviction; provides for the post-release supervision of sex offenders by the probation and welfare service; and introduces separate legal representation for complainants in rape and serious sexual assault cases. Amends the *Criminal Law (Rape) Act, 1981* and the *Civil Legal Aid Act, 1995*
Date enacted: 30/6/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Standards in Public Office Act, 2001
Number: 31/2001
Contents note: Provides for the establishment of a new Standards in Public Office Commission with wide investigative powers in relation to complaints about acts or omissions of persons in public life; provides for the development by the government, the commission or the minister for finance of codes of conduct which will apply to ministers and other office-holders, members of the Oireachtas and employees of public bodies respectively; provides for the furnishing of tax clearance certificates to the commission by persons upon election to either house of the Oireachtas or appointment to judicial office or senior office; amends the *Statutory Declarations Act, 1938*, the *Ethics in Public Office Act, 1995* and the *Electoral Act, 1997*; and provides for related matters
Date enacted: 14/7/2001
Commencement date: Commencement order to be made subject to s29(2)(b) (per s29(2)(a) of the act)

Vocational Education (Amendment) Act, 2001
Numbers: 23/2001
Contents note: Amends the law relating to the membership and functions of vocational education committees; amends the *Vocational Education Act, 1930* and provides for related matters
Date enacted: 5/7/2001
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Waste Management (Amendment) Act, 2001
Number: 36/2001
Contents note: Amends and extends the *Waste Management Act, 1996*, particularly with regard to the procedure for the making of waste management plans. Amends the *Environmental Protection Agency Act, 1997* and the *Litter Pollution Act, 1997*
Date enacted: 17/7/2001
Commencement date: 17/7/2001

SELECTED STATUTORY INSTRUMENTS

ACC Bank Act, 2001 *(Commencement) Order 2001*
Number: SI 278/2001
Contents note: Appoints 15/6/2001 as the commencement date for the *ACC Bank Act, 2001* other than sections 6, 8, 10, 11(2) and 12

Broadcasting Act, 2001 *(Commencement) Order 2001*
Number: SI 362/2001
Contents note: Appoints 1/9/2001 as the commencement date for the *Broadcasting Act, 2001*

Circuit Court (Fees) Order 2001
Number: SI 252/2001
Contents note: Provides for increases in fees chargeable in Circuit Court offices and provides for the exemption from fees of certain categories of proceedings, including any family law proceedings, any matrimonial cause or matter, or proceedings brought by a health board under the *Children Acts, 1908 to 1997*
Commencement date: 16/7/2001

Commission to Inquire into Child Abuse Act, 2000 *(Additional Functions) Order 2001*
Number: SI 280/2001
Contents note: Confers additional functions on the Commission to Inquire into Child Abuse and on the investigative committee of the commission
Commencement date: 19/6/2001

Credit Union Act, 1997 *(Commencement) Order 2001*
Number: SI 378/2001
Contents note: Appoints 1/8/2001 as the commencement date for sections 46 to 52 of the *Credit Union Act, 1997*

District Court (Fees) Order 2001
Number: SI 253/2001
Contents note: Revises the fees chargeable in the District Court offices and prescribes four new fees following on the enactment of the *Intoxicating Liquor Act, 2000*. Provides that the payment of fees in respect of all items in the schedule to the order may be recorded by endorsing the relevant documents or court fee cards, as appropriate, with the amount paid. Provides for exemptions from fees in certain proceedings, including any family law

proceedings, any matrimonial cause or matter, or in proceedings brought by a health board under the *Children Acts, 1908 to 1997*
Commencement date: 16/7/2001

European Communities (Award of Public Service Contracts) (Amendment) Regulations 2001
Number: SI 334/2001
Commencement date: 17/7/2001
Legislation implemented: Directives 92/50/EC and 97/52/EC

European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001
Number: SI 337/2001
Contents note: Give effect to Council directive 97/80/EC on the burden of proof in cases of discrimination based on sex
Commencement date: 18/7/2001

Health (Miscellaneous Provisions) Act, 2001 *(Commencement) Order 2001*
Number: SI 305/2001
Contents note: Appoints 1/7/2001 as the commencement date for section 1(1)(a) of the *Health (Miscellaneous Provisions) Act, 2001* (amendment of s45 of the *Health Act, 1970* to extend full eligibility for the health services to all persons aged 70 years and over)

Health (Miscellaneous Provisions) Act, 2001 *(Commencement) (No 2) Order 2001*
Number: SI 344/2001
Contents note: Appoints 1/8/2001 as the commencement date for section 2 of the *Health (Miscellaneous Provisions) Act, 2001* (amendment of section 3 of *the Tobacco (Health Promotion and Protection) Act, 1988*, raising from 16 years to 18 years the age limit at which tobacco products can legally be sold to young persons; maximum fine on persons convicted for selling to underage persons increased from £500 to £700)

Human Rights Commission Act, 2000 *(Establishment Day) Order 2001*
Number: SI 340/2001
Contents note: Appoints 25/7/2001 as the establishment day for the purposes of the *Human Rights Commission Act, 2000*

Planning and Development Act, 2000 *(Commencement) (No 2) Order 2001*
Number: SI 335/2001
Contents note: Appoints 20/7/2001 as the commencement date for the following provisions of the *Planning and Development Act, 2000*: a) section 2 insofar as it relates to the sections referred to at (b) and (c) below; b) chapter 1 of part VI (composition and membership of An Bord Pleanála); c) section 264 and the sixth schedule insofar as they relate to the repeals effected by this order

Protection of Young Persons (Employment) Act, 1996 *(Bar Apprentices) Regulations 2001*
Number: SI 351/2001
Contents note: Regulate the hours of employment of young people employed as apprentices in a full-time capacity in a licensed premises
Commencement date: 24/7/2001

Protection of Young Persons (Employment) Act, 1996 *(Employment in Licensed Premises) Regulations 2001*
Number: SI 350/2001
Contents note: Regulate the employment of young people to carry out general duties in a licensed premises; include a code of practice concerning the employment of young people in licensed premises
Commencement date: 24/7/2001

Rules of the Superior Courts *(No 1) (Amendment to Order 77) 2001*
Number: SI 268/2001
Contents note: Amend order 77, rules 43(1) and 43(2) (investment of money in court), of the *Rules of the Superior Courts*
Commencement date: 16/7/2001

Rules of the Superior Courts *(No 2) (Amendment to Order 3) 2001*
Number: SI 269/2001
Contents note: Amend order 3 (procedure by special summons), rule 2, of the *Rules of the Superior Courts*
Commencement date: 16/7/2001

Rules of the Superior Courts *(No 3)* (Investor Compensation Act, 1998) *2001*
Number: SI 270/2001
Contents note: Insert order 75C *Investor Compensation Act* into the *Rules of the Superior Courts*, which sets out procedures in relation to an application under the *Investor Compensation Act, 1998*
Commencement date: 16/7/2001

Social Welfare Act, 2001 *(Part 5) (Commencement) Order 2001*
Number: SI 243/2001
Contents note: Appoints 29/5/2001 as the commencement date for part 5 (sections 29-31) of the *Social Welfare Act, 2001* (amendments consequent on the alignment of the income tax year and the calendar year)

Social Welfare Act, 2001 *(Section 22) (Commencement) Order 2001*
Number: SI 300/2001
Contents note: Appoints 2/7/2001 as the commencement date for section 22 of the *Social Welfare Act, 2001* (recovery of payments from financial institutions)

Social Welfare Act, 2001 *(Section 26) (Commencement) Order 2001*
Number: SI 301/2001
Contents note: Appoints 28/6/2001 as the commencement date for section 26 of the *Social Welfare Act, 2001* (amendments to the qualifying conditions for entitlement to carer's benefit)

Social Welfare Act, 2001 *(Section 38) (Commencement) Order 2001*
Number: SI 244/2001
Contents note: Appoints 29/5/2001 as the commencement date for section 38 of the *Social Welfare Act, 2001* (amendment to *Health Contributions Act, 1979* – alignment of tax and calendar year)

Supreme Court and High Court (Fees) Order 2001
Number: SI 251/2001
Contents note: Revises as from 16/7/2001 the fees chargeable in the office of the registrar of the Supreme Court, the central office, the examiner's office, the office of the official assignee in bankruptcy, the taxing masters' office, the accountant's office, the office of wards of court, the probate office and district probate registries

Trade Marks (Madrid Protocol) Regulations 2001
Number: SI 346/2001
Commencement date: 19/10/2001

Waste Management Act, 1996 *(Prescribed Date) Order 2001*
Number: SI 345/2001
Contents note: Appoints 14/9/2001 as the prescribed date for the making of a waste management plan for the purpose of section 22(2) or section 22(3) of the *Waste Management Act, 1996*

FOOT AND MOUTH DISEASE REGULATIONS

Diseases of Animals Act, 1966 *(Control of Movement of Sheep) Order 2001*
Number: 314/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Import of Sheep from Northern Ireland) Order 2001*
Number: SI 364/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Artificial Insemination) (Amendment) (No 2) Order 2001*
Number: SI 324/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Exhibition, Sale and Transport of Animals) Order 2001*
Number: SI 318/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Imports from the Netherlands) (Revocation) Order 2001*
Number: SI 316/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Imports from the United Kingdom) (No 2) Order 2001*
Number: SI 277/2001

Diseases of Animals Act, 1966 *(Restriction on Movement of Certain Animals) (No 2) Order 2001*
Number: SI 308/2001

Diseases of Animals Act, 1966 *(Restriction on Movement of Certain Animals) (No 2) (Amendment) Order 2001*
Number: SI 315/2001

Diseases of Animals Act, 1966 *(Restriction on Movement of Certain Animals) (No 2) (Second Amendment) Order 2001*
Number: SI 338/2001

Diseases of Animals Act, 1966 *(Section 29A(4)) (No 3) Order 2001*
Number: 276/2001

Diseases of Animals Act, 1966 *(Section 29A(4)) (No 4) Order 2001*
Number: SI 330/2001

Foot and Mouth Disease (Prohibition of Exhibition and Sale of Animals) (Amendment) Order 2001
Number: SI 275/2001

Foot and Mouth Disease (Restriction on Import of Greyhounds) Order 2001
Number: SI 317/2001

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Personal injury judgments

Tort – road traffic accident – minor *sequelae* from physical injuries – post-traumatic stress disorder – accident victim suffering from mild mental disorder prior to accident – differences of opinion on prognosis between two psychiatrists – effect of litigation on the victim's condition – accident leading to an unexpected advantage – loss of state social welfare benefits and medical card – issue of whether the accident victim could manage her money – question of reference to president of the High Court in the context of making the accident victim a ward of court

CASE

***Winifred McDonnell v John Walsh*, High Court, judgment of Mr Justice Barr of 1 March 2001.**

THE FACTS

Winifred McDonnell, a woman in her early 30s, from Bangor Erris, had lived with her partner in Castlebar for several years. On 27 June 1997, she was a back-seat passenger in her sister's car, which was involved in a head-on collision with Mr Walsh's vehicle. She suffered a head injury and was rendered unconscious for a minute or two. Her only memory of the accident is of a loud bang when the vehicles collided. She was detained in hospital for seven days suffering from shock, facial cuts in which glass was embedded, and a laceration of the left leg which required sutures. She also suffered from severe pain running down from the top of the head to the side of her nose, pain in her right shoulder, right ear and left leg.

Subsequently, Ms McDonnell developed pain in her neck. She was sent to Dublin for a brain scan which revealed nothing irregular. There were some other minor *sequelae* but she made a good recovery from her physical injuries. The headaches eventually cleared up and she no longer required medication in that regard, although she got the odd headache now and then. The neck injury cleared up and the shoulder injury improved, with the only residual problem being difficulty with heavy lifting and certain housework, such as bed-making.

Her main problem was what is described as post-traumatic stress disorder. When in hospital, she suffered shock and nightmares about the accident. These symptoms became more acute when she returned home. She consulted a medical doctor and was referred to the chief psychiatrist at St Mary's Hospital, Castlebar. She has had numerous admissions to hospital as an in-patient amounting in all to 137 days at the date of the trial, which included a period of about two months in the late summer and early autumn of 2000.

Ms McDonnell had always suffered from a mild mental disorder which affected her employment. However, in the period prior to the accident she did not seek or receive any psychiatric treatment or medication.

A psychiatrist diagnosed Ms McDonnell as suffering from severe post-traumatic stress disorder. Ms McDonnell sued John Walsh and liability was not at issue. The judge had to determine the issue of damages.

THE JUDGMENT

Barr J noted that Ms McDonnell had bouts of depression which included suicidal tendencies and that on one occasion she attempted to kill herself by slitting her wrists. He stated that she was susceptible to mood swings ranging from euphoria to suicidal depression. Another consequence of her psychiatric disorder was substantial weight gain. The judge described her as a large young woman at the time of the accident whose weight was 14 stone. At the trial, her weight was 20 stone. This apparently was a product of 'comfort eating' arising out of her depression. A contributory factor, according to the judge, was that her medication, which she will require permanently, is by its nature appetite promoting.

The judge noted that Ms McDonnell now had the benefit of a sheltered workshop where she was engaged in horticultural activities in potting plants and the like. She enjoyed the work and performed quite well except when she was having an adverse mood swing. The action came to trial in October 2000. Ms McDonnell's medication had been changed some weeks before then and that had brought about a significant improvement in her situation. The judge noted that, surprisingly, she was not distressed by her court appearance and in evidence she expressed enthusiasm about her future prospects in life, including her intention to marry her boyfriend and to rear a family.

Ms McDonnell's psychiatrist's evidence, however, was much less sanguine. The psychiatrist expressed the opinion that Ms McDonnell would require on-going daily medication for the rest of her life, that she would never be fit for ordinary gainful employment and that it would be necessary for her to continue attending the rehabilitation centre permanently, a factor which, he said, probably would have been advantageous in any event, bearing in mind her mild mental disablement. In the psychiatrist's opinion, it was also probable that she would require in-patient treatment for an average of six weeks a year and this would continue indefinitely, and he recommended that her condition should be monitored on a monthly basis.

A consultant psychiatrist gave evidence at the October 2000 trial on behalf of the defendant. That psychiatrist had interviewed Ms McDonnell twice, in January and September 2000. He stated that originally his prognosis was guarded and he did not consider that Ms McDonnell was likely to reach her pre-morbid state. He found that when he

saw her in September 2000 she was much improved. She was not depressed and her energy level appeared to be good. As a consequence, he was a lot more optimistic about her future than he had been at the earlier interview. In his opinion, the long-term prognosis was much improved. He stated that he could not predict the extent of future hospitalisation that she might require. He conceded that she might need such treatment but not as long as six weeks a year on average into the future.

Barr J stated that in light of the substantial conflict between the prognosis of the two psychiatrists and also bearing in mind that Ms McDonnell had required prolonged hospitalisation up to a time shortly before the trial, that it seemed to him, in the interests of justice to both parties, premature to arrive at any firm conclusion as to her probable future and that some further time should be allowed to elapse before final assessment of damages. He took the unusual step of adjourning the trial for three months with a view to hearing further medical evidence as to Ms McDonnell's continuing progress. Accordingly, the trial was resumed on 15 January 2001 and the judge stated he had the benefit of hearing further evidence from the two psychiatrists. In the intervening period, Ms McDonnell had had three short periods in hospital of a few days on each occasion, two before Christmas, and one afterwards. Otherwise, she continued to attend the rehabilitation centre on a daily basis.

The dispute that the judge had to resolve was the difference of opinion between the two psychiatrists as to the length of hospitalisation each year. The psychiatrist for the defendant did not accept a probable average of six weeks a year. The real difference between the two psychiatrists was that the psychiatrist for the defendant attached substantial significance to the effect of litigation on Ms McDonnell's condition up to the present. He stated in evidence that he thought the whole process of the court appearance created a considerable increase in anxiety, causing Ms McDonnell to become distraught. When that happened, her mood went down and her anxiety went up and he considered that those were the days when she began to feel suicidal. The psychiatrist for the defendant considered that once the court case was out of the way, it would be a further hurdle overcome and things would get easier. There would be a further reduction in the stressors. Ms McDonnell's psychiatrist attached less significance to the aggravating effect of the litigation.

The judge concluded that the absence of earlier psychiatric treatment and attendance at the rehabilitation centre rendered her more vulnerable to the effects of post-traumatic stress disorder. He considered that the degree of stress disorder suffered by Ms McDonnell was severe. It led, at times, to dramatic mood swings ranging from euphoria to deep depression, with serious suicidal tendencies which demanded immediate in-patient treatment. Accepting that the stress of litigation was likely to be an aggravating factor for Ms McDonnell, he preferred the assessment of her psychiatrist. The judge stated that he bore in mind the remarkably composed demeanour of Ms McDonnell when giving evidence. If the litigation had been as severe a stressor for her as the psychiatrist for the defendant suggested, such a degree of composure would seem most unlikely. However, in any view, the stress of litigation was probably a significant factor for her.

The judge considered that the probabilities pointed to a scenario where Ms McDonnell would require in-patient psychiatric treatment for about three weeks on average each year for the rest of her life. She was now significantly more vulnerable to stress of all sorts than she was before the accident. In the ordinary course of living, stress is likely to occur occasionally and, when that happens, Ms McDonnell may require in-patient support. Her situation should also be monitored monthly into the future as her psychiatrist recommended so that early warning signs of distress may be discovered. Her medication may also require alteration from time to time as had been done in the past. The judge noted that he gathered from Ms McDonnell's psychiatrist that there were doubts if anything could be done for her grievous weight problem. The judge noted that it seemed to be a 'catch 22' situation because one of the factors contributing to gross overweight was a side effect of Ms McDonnell's daily medication, which stimulates appetite. The judge suggested a dietician might be able to find an answer to that problem.

Barr J noted, however, that the accident had led to an unexpected advantage for Ms McDonnell which might never have arisen otherwise. He stated that there was no doubt that the rehabilitation centre which she now attended had brought some order and satisfaction into her life which she did not previously enjoy.

A legal issue arose in the case as to Ms McDonnell's earnings from the investment of her damages. This would exceed £77.50 a week, so she would lose her weekly disability benefit of £47 plus £5 fuel allowance. Her damages would also result in the loss of her medical card up to the age of 70. As a consequence, she would be liable for the first ten days of in-patient hospital treatment a year. The extent of her annual liability in that regard was £260. She would not be charged for attendance at the day centre/rehabilitation unit, but the future estimated annual cost of hospitalisation and medical treatment was £1,260, that is, £26 a week. When added to the weekly loss of disability benefit and fuel allowance, the total was £78 a week. The judge noted that he had not taken into account possible loss of rent allowance, as it was unlikely to arise because that particular benefit was in the name of Ms McDonnell's partner.

THE AWARD

The judge stated that he had to calculate the capital value of the weekly loss which Ms McDonnell would sustain taking into account the *Reddy v Bates* principle. He assessed this capital value of the weekly loss at £60,000.

Special damages had been agreed at £21,375, which included a Kinlen order for 137 days in hospital at £125 a day.

In assessing damages for suffering and loss of enjoyment of life by Ms McDonnell up to the date of the trial, he assessed this in the sum of £60,000 and in the future at £80,000. Accordingly, he awarded her a total amount of £221,375.

Having awarded damages, the judge noted that one aspect of the case caused him concern. Having regard to Ms McDonnell's pre-accident mental condition which had been significantly aggravated by the post-traumatic stress disorder from which she now suffered and would continue to suffer in the future, he stated that it was evident that she would have difficulty in managing the amount of damages he had assessed. It seemed to him that she should be brought into wardship so that the damages would be managed on her behalf. The judge would refer his judgment to the registrar of the Wards of Court with a request that the president of the High Court consider taking Ms McDonnell into wardship. The amount of damages should be paid to the solicitor for Ms McDonnell out of which he should pay £1,000 to her. He should retain the balance on deposit pending the decision of the president of the High Court in the wardship matter.

Tort – road traffic accident – child – school bus – inhalation of fumes – bedwetting and other associated *sequelae* – acquisition of condition akin to asthma – award of High Court – appeal to Supreme Court

CASE

***Andrea Newell (a minor) suing by her mother and next-friend Marie Newell v Bus Éireann/Irish Bus*, Supreme Court (Denham, Hardiman and Fennelly JJ), judgment of Mr Justice Fennelly delivered on 10 July 2001.**

THE FACTS

Andrea Newell was born on 22 January 1986. In October 1993, when she was seven years of age, she was travelling to school on a bus run by Bus Éireann. The bus filled up with smoke, apparently as a result of an engine fire, though the bus did not catch fire. The seven-year-old child breathed in a lot of smoke. After leaving the bus, she felt shock; she was distressed and crying; her throat was sore with coughing and her chest felt tight. Apparently, she was on the bus for some minutes before it was cleared of all its passengers.

For some time after the accident, the child suffered nightmares. She would wake up in distress, shaking, sweating, and with her heart pounding. There were also a few incidents of sleepwalking. The child became nervous, clinging to her mother, and she did not want to go to school. She also had abdominal pains and recommenced bed-wetting, from which she had suffered previously as a result of certain distressing incidents, but from which she had recovered. Bed-wetting occurred almost every night, with occasional daytime incidents for a year and continued for several years until it eventually resolved itself, though with occasional persistent problems of loss of control, when the child was ten or 11. Bus Éireann was sued in negligence and breach of duty.

THE HIGH COURT JUDGMENT

The matter came before Johnston J in the High Court. Evidence was given, including that of a psychiatrist who explained the symptoms set out above were the result of an acute anxiety disorder.

Although these were resolved to a large extent after five months, some general symptoms had persisted up to the hearing in the High Court.

The psychiatrist had stated that the child's continuing psychological problems were more associated with respiratory problems.

THE HIGH COURT AWARD

Johnston J awarded general damages to Andrea Newell for:

- Pain and suffering to the date of the trial in the High Court – £30,000
- Pain and suffering in the future – £25,000.

The child's mother appealed to the Supreme Court on the basis that the damages awarded to her in the High Court were too low and should be increased.

THE SUPREME COURT JUDGMENT

The matter came before the Supreme Court composed of Denham, Fennelly and Hardiman JJ. The judgment of the Supreme Court was delivered on 10 July 2001 by Fennelly J. Having outlined the evidence, Fennelly J stated in relation to the respiratory difficulties of Andrea Newell that, at first, it was assumed she simply had a bad cold. She coughed up a lot of mucus and she was put on antibiotics by the family doctor several times over a period of months. After more than a year, she was referred to a specialist who diagnosed a condition akin to asthma, called reactive airways dysfunction syndrome. The judge noted the evidence that there had been signs of airway inflammation with gas trapped behind closed airways. Such long-term damage could be due to brief exposure to noxious fumes. The symptoms consisted of breathlessness and wheezing. They were accompanied by a lot of coughing, especially in winter. Fennelly J noted that the evidence in the High Court had been that while the child had been the fastest runner in her class in school, she was no longer able to run without distress and wheezing. Eventually she lost interest. The child was also fond of dogs, but was now conscious that close proximity

to animals risked causing wheezing. Her condition had varied up and down over the years. Periods of improvement had been followed by relapse.

The judge noted that expert opinion suggested that her chance of recovery was somewhat less, 40%, than a normal asthma sufferer, where the chance was said to be about 50%. The age of 14 was stated to be a watershed. The judge noted the child was just over 14 at the time of the High Court hearing. Her on-going drug regime involved taking inhaled steroids at relatively high dosages, morning and evening, with several daily applications of a reliever inhaler. In winter she also needed an antibiotic cover.

The Supreme Court considered that in the context of the appeal against the two parts of the assessment of damages by the High Court, it was necessary to separate so far as possible the cluster of symptoms described by the psychiatrist as acute anxiety disorder. The Supreme Court noted the general burden of the evidence and the finding of Johnston J in the High Court was that these symptoms had largely, but not totally, resolved within the first six months, although the bed-wetting problem persisted for three or four years. The continuing symptoms of stress were more, though perhaps not entirely, associated with the respiratory system which has a past and future element.

On the basis that the sum of £30,000 awarded by the High Court was largely for the consequences of the acute anxiety disorder, the Supreme Court considered the assessment of those damages for pain and suffering to date reasonably compensated the child for the undoubted distress which she had suffered over a period of several years but which were diminishing during that time. The Supreme Court stated that it certainly had not been shown that £30,000 was in error to the standard that would be required before the Supreme Court would disturb it. Therefore, the appeal was dismissed in relation to the award of £30,000.

Fennelly J then turned to the issue of £25,000 for future pain and suffering for a child who had effectively acquired a condition akin to asthma. Noting that it was true that the evidence established that the symptoms of the condition were effectively controlled, he also noted that this had been achieved by a comprehensive programme of drug treatment. The need for the child to take a reliever inhaler several times daily as well as before exercise was indicative of the active state of her condition. It appeared to be common case that the chances of her recovering from this condition were assessed at less than 50%, though such a prognosis was necessarily more in the nature of a conjecture than any real evaluation of probability. Fennelly J noted that the correct approach must be to conclude that there was a very real possibility that the child would continue to suffer from this all her life. An obvious consequence was that she would, on that hypothesis, have to follow a heavy daily drugs programme. Apart from the inconvenience of that course, it could not be entirely devoid of the risk of side effects. The child had also lost a significant element of enjoyment of life in no longer being able to pursue athletic pursuits. Her innate enjoyment of animals had also been curtailed. There was some restriction of her employment possibilities consequent on the need to avoid inappropriate environments. G

These judgments were summarised by solicitor Dr Eamonn Hall.

THE SUPREME COURT AWARD

The Supreme Court considered that the sum of £30,000 for pain and suffering to the date of the trial, awarded by the High Court, was reasonable.

It also held that the sum of £25,000 awarded by the High Court for future pain and suffering fell significantly short of adequate compensation for the fact that Andrea Newell had effectively acquired a condition akin to asthma. The appeal would be allowed in that respect and the figure for future pain and suffering was increased by the Supreme Court to £50,000.

Diploma in legal French

The Law Society and the Alliance Française are pleased to announce that the 6th *Diploma in Legal French* programme will begin in October 2001. Certified by the Paris Chamber of Commerce, the course will be taught by native French lawyers and lecturers. This diploma is a practical qualification and provides a comprehensive study of the French legal environment.

COURSE CONTENT

The course is divided into legal French and general French modules.

The legal French element represents two-thirds of the course and will include modules on the French legal system dealing with both civil and commercial law. The language modules will complement the legal syllabus and will include work on the oral and written skills essential to success in the diploma examination.

COURSE AIMS

The aim of the programme is that successful participants will be qualified to interact proficiently with French-speaking lawyers and business people. They will also have acquired an excellent knowledge and understanding of the French legal system. Practitioners will benefit from the application of their professional and language skills, and apprentices will enhance their career prospects by undertaking the programme.

COURSE PARTICIPANTS

The course is open to solicitors, barristers, apprentices and other interested parties.

VENUE AND TIMETABLE

The course will run from October 2001 to May 2002. Lectures will take place at the Law Society, each Wednesday evening and on Saturday mornings on a monthly basis.

FEE

The course fee is £700 per student, inclusive of course materials. An examination fee of £85 will be payable at a later date. *(There is also an examination-inclusive fee option of £775).*

ENTRY CRITERIA

Admission will be based on a pre-course language assessment which will take place at the Alliance Française.

For further information please contact Louise Stirling at the Alliance Française (01)-676 1732

Diploma in legal French

PRE-COURSE LANGUAGE ASSESSMENT APPLICATION FORM

Name: _____ Qualification: _____

Address: _____

Telephone: _____ Fax: _____ E-Mail: _____

Home address: _____

Telephone: _____ E-Mail: _____

Signature: _____ **Date:** _____

Assessments will take place at the Alliance Française, I Kildare Street, Dublin 2. Please indicate preferred method of communication regarding assessment. *It would be appreciated if you would indicate on a seperate sheet of paper the level of French studied previously, time in French-speaking countries or other relevant information.* **Applications for language assessment should be forwarded immediately to: Louise Stirling, Alliance Française, 1 Kildare Street, Dublin 2.**

Practice notes

Administration of estates: Department of Social Welfare enquires

The personal representatives of deceased social welfare assistance recipients are obliged by law to provide the minister with a copy of the Inland Revenue affidavit of the deceased on request. In order to determine the existence or extent of the claim against the estate, the inspector may require transcripts of all bank/building society accounts held solely or jointly by the deceased during the period that the assistance or pension was paid.

At the time of taking up instructions, solicitors should advise personal representatives of the possibility that such enquires may be made. If information is required, personal representatives should be asked to obtain the information directly.

The categories of social welfare assistance are as follows:

- Unemployment assistance
- Pre-retirement allowance
- Old age (non-contributory) pension
- Blind person's pension
- Widow's and orphan's (non-contributory) pension
- Deserted wife's allowance
- Prisoner's wife's allowance
- Lone parent's allowance
- Carer's allowance
- Supplementary welfare allowance
- Disability allowance.

Probate, Administration and Taxation Committee

Personal injury list: Dublin

Practitioners are reminded that it is essential that the registrar be informed when cases are settled, in order that they may be taken out of the list. Otherwise, settled cases which have inadvertently remained on 'the shortfall list' are called on for hearing and, as no notice to this effect issues to either party (other than the re-listing of the case in the legal diary), the list on any given day may include a number of settled cases.

In recent times, the court has taken the view that the onus to advise the court of the status of the proceedings does not rest solely with the solicitor for the plaintiff, and the solicitor for the defendant must also bear some responsibility in the matter. Practitioners should note that, whether acting for the plaintiff or the defendant, they may be summoned before the court to explain their failure to appear at previous call-overs or to notify the registrar that the case has settled.

Litigation Committee

Undertakings: infant cases

Practitioners are reminded that the procedure governing the settlement or compromise of actions in infant cases is governed by order 22 of the *Superior court rules*.

Order 22, rule 10(1) provides (among other things) that no settlement or compromise or payment or acceptance of money paid into court, either *before*, at or after trial, shall, as regards the claim of an infant, be valid without the approval of the court.

The absolute jurisdiction of the court in such cases cannot be compromised or pre-empted by undertakings given before the matter has been ruled. Practitioners should therefore decline to furnish undertakings in such cases.

Litigation Committee

New fees orders for District, Circuit, Supreme and High courts

New fees orders for the above courts will come into operation with effect from **16 July 2001**. The orders provide, among other things, for increases in certain fees. Practitioners should refer to the relevant statutory instruments for full details of all changes. Details of the increased fees are set out below.

District Court (Fees) Order 2001 **(SI no 253/2001)**

With the exception of four new fees, the fees prescribed in the new order are the same as those in the 1997 order. The four new fees are in part 4 of the schedule to the new order as follows:

	Item (1)	Fee (2)	Document to be stamped (3)
9a	On an application under section 23 of the *Intoxicating Liquor Act, 2000* for the licensing of an authorised event at a racecourse or greyhound track	£24	The application
10a	On application for an order under section 20(2) of the *Intoxicating Liquor Act, 2000*	£84	The application
10b	On application for an order under section 20(3) of the *Intoxicating Liquor Act, 2000*	£84	The application
28	On lodging a notice of objection to the renewal of an intoxicating liquor licence	£18	The notice

Circuit Court (Fees) Order 2001 **(SI no 252/2001)**

With the exception of one revised fee, the fees prescribed in the new order are the same as those in the 1999 order. The revised fee is in part 1 of the schedule to the new order at item 2:

	Item (1)	Fee (2)	Document to be stamped (3)
2	On every copy of any document	£4	The copy or court fee card

Supreme Court and High Court (Fees) Order 2001 **(SI no 251/2001)**

With a small number of exceptions, the fixed fees in the 1989 order have been increased by 20%. In relation to those fees which are charged rateably or as a percentage, there has been no increase in the rates. There have, however, been increases in some of the relevant threshold amounts. For full details, see SI no 251/2001.

Litigation Committee

Sections 221 and 222 of the *Finance Act, 2001*

Sections 221 and 222 of the *Finance Act, 2001* (no 7 of 2001) have widened the category of 'child' for the purposes of computing capital acquisitions tax. A child for this purpose now includes:

a) A step-child (*Capital Acquisitions Tax Act, 1976*, section 2(1))
b) A child adopted under the *Adoption Acts, 1952–1998* or under a foreign adoption which is deemed to be a valid adoption within the meaning of the *Adoption Act, 1991*, as amended by the *Adoption Act, 1998* (*Finance Act, 1992*, section 223(1))
c) A foster child (*Finance Act, 2001*, section 221), and
d) A natural (adopted) child (*Finance Act, 2001*, section 222).

The extended category of 'child' for the purposes of calculating capital acquisitions tax includes a foster child and a natural (adopted) child. That said, the definition of a 'child' for the purposes of the capital acquisitions tax legislation remains unaffected by the foregoing development. The reliefs included in the *Finance Act, 2001* only apply to foster children and natural children adopted by others in terms of benefits received from the disponer, not for any other purpose.

A foster child is now classified as a child of the foster parents in limited circumstances for the calculation of capital acquisitions tax. Section 221 of the *Finance Act, 2001* adds a new section 59D to the *Capital Acquisitions Tax Act, 1976* by providing that a foster child (successor) will bear to the deceased foster parent (disponer), in relation to a gift or inheritance taken on or after 6 December 2000, the relationship of a 'child' if the following conditions are met:

a) The foster child must have been placed in the foster care of the deceased foster parent under the *Child Care (Placement of Children in Foster Care) Regulations 1995* (SI no 260 of 1995), **or**
b) The foster child must have resided with the deceased foster parent for a period of five years before he or she reached 18 years ('the appropriate period') and must have been under the care of **and maintained by the foster parent at the foster parent's own expense.***

If these conditions are proven, the foster child will be deemed to bear to the foster parent the relationship of a child for the purpose of computing the tax payable on any gift or inheritance from the deceased foster parent, which relationship now has a group 1 threshold of £316,800. An independent witness must corroborate the foster child's claim for group 1 status.

Identical rules apply in respect of the placement of children with relatives under the *Child Care (Placement of Children with Relatives) Regulations 1995* (SI no 261 of 1995).

By virtue of section 222 of the *Finance Act, 2001*, an adopted child bears to a deceased natural parent, in relation to a gift or inheritance taken on or after 30 March 2001, the relationship of a 'child'. Consequently, a natural child has now a group 1 threshold of £316,800 in respect of any gift or inheritance from his or her adoptive parent and his or her natural parent.

Practitioners should note that while section 14(d) of the *Interpretation Bill, 2000* (no 53 of 2000) has redefined 'adopted child', this is unlikely to have any impact on this section.

** The interpretation of this section will be a matter for the capital taxes section and we would welcome any comments from the profession about the application of this relief.*

Family Law and Civil Legal Aid Committee

First Law Update
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News from Ireland's on-line legal awareness service
Compiled by Karen Holmes of FirstLaw

ADMINISTRATIVE

Detention, mental health

Habeas corpus *proceedings – statutory interpretation – legality of detention – hospitalisation – whether detention of applicant unlawful* – Mental Treatment Act, 1945, *section 194* – Bunreacht na hÉireann 1937

The applicant had been detained under the *Mental Treatment Act, 1945* and initiated *habeas corpus* proceedings under article 40 of *Bunreacht na hÉireann*. The applicant had demanded that he be discharged from hospital. The High Court (Mr Justice Kelly) held that the applicant had not made out a case that his present detention was unlawful and the application for release was refused. On appeal, the Supreme Court (McGuinness J and Hardiman J delivering judgments) held that the applicant's detention had been in accordance with the law. The current legislation was, however, in need of reform. The appeal would be dismissed.

***Gooden v Waterford Regional Hospital*, Supreme Court, 21/02/2001** [FL3788]

Social welfare

Statutory interpretation – retrospective effect of statutory provisions – whether benefit should be refunded by claimant – Social Welfare (Consolidation) Act, 1993

The minister had sought the repayment of a social welfare benefit. In the High Court, Ms Justice Laffoy held that the provision in question for the repayment of monies had a retrospective effect and the statute should be interpreted as having a prospective effect only. The claim was dismissed. In the Supreme Court, Fennelly J held that the claim should be allowed and a decree would be granted to the minister for the amount in question.

***Minister for Social, Community and Family affairs v Scanlon*, Supreme Court, 16/01/2001** [FL3875]

AGRICULTURAL

Planning and environment

Injunction – agriculture – construction of road – land reclamation – whether development 'exempted' – whether works constituted a land reclamation project – Local Government (Planning and Development) Act, 1976, *section 27*

An injunction was granted in the High Court against the respondent in relation to works carried out on certain lands. The respondent appealed to the Supreme Court. Keane CJ, delivering judgment, held that in no sense could the works in question be considered as reclamation. The order of the High Court was affirmed and the appeal dismissed.

***Dolan v Cooke*, Supreme Court, 13/03/2001** [FL3800]

COMMERCIAL

Contract, pensions

Pension scheme – whether deficiencies in pension schemes disclosed by vendors

The proceedings related to the purchase of share capital in a company. The purchasers claimed that deficiencies in the pension scheme of the company had not been disclosed and sued the vendors. In the High Court, Ms Justice Laffoy dismissed the claim. On appeal to the Supreme Court, Murphy J held that the letter of disclosure of the vendors fully discharged their obligations and the case must be dismissed.

***UPM Kymmene v BWG Limited*, Supreme Court, 04/04/2001** [FL3874]

Intellectual property, trade marks

Registration of a trade mark – opposition – similarity – confusion – deception – bona fides – Trade Marks Act, 1963 – Trade Marks Act, 1996 – Rules of the Superior Courts 1986

The applicant (Montex Holdings) had attempted to register the trade mark *Diesel* in respect of items of clothing. The second defendant (Diesel SPA) had objected to the registration. The controller of patents had refused the application primarily on the basis that the use of the mark by the applicant would cause deception and confusion for many people. The applicant appealed the decision of the controller to the High Court. O'Sullivan J held that the registration of a trade mark would be refused where its registration would be likely to cause confusion or deception. Accordingly, the decision of the controller declining to permit the registration of the trade mark in question was upheld and the appeal was dismissed. The applicant appealed. Mr Justice Geoghegan held that there had been ample evidence before the High Court to justify the conclusions reached. The appeal would be dismissed.

***Montex Holdings v Controller of Patents*, Supreme Court, 05/04/2001** [FL3893]

COMPANY

Revenue and financial law

Taxation – income tax – capital gains tax – nature of disposal – whether redemption of loan note gave rise to chargeable gain – whether loan note constituted debt on a security – Capital Gains Tax Act, 1975

The respondent was the owner of a number of shares, which he sold in 1990 in return for a loan note issued by the purchaser. The loan note was redeemed by the respondent for cash in 1993. A dispute arose as to the proper amounts subject to income tax and capital gains tax. In the High Court, McCracken J held that no chargeable gain arose in respect of the loan note. On appeal, Murphy J held that the issue relating to a liability for income tax must be remitted to the High Court for further consideration. The loan note could not be considered to be a debt on security and the appeal of the inspector of taxes in this regard was dismissed.

***O'Connell, Inspector of Taxes v Keleghan*, Supreme Court, 16/05/2001** [FL3828]

Telecommunications

Winding-up petition – mobile telephony services – equity – application for injunction

The proceedings concerned the termination of an agreement whereby the defendant supplied the plaintiff with mobile telephone lines. The defendant was intent on bringing a winding-up petition in order to recover monies allegedly owed. The plaintiff sought an interlocutory injunction to protect its position pending a sale of business assets. The application was refused in the High Court. On appeal, the Supreme Court held that the balance of convenience would be served by granting the injunction sought accompanied by a number of conditions. The appeal would be allowed.

***Meridian v Eircell*, Supreme Court, 10/05/2001** [FL3771]

CONSTITUTIONAL

Proceeds of crime

Property – onus of proof – whether legislation unconstitutional – whether serious risk of injustice – Proceeds of Crime Act, 1996

The plaintiff sought orders under the *Proceeds of Crime Act, 1996* in respect of property owned by the second-named respondent, which was allegedly bought from the profits arising from drug trafficking. Orders had already been made in respect of properties owned by the first respondent, who was the son of the second respondent. The second respondent challenged the constitutionality of the legislation. O'Sullivan J was satisfied that the legislation was constitutionally sound and was prepared to make the orders sought. However, the matter would be adjourned to allow the bank with a mortgage on the property to make submissions.

***FJM v TH and JH*, High Court, Mr Justice O'Sullivan, 29/06/2001** [FL4016]

Road traffic offences

Judicial review – road traffic offences – stating of case to High Court – role of District Court judge – whether section governing stating of case constitutional – Summary Jurisdiction Act 1857, *section 4*

The applicant had been involved in a traffic accident and was subsequently charged with an offence under the *Road Traffic Act, 1961*. The charge was dismissed and the director of public prosecutions sought to state a case to the High Court on whether the District Court judge was correct in dismissing the charge. The applicant initiated judicial review proceedings seeking to challenge to the constitutionality of the proviso contained in section 4 of the *Summary Jurisdiction Act 1857* whereby a district judge may not refuse to state a case where an application was made by the attorney general or the director of public prosecutions. The applicant claimed that such a proviso was discriminatory against the other party to the proceedings. Kearns J held that the proviso was discriminatory and hard to justify. The declaration sought by the applicant would be granted.

***Fitzgerald v DPP*, High Court, Mr Justice Kearns, 04/05/2001** [FL4031]

Search warrants

Criminal law – validity of search warrant – role of peace commissioner – misdescription on face of warrant – whether warrant validly issued

The matter had been referred to the Supreme Court for determination. The trial judge had held that the search warrant obtained by gardaí to search the premises of the defendant was invalid and, as a result, a large amount of evidence was excluded at the original trial. In the Supreme Court, Hardiman J held that despite a misdescription, the warrant could not be said to be defective and the warrant was valid. The case stated was so answered.

***DPP v Edgeworth*, Supreme Court, 29/03/2001** [FL3873]

CONTRACT

Dismissal of proceedings

Employment law – contract – fair procedures – dismissal – misconduct – whether plaintiff's dismissal justified – whether plaintiff entitled to damages – whether fair procedures followed – whether adequate notice given

The plaintiff had been employed by the defendant as a hotel manager and was dismissed following an incident whereby he had allegedly failed to follow an express instruction from his superiors. The plaintiff instituted proceedings claiming that fair procedures had not been followed. Mr Justice McCracken was satisfied that the plaintiff had been guilty of misconduct. However, the plaintiff had not been given the requisite six months' notice and a total of £31,752 would be awarded.

***Dooley v Great Southern Hotels Ltd*, High Court, Mr Justice McCracken, 27/07/2001** [FL4051]

CRIMINAL

Customs and Excise, drug offences

Judicial review – seizure of assets – practice and procedure – customs and excise – whether seizure of money in accordance with fair procedure

A sum of money had been seized from the applicant following an operation by Customs and Excise at Cork Airport. The applicant sought to challenge the seizure of the monies and claimed that proper procedures had not been followed. Mr Justice Kearns held that correspondence had made it abundantly clear to the applicant the context in which applications for the detention of monies had been made. The application was dismissed.

***McDonnell v District Judge MacGruairc*, High Court, Mr Justice Kearns, 20/06/2001** [FL3997]

Detention, medical care

Criminal law – detention – prisons – medical care

The applicant initiated proceedings regarding his detention as a prisoner. The applicant wished to avail of private medical treatment. Keane CJ, delivering judgment, held that the applicant was not entitled to private medical care. The order of *mandamus* sought by the applicant would be refused.

***Hassett v Governor of Limerick Prison*, Supreme Court, 09/03/2001** [FL3820]

Discovery

Practice and procedure – discovery – privilege – evidence – director of public prosecutions – whether discovery should be ordered

The applicant sought discovery of a letter emanating from the office of the director of public prosecutions. Hardiman J held that disclosure of the letter should be ordered and the appeal of the applicant would be allowed.

***Hannigan v DPP and Judge Smithwick*, Supreme Court, 30/01/2001** [FL3773]

Drug offences, evidence

Appeal against appeal and conviction – presence of money in applicant's house – whether trial judge correctly instructed jury

The applicant had been convicted and sentenced in respect of drugs offences. The applicant appealed against his conviction primarily on the basis that the trial judge had incorrectly instructed the jury with regard to the presence of money in the applicant's house. Murray J held that the trial judge had incorrectly instructed the jury. In the circumstances it would be unsafe to allow the verdict to stand. The verdict would be set aside and a new trial ordered.

***DPP v Coddington*, Court of Criminal Appeal, 31/05/2001** [FL3911]

Evidence, fair procedures

Identification evidence – whether convictions of applicants safe – whether miscarriage of justice had occurred – whether disclosure of relevant evidence would have assisted defence – Criminal Procedure Act, 1993, *section 9*

The proceedings concerned the convictions of the two applicants in relation to an alleged joy-riding incident. Part of the evidence relied on in securing the convictions was identification evidence tendered by two witnesses to the incident. The applicants submitted that on the basis of recently-discovered documentation, the identification evidence was unsafe and a miscarriage of justice had occurred. Geoghegan J, delivering judgment, held that the identification evidence would not have been allowed by a trial judge. There had been a miscarriage of justice and the court would certify accordingly.

***Meleady and Grogan v DPP*, Court of Criminal Appeal, 20/03/2001** [FL4037]

Judicial review, solicitors

Fair procedures – drug offences – prosecution of appeal – whether non-attendance of applicant attributable to state

The applicant sought judicial review of a decision to strike out the applicant's appeal of a drug conviction. The applicant had not appeared in court and in the present application the applicant's solicitor averred that it was the practice of the relevant court office to inform the solicitor of the date of the appeal and had not done so. Mr Justice Herbert held that no such duty lay on the court office. At all times, the solicitor of the applicant was obliged to prosecute the appeal and ascertain the relevant date of trial. The application was dismissed.

***McCann v Judge Groarke and the DPP*, High Court, Mr Justice Herbert, 03/05/2001** [FL3966]

Legal aid

Costs – application of director of public prosecutions – Courts of Justice Act, 1924

The director of public prosecutions had sought a review of the sentences the respondent had received. The review was unsuccessful and the respondent sought his costs arising from the application. Hardiman J, delivering judgment, held that the court had the power to award costs both under statute and the *Rules of the Superior Courts*. The respondent would be awarded costs.

***DPP v Redmond*, Court of Criminal Appeal, 29/03/2001** [FL3909]

Medicine, prisons

Detention – medical care – prisons – whether adequate medical care afforded to prisoner

The applicant had sought to challenge the medical treatment afforded to him while in prison, complaining that he had been refused nicotine patches as he wished to give up smoking. In the High Court, Mr Justice Kelly dismissed the action and on appeal the Supreme Court affirmed the ruling of the High Court.

***Kelly v Governor of Mountjoy Prison*, Supreme Court, 09/03/2001** [FL3868]

Practice and procedure, sentencing

Deferral of sentencing – definition of 'sentence' – whether sentence imposed capable of review – Criminal Justice Act, 1993, *section 2*

The respondents had been convicted of certain offences, including drug offences. The trial judge imposed a number of conditions on the respondents and deferred sentencing until a certain date. The director of public prosecutions brought an application to have these sentences reviewed on the grounds of undue leniency. The respondents contended that sentencing had not occurred and, as such, the review was premature. As a preliminary issue, it was held that the order the trial judge had made was as such a 'sentence' which was capable of review pursuant to the terms of the *Criminal Justice Act, 1993*.

***DPP v Dreeling and Lawlor*, Court of Criminal Appeal, 27/02/2001** [FL3946]

Provocation

Murder conviction – appeal – mens rea – *subjective test* – Criminal Justice Act, 1964

The applicant had been convicted of murder. He sought leave to appeal against his conviction on the grounds that the trial judge had erred in refusing to allow the jury to consider a defence of provocation. Also, it was claimed that the applicant had not intended the natural and probable consequences of his conduct. Murray J, delivering judgment, held that the trial judge had conducted the trial correctly and leave to appeal would be refused.

***DPP v McDonagh*, Court of Criminal Appeal, 31/05/2001** [FL3959]

Right to fair trial, self-defence

Fair procedures – whether jury properly charged

The appeal concerned the conviction of the applicant in circumstances where he was convicted of malicious wounding. On behalf of the applicant, it was contended that the jury had not been properly charged by the trial judge. Mr Justice Keane (as he was then) held that the onus remained on the prosecution to show that the accused was not entitled to rely on self-defence. A misdirection had occurred and the conviction would be quashed and a re-trial ordered.

***DPP v Cremin*, Court of Criminal Appeal, 10/05/99** [FL3825]

Role of jury

Fair procedures – role of jury – risk of bias – whether risk of unfair trial

The appellant had been tried and convicted on rape and sexual assault charges. It had transpired during the trial that a member of the jury had suffered sexual abuse. The trial judge had refused to discharge the jury. The appellant brought an appeal seeking to have the conviction quashed. Fennelly J, delivering judgment, held that there was a risk of objective bias. The conviction would be quashed and a re-trial ordered.

***DPP v Tobin*, Court of Criminal Appeal, 22/06/2001** [FL3914]

Sentencing

Review procedure – Criminal Justice Act, 1993, *section 3 – separation of powers – whether practice of reviewing sentences and suspending balance correct*

The defendant had been convicted of certain offences and had been sentenced to seven years' and three years' imprisonment with a review date built in. At the review date, the defendant was released upon furnishing various undertakings. The director of public prosecutions applied to have the sentence reviewed on the grounds that it was too lenient. This application was granted in the Court of Criminal Appeal and the suspension periods in the sentences were abolished. On appeal to the Supreme Court, Chief Justice Keane held that any appeal by the state against a sentence must be taken within 28 days of the imposition of the original sentence. The Court of Criminal Appeal was wrong in law in substituting the sentences in question and the appeal would be allowed. The incorporation of a review period in sentences which results in the suspension of the balance of sentences offended against the principle regarding the separation of powers and this practice must be discontinued.

***DPP v Finn*, Supreme Court, 24/11/2000** [FL3872]

Sexual offences

Evidence – sexual assault – appeal against conviction – whether evidence of complainant consistent

The applicant sought leave to appeal against a conviction for an offence of sexual assault. The applicant claimed that the evidence of the complainant was inconsistent and that the case should have been withdrawn from the jury. Mrs Justice Denham held that the trial judge did not err in refusing to withdraw the count in respect of sexual assault from the jury at the conclusion of the prosecution case. The court would dismiss the application and the appeal.

***DPP v M*, Court of Criminal Appeal, 15/02/2001** [FL3975]

CRIMINAL ASSETS BUREAU

Jurisdiction of Circuit Court

Social welfare – withdrawal of benefit – case stated – whether Circuit Court had jurisdiction to decide matter – Courts of Justice Act, 1947

Judge Moran of the Circuit Court had stated a case for the opinion of the Supreme Court. Mr Justice Fennelly, delivering the leading judgment, held that the judge had decided the case as a complete re-hearing. The Circuit Court judge had the jurisdiction to do so and the case stated was so answered.

McGinley v Deciding Officer

***Criminal Assets Bureau*, Supreme Court, 30/05/2001** [FL3903]

Legal aid

Freezing of assets – whether defendants entitled to legal aid

The case concerned the entitlement of the defendants to legal aid. An order had been made effectively freezing the sum of £300,000 owned by the respondents. An application seeking legal aid was refused by Butler J in the High Court. On appeal, Hardiman J held that it was in the interests of justice that the defendants be legally represented. Legal aid would therefore be granted to the defendants.

***Murphy v GM and Others*, Supreme Court, 03/04/2001** [FL3904]

Revenue and financial law

Seizure of assets – Revenue – income tax assessment – practice and procedure – whether defendant had stateable defence – whether matter should be remitted to plenary hearing – Criminal Assets Bureau Act, 1996 – Taxes Consolidation Act, 1997

An income tax assessment had been raised against the defendant by the Criminal Assets Bureau, which sought to enter a final judgment in respect of the amount. McCracken J held that the defendant had demonstrated that there was a reasonable possibility of there being a *bona fide* defence and the matter should proceed to a plenary hearing.

***Criminal Assets Bureau v KB*, High Court, Mr Justice McCracken, 15/05/2001** [FL4010]

DEFAMATION

Evidence, libel

Appeal – practice and procedure – whether appropriate to permit cross-examination regarding plaintiff's previous actions

The plaintiff, a member of An Garda Síochána, had sued in relation to a newspaper report. Evidence had been given of previous libel actions undertaken by the plaintiff. The plaintiff lost the case in the High Court and appealed against the directions of the trial judge. Keane CJ, delivering judgment, held that the trial judge had erred in law in permitting the evidence in question to be introduced. The appeal would be allowed and a re-trial ordered.

***Browne v Tribune Newspapers*, Supreme Court, 24/11/2000** [FL3817]

DISCOVERY

Practice and procedure

Legal professional privilege – litigation – inspection of documents – medical negligence – whether documents in question privileged – Medical Practitioners Act, 1978 – Rules of the Superior Courts 1986, *order 31*

The plaintiff sued the defendant for alleged medical negligence and as part of the proceedings sought the discovery of certain documents. The defendant claimed the documents were covered by legal professional privilege. The president of the High Court, Mr Justice Morris, reviewed the relevant case law and held that with the exception of a handful of documents the bulk of the documents were not privileged and should be discovered.

***Buckley v Bough*, High Court, Mr Justice Morris, 02/07/2001** [FL4045]

FAMILY

Divorce, domicile

Residence – marriage – recognition of foreign divorce – whether parties domiciled in England at time of divorce – whether divorce valid – Family Law Act, 1995 – Family Law (Divorce) Act, 1996 – Judicial Separation and Family Law Reform Act, 1989

The proceedings concerned the validity of a divorce decree granted in England. MEC and JAC were lawfully married to each other in Ireland and moved to England. A divorce was obtained in England in 1980 and subsequently JAC married JOC. An issue arose as to whether the divorce obtained was valid. Kinlen J held that although both MEC and JAC were resident in England, they were not domiciled there. The divorce was not entitled to recognition within the state and the court issued the appropriate orders.

***MEC v JAC and JOC*, High Court, Mr Justice Kinlen, 09/03/2001** [FL3976]

IMMIGRATION AND ASYLUM

Fair procedures

Refugee and asylum law – judicial review – fair procedures – mistake of fact – whether fundamental error on face of record – Refugee Act, 1996 (Appeals) Regulations 2000

The applicant sought judicial review of a decision to refuse him refugee status, claiming that the decision offended against fair procedures and also that there was a mistake made as to his country of origin. O'Donovan J was satisfied that the mistake that had been made with regard to the applicant's country of origin meant that the decision to refuse the applicant refugee status was made without jurisdiction and must be quashed.

***A B-M v Minister for Justice*, High Court, Mr Justice O'Donovan, 23/07/2001** [FL4008]

Fair procedures

Refugee and asylum – whether applicant entitled to oral hearing in respect of application – whether applicant had demonstrated substantial grounds – Illegal Immigrants (Trafficking) Act, 2000, *section 5*

The applicant had applied for refugee status and had been refused. The applicant sought leave to challenge the refusal on a number of grounds. Mr Justice Finnegan was satisfied that applicant should be granted leave on the basis that an oral hearing had not been afforded to him. The other grounds raised by the applicant were not substantial within the meaning of the relevant legislation.

***Zgnat'ev v Minister for Justice*, High Court, Mr Justice Finnegan, 29/03/2001** [FL3983]

Judicial review

Asylum and refugee law – immigration and nationality – judicial review – deportation – fair procedures – whether reasons given in notice from respondent were proper, intelligible and adequate – whether respondent acted ultra vires *– points of law of exceptional public importance* – Refugee Act, 1996 – Immigration Act, 1999 – Illegal Immigrants (Trafficking) Act, 2000

Three applicants, P, L and B, who were randomly selected from a large number of similar cases, brought judicial review proceedings seeking to quash by *certiorari* deportation orders the respondent had made against them. An application for asylum in each case has been refused, as had their subsequent appeals. Smyth J held that the applicants had not discharged the burden of proof that any of the decisions impugned were unreasonable. The respondent did not act *ultra vires* and there was no error on the face of the records that would entitle the applicants to *certiorari*. In the case of B, there was a failure by the respondent to give him reasons for the making of the deportation order in the respondent's letter of notice under section 3(a) of the *Immigration Act, 1999*. B only was entitled to an order of *certiorari*. Mr Justice Smyth also certified that the points raised in the case were of exceptional public importance and should be taken to the Supreme Court.

***P, L and B v Minister for Justice*, High Court, Mr Justice Smyth, 02/01/2001** [FL3895]

Hope Hanlan procedure

Refugee and asylum – statutory interpretation – judicial review – Hope Hanlan *procedure – whether decision of civil servant*

refusing refugee status void – Refugee Act, 1996

The applicant had sought refugee status, which had been refused. The applicant sought to challenge the decision on the grounds that the *Hope Hanlan* procedures had not been fully complied with. Mr Justice Finnegan agreed with the submissions of the applicant and granted the relief claimed.

***Sarfaraz v Minister for Justice*, High Court, Mr Justice Finnegan, 03/07/2001** [FL3935]

Statutory interpretation

Immigration and nationality – refugee and asylum – judicial review – Hope Hanlan *procedure – whether assessment of application for refugee status carried out correctly* – Refugee Act, 1996

The applicant had made an application for asylum, which had been refused. The applicant sought to challenge the decision on the grounds that procedures had not been fully complied with. Mr Justice Finnegan agreed with the submissions of the applicant. One of the crucial steps in making the assessment by the first respondent's official had not been complied with and the relief sought would be granted.

***Ulhaq v Minister for Justice*, High Court, Mr Justice Finnegan, 03/07/2001** [FL3967]

LAND

Planning and environment

Local government – public right of access – judicial review – whether conditions imposed relating to public access unreasonable

The applicant had been granted planning permission in respect of a golf development. The first-named respondent had granted permission subject to a number of conditions, some of which related to rights of public access. The applicant initiated judicial review proceedings challenging the conditions imposed relating to public access. Kearns J was satisfied that the conditions imposed were *ultra vires* and the access provisions were thereby void.

***Ashbourne Holdings v An Bord Pleanála and Cork County Council*, High Court, Mr Justice Kearns, 21/03/2001** [FL3886]

Property

Decree of specific performance – boundary dispute – settlement terms – whether defendant induced to enter agreement – whether plaintiff entitled to have agreement enforced

The proceedings related to a dispute over a boundary wall. Terms had been agreed between the parties. The plaintiff claimed, however, that the defendant would not abide by the agreement and sought to have the agreement enforced. O'Donovan J on the basis of the evidence heard made a declaration as to the true position of the boundary. The plaintiff was entitled to the decree of specific performance sought.

***Griffin v Madden*, High Court, Mr Justice O'Donovan, 11/05/2001** [FL4017]

PERSONAL INJURIES

Tort

Causation – novus actus interveniens – *conflicting case law – whether owner of vehicle left unattended liable for injuries arising subsequently*

The plaintiff had been injured in a road traffic accident. The first-named defendant had left his keys in the ignition of his car and an unknown person jumped in and drove off, injuring the plaintiff. An issue arose as to whom the plaintiff should recover from and whether the first defendant was, in fact, liable to the plaintiff. Mr Justice Butler held that although the first defendant should not have left his keys in the car, the chain of causation had been broken. Consequently, the second defendant would be held liable.

***Breslin v Corcoran and MIBI*, High Court, Mr Justice Butler, 17/07/2001** [FL4044]

PRACTICE AND PROCEDURE

Privilege, solicitors

Administrative law – discovery – judicial review – legal professional privilege – practice and procedure – tribunals of inquiry – application to apply for judicial review – standard of proof – claim that privilege wrongly asserted – Rules of the Superior Courts 1986, *order 31, rule 31*

The applicant (the society) commenced proceedings to seek leave to apply for judicial review of a ruling made by the respondent upholding a claim of legal professional privilege made by the notice party in respect of certain documents. The documents had been set forth in an affidavit sworn by a doctor giving evidence at the tribunal. The tribunal declined to inspect the documents and refused to allow the society to cross-examine the doctor in question. Mr Justice Kelly held that the applicant had failed to meet the standard required in order for leave to be granted and dismissed the application.

***Irish Haemophilia Society v Judge Lindsay and Blood Transfusion Board*, High Court, Mr Justice Kelly, 16/05/2001** [FL4007]

TAXATION

Revenue and financial law

Expenses – deductibility – case stated – taxpayer company obtained loan having spent commensurate sum in redemption of preference shares

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

***MacAonghusa v Ringmahon*, Supreme Court, 9/05/2001** [FL3847] G

CONTINUING LEGAL EDUCATION

One day Law Society conference

Reviewing recent developments in legal practice

Following on the success of last year's one day conference ***Reviewing recent development in legal practice*** the continuing legal education department of the Law Society is pleased to announce that it will be running a similar conference this November.

As before, a series of seminars will take place over one day. Panels of experienced speakers will deliver lectures, which will run concurrently, on a wide range of topics including employment law, planning, commercial law, conveyancing, licensing, probate and administration, taxation and litigation – ***you*** decide the agenda.

Further details on topics, speakers and so on will be published in the October issue of the *Gazette*.

Where: The Education Centre, Blackhall Place
When: Saturday 10 November 2001
Fee: £140

For further information, please contact the continuing legal education section in the Law School on 672 4802.

Eurlegal

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

International exhaustion of trade mark rights: is the answer export bans?

On 5 April 2001, Advocate General Stix-Hackl of the European Court of Justice delivered her opinion in what will surely prove to be landmark cases between: a) Levi Strauss jeans and Tesco & Costco supermarkets, and b) Davidoff toiletries and A&G Importers. The cases were referred from the UK High Court and are separate but concern the same points of law, so were joined together at the ECJ for convenience.

The AG's opinion is not without ambiguity but its general message is a serious warning to brand-holders doing business inside and outside the European Economic Area (EEA). The suggestion is now that when goods are first sold outside the EEA, unless brand-holders take active steps to ensure the goods are not resold *within* the EEA (which itself raises competition issues, as discussed below), then the goods may indeed be re-sold in the EEA with relative impunity.

The issues before the court

The cases concern branded jeans and toiletries bought cheaply outside the EEA, then imported into the EEA. Such goods are known as parallel imports. They are not counterfeit and are bought legitimately, albeit in another territory. The essential question is: when do such parallel imports infringe manufacturers' trade mark rights as held in the 'importing' country?

Article 7(1) of the *European trade marks directive* and past ECJ cases make it clear that a trade mark holder (such as Levi's) cannot object to the resale of its goods in the EEA if they have been legally put on the market anywhere in the EEA by him or *with his consent*, unless there is a *legitimate interest* to protect. The two main questions arising then are:

- What constitutes consent – must it be express or can it be given by implication?
- If consent is deemed to be given, what are 'legitimate interests' to oppose resale?

What is consent?

Previous ECJ cases, notably *Silhouette* (Case C-355/96 [1998] ECR I – 4799) in 1998, held that a brand holder retained his trade mark rights within the EEA if the relevant branded goods were only sold outside the EEA (in this case, Bulgaria). In other words, a trade mark owner did not exhaust his trade mark rights for given goods within the EEA by selling those goods outside it. Therefore, only intra-Community exhaustion was possible and the single market could not be divided between those member states that recognised exhaustion and those that did not. This was heralded by brand holders and considered as a major reinforcement of 'fortress Europe'.

The new cases threaten to dismantle *Silhouette* to an extent. It is Tesco's and A&G's contention that in the absence of express provision to the contrary, consent to resell anywhere is implied by default and is a fundamental right. In other words, when Levi's and Davidoff failed to dictate that the goods were not intended for resale within the EEA, they consented by implication to resale within the EEA and their trade mark rights within the EEA were exhausted.

The AG has not conceded entirely to the Tesco/A&G argument, and has said that 'consent' has to be interpreted subjectively by each national court on a case-by-case basis. However, it has been suggested that because both Levi's and Davidoff both had opportunity to restrain the further movement and sale of the goods and did not, they indeed waived their right to determine further destination. The AG suggests that such a 'waiver' is tantamount to implied consent.

The AG has suggested that 'legitimate reasons' for a trade mark holder to object to further commercialisation of its own market goods exist only when the actions of third parties 'affect the value, allure or image of the trade mark'. Thus, by implication, provided branded goods are not physically altered and are presented in essentially the same fashion as originally bought, then legitimate reasons to oppose their resale will not exist.

Conflict with competition law

Retailers and parallel importers have welcomed the AG's opinion. It remains ambiguous, however, so the ultimate impact on brand owners is not yet clear. It is hoped that the court's final judgment will help in this respect. The AG's opinion is not binding, but is usually a good indication of the court's final decision.

It appears then that brand owners will be looking to tighten distribution systems to ensure that they can point to an express statement of no waiver of their right to control EEA distribution. It has been suggested that on goods distributed outside the EEA it may be sufficient for brand owners to add a standard statement to invoices stating that 'these goods are not for sale in the EEA'. The problem this presents is that such restrictions may be seen as 'export bans' and may consequently infringe article 81(1) of the *EC treaty* as anti-competitive agreements. Current guidance on this issue derives primarily from *Javico v Yves St Laurent* (Case C-306/96 [1998] ECR I –1983). Here, the ECJ held that an agreement preventing a distributor located outside the EEA from selling into the EEA infringed article 81(1) if: i) the Community market for the relevant goods was oligopolistic in structure; ii) there were marked price differentials between inside and outside the Community; and iii) the agreement had an appreciable effect on trade between member states.

All in all, this leaves brand holders, in particular, in something of a quandary. To protect their European markets from parallel imports, they must engage in restrictive agreements which by defini-

tion may infringe EC competition law. Whether or not competition law would be breached will depend much on economic analysis, which is always subject to argument. The end result is that each case will ultimately be decided on its own merits and with reference to different national courts. This may encourage litigious practice and a degree of 'forum shopping' (selective choosing of most advantageous jurisdiction for court action) by the brand owners. It is hoped that the court's final decision might resolve such questions and provide greater legal clarity, but this is far from guaranteed. G

Jonathan Branton is a solicitor with the Brussels-based law firm Hammond Suddards Edge.

Proposed changes to mergers legislation

The Minister for Enterprise, Trade and Employment Mary Harney has announced that she intends to introduce legislation which will substantially amend the system of merger control in Ireland. The existing merger control regime is set out in the provisions of the *Mergers, Take-overs and Monopolies (Control) Act, 1978* (as amended). The minister has pointed out that the proposed bill would be based broadly on the recommendations put forward by the Competition and Mergers Review Group in its report of May of last year, which recommended the introduction of a merger-control system in Ireland similar to that provided for under Council regulation (EEC) 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1990 L257/14).

The 1978 act applies when two or more enterprises, at least one of which carries on business in Ireland, come under common control. Enterprises are deemed to come under common control in various situations, including where one enterprise, whether by means of acquisition or otherwise, acquires shares carrying voting rights in excess of 25% of the total shares carrying voting rights of the target company. A merger or take-over is notifiable to the minister if each of at least two of the enterprises involved in the proposal have a turnover in the most recent financial year of not less than £20 million or gross assets in the same year of not less than £10 million. The 1978 act is silent as to whether or not the above thresholds are Irish or worldwide and there is no court ruling clarifying the matter. The general view in the face of such silence is that they are worldwide as opposed to Irish and, as will be seen below, the review group has recommended the introduction of a test which requires a certain level of turnover to be achieved in Ireland before the notification requirement is triggered.

In summary, the group recommended the existing system be replaced by a new regime bearing the following features:

- A transaction would be notifiable if i) the worldwide turnover of each of two or more of the enterprises involved exceeds €38 million and ii) the turnover in Ireland of any one of those enterprises exceeds €38 million

'The minister stated that merger cases will be decided by the Competition Authority on purely competition law criteria without ministerial intervention on grounds of public policy, except for the newspapers/media industry'

- The turnover of the vendor would be excluded
- The asset-based test would be removed
- Except in certain circumstances, the mergers legislation would apply exclusively to mergers to the exclusion of the *Competition Acts, 1991 to 1996*. At present, a merger can be caught under both regimes requiring in certain cases notification to the minister and the Competition Authority with the at least theoretical risk that a different decision could be arrived at by the two bodies
- The exemption for transactions within a corporate group would be widened.
- Notifiable transactions would be notified to the Competition Authority and the authority would have three weeks within which to either approve the merger or launch a second-stage two-month in-depth investigation into the transaction. The minister would then have a further one-month period within which to accept or reject a proposed merger. The minister would only be entitled to take non-competition public policy factors into account when departing from the view of the Competition Authority. Significantly, the minister has recently announced that she intends to depart from the above recommendation by stating that merger cases will be decided by the Competition Authority on purely competition law criteria without ministerial intervention on grounds of public policy, except for the newspapers/media industry
- The report recommends that the Competition Authority should be obliged to approve a merger provided it does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the state or in a substantial part of the state. This parallels the test imposed at EU level under the EU *Merger regulation*
- During either the first or second stage of the Competition Authority investigation, the notifying parties would be entitled to negotiate with the authority in an attempt to remedy any concerns prior to the taking of a decision
- The parties will be able to give legally-binding undertakings to the authority
- Information relating to notified transactions would be published on notification or shortly thereafter and decisions taken in respect of mergers would also be published
- The notifying parties should be entitled to make submissions to the Competition Authority and the minister and an oral hearing should take place before the authority and the minister if requested by the parties, and third parties should, at the discretion of the authority or the minister, be allowed to participate. Again, given that the minister will not be involved in the merger review process, it appears that this recommendation, to the extent that it involves the minister, will not be followed
- Flexibility should be introduced in the merger control system, allowing for confidential discussions between the parties to the proposed transaction and the Competition Authority prior to notification.

The bill for introducing the new merger control system is unlikely to reach the Oireachtas for debate before autumn 2001. G

Marco Hickey is a solicitor with the Dublin law firm LK Shields.

Implementation of EU competition rules

In late September 2000, the commission adopted a proposal for a regulation implementing the main EU competition rules which are set out in articles 81 and 82 of the treaty. The regulation (if adopted) will be the most significant change to the implementation of the EC competition rules since 1962, when the current framework for implementation of the EU competition rules was put in place (*Proposal for a council regulation on the implementation of the rules on competition laid down in articles 81 and 82 of the treaty and amending regulations* [EEC] no 1017/68, [EEC] no 2988/74, [EEC] no 4056/86 and [EEC] no 3975/87 COM [2000] 582 final).

Article 81(1) prohibits agreements between undertakings which affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the EU. Article 81(3) allows for the grant of exemptions from the prohibition in article 81(1) in certain circumstances either by way of individual exemption in a particular case or by way of a block exemption regulation, which grants an exemption to a defined category of agreements. Article 82 prohibits companies that hold a dominant position in a product or service market in the EU or a substantial part of the EU from abusing that position.

The existing framework for the implementation of article 81 is largely set out in regulation 17/62, which provides a centralised system under which the commission in Brussels is effectively given exclusive jurisdiction to grant individual and block exemptions and under which the commission is the executive body principally responsible for the enforcement of EU competition law. This has created a largely notification-based system where the parties to an agreement notify the commission of an agreement, requesting a decision that the agreement in question is not an infringement of EU competition law (known as negative clearance) or that it qualifies for the granting of an exemption. Furthermore, the existing system means that the commission receives many complaints of breaches of EU competition law. The proposal is designed to decentralise the implementation of EU competition rules so that implementation occurs principally at a national as opposed to European level. Decentralisation is designed to allow the commission to concentrate its resources on combating the most significant breaches of EU competition law, such as price-fixing cartels.

'The existing framework provides a centralised system under which the commission in Brussels is effectively given exclusive jurisdiction to grant individual and block exemptions'

The following is a brief summary of the main features of the proposal:

- The proposal specifically excludes the application of national competition laws to agreements and practices, that fall within the scope of articles 81 and 82, so as to ensure that the EU competition rules are uniformly applied throughout the Community. The application of a single rule of law by decision-making authorities is designed to ensure that businesses will no longer have to contend with 15 distinct legal systems and lead to a reduction in compliance costs for businesses
- The proposal allows the national competition authorities and the national courts to apply articles 81 and 82 of the *EU treaty*, including article 81(3), which allows for the grant of exemptions. The proposal specifically states that the national competition authorities may, acting on their own initiative or on foot of a complaint, take any decision requiring that an infringement be brought to an end, adopt interim measures, accept commitments or impose fines or periodic penalty payments or any other penalty provided for under national law
- Similar to the current system, the commission is empowered to apply the provisions of articles 81 and 82 of the *EU treaty* either acting on foot of a complaint or on its own initiative and to adopt interim measures in urgent cases
- The proposal empowers the commission to accept legally-binding commitments from undertakings
- The commission will be empowered to introduce compulsory registration requirements for certain types of agreements, decisions and practices, a power that the commission does not currently enjoy
- The proposal clarifies the burden of proof by specifying that the burden of proving an infringement of articles 81(1) or 82 shall rest with the person alleging infringement and that the burden of proving that the conditions for the grant of an exemption under article 81(3) shall rest with the party seeking it
- The national competition authorities are obliged to inform the commission at the outset of any national proceedings involving the application of articles 81 or 82 of the *EU treaty*
- The national competition authorities are obliged first to consult the commission in circumstances where they intend to adopt a decision under articles 81 or 82 of the *EU treaty* requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption regulation. The national competition authorities are obliged also no later than one month before adopting any of the above decisions to provide the commission with a summary of the case and with copies of the most important documents drawn up in the course of their own proceedings, and, at the commission's request, to provide it with a copy of any other document relating to the case
- There is a provision for the commission and the national competition authorities to provide one another with and use in evidence any matter of fact or law including confidential information
- The national courts may make a request to the commission for information or for the commission's opinion on questions concerning the application of the Community competition rules
- National courts are obliged to send to the commission copies of any judgments applying articles 81 or 82 in the treaty within one month from the date on which the judgment is delivered
- The proposal provides that the commission is empowered on its own initiative to submit written or oral observations to the national courts in the context of proceedings

Litigation in the European Court of Justice

Organiser: **Richard Crowe,** Academy of European Law
in co-operation with:
The General Council of the Bar (London), **The Law Society of Ireland, The Faculty of Advocates** (Scotland)
Trier, 19 – 21 September 2001, ERA Congress Centre, Metzer Allee 4, Trier

with the support of the European Union

List of speakers

Ludovic Bernardeau, European Court of Justice, Luxembourg
Anthony M. Collins, barrister-at-law, Dublin, Ireland *(subject to confirmation)*
Richard Crowe, course director, Academy of European Law, Trier
Leo Flynn, cabinet of Judge Fidelma Macken, European Court of Justice, Luxembourg
Leesha O'Driscoll, European Court of Justice, Luxembourg
Vincent Power, partner, head of EU and competition law unit, A&L Goodbody Solicitors, Dublin, Ireland
Anthony Whelan, legal service, European Commission, Brussels, Belgium

Contents

The purpose of this course, aimed primarily at British and Irish practitioners, is to highlight the relevance of EC law to the daily work of the national lawyer and to describe the various types of proceedings before the Community courts (the Court of Justice of the European Communities and European Court of First Instance) in which a national practitioner is likely to get involved. Course participants will have the opportunity to attend a hearing of the European Court of Justice at Luxembourg.

Places limited – early booking recommended

Wednesday 19 September 2001

09.00 Arrival and registration
09.30 **Welcome and introduction**
Wolfgang Heusel, director of the ERA

PART I EC LAW AND THE NATIONAL LAW PRACTITIONER
09.45 **The relationship between community law and national laws**
Anthony M Collins
10.30 **Community law and the private client**
Vincent Power
11.00 Discussion
11.15 Coffee/tea break
11.45 **Community law and the business client**
Vincent Power
12.20 Discussion
12.30 Lunch at the *Mercure* Hotel Trier

PART II PROCEEDINGS BEFORE THE EUROPEAN COURT OF JUSTICE
14.15 The role of the European Court of Justice
The different types of proceeding; the basic structure, composition and working methods; the division of jurisdiction between the Court of Justice and the Court of First Instance
Leo Flynn
15.30 Coffee/tea break
16.00 **Direct actions**
Procedure, including the appeal procedure; limitations on *locus standi*; some advice on the drafting of written pleadings and on the presentation of oral argument
Leo Flynn
17.00 Discussion
17.30 End of the first day
19.00 **Evening programme**

Thursday 20 September 2001

PART III VISIT TO THE EUROPEAN COURT OF JUSTICE IN LUXEMBOURG
Meeting point : 07.30 in front of the Mercure Hotel.
08.30 **Visit to the European Court of Justice in Luxembourg**
Opportunity to attend a hearing of the European Court of Justice
13.00 Lunch at the *Mercure* Hotel Trier

PART IV THE PRELIMINARY REFERENCE PROCEDURE
14.15 **The preliminary reference procedure I**
Its function as a means of ensuring uniform application of Community law and effective enforcement of Community rights; the division of labour between the national court and the Court of Justice
Anthony M Collins
15.30 Coffee/tea break
16.00 **The preliminary reference procedure II**
When to refer; when a reference is compulsory; some advice on the drafting of a reference and the formulation of preliminary questions; the courts recent case law on the admissibility of references
Anthony M Collins
16.45 Discussion
17.15 End of the second day

Friday 21 September 2001

PART V CURRENT DEVELOPMENTS
09.30 **EU legal materials on the Internet**
Ludovic Bernardeau
16.45 Discussion
10.30 Coffee/tea break
11.00 **The *Treaty of Nice* and reform of the community courts**
Richard Crowe
12.00 Discussion
12.15 Lunch at the *Mercure* Hotel

PART VI WORKSHOPS
13.30 **Workshop I**
Anthony Whelan
Leesha O'Driscoll
14.30 Coffee/tea break
15.00 **Workshop II**
Anthony Whelan
Leesha O'Driscoll
16.00 **End of the conference**

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in which questions of articles 81 or 82 of the *EU treaty* arise
- The initiation by the commission of proceedings automatically relieves the national competition authorities of their competence to apply articles of 81 and 82 of the *EU treaty*
- The proposal expands the commission's investigatory powers by proposing to allow commission officials to enter private homes of directors, managers or other members of staff of the undertakings concerned in so far as it may be suspected that business records are kept there
- The commission will be empowered to interview any natural or legal person that may be in possession of 'useful information' and record the answers
- The commission will be empowered to impose fines for procedural infringements of up to 1% of the turnover of the undertakings concerned in the previous financial year as opposed to €5,000 under the current system
- The current system allows for the imposition of periodic penalty payments (a daily fine) for substantive and procedural infringements of the EU competition rules of up to €1,000 a day. The proposal will increase this figure to 5% of the average daily turnover of the undertaking concerned in the previous financial year. G

Marco Hickey is a solicitor with the Dublin law firm LK Shields.

Recent developments in European law

EMPLOYMENT

Annual leave

Case C-173/99 *The Queen v Secretary of State for Trade and Industry, ex parte: Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU)*, 26 June 2001. BECTU is a UK trade union with some 30,000 members who work in film and broadcasting. The UK *Working time regulations* provide that the right to paid annual leave does not arise until a worker has completed a period of 13 weeks' uninterrupted employment with the same employer. Most of the members of BECTU are employed on short-term contracts – often for less than 13 weeks with the same employer. Thus, they have no right to paid annual leave under UK law. The English High Court sought a preliminary ruling as to whether the UK regulations were compatible with the *Organisation of working time directive*. The ECJ observed that the purpose of the directive is to harmonise national provisions concerning the duration of working time. This is to ensure better protection of the health and safety of workers by ensuring that they are entitled to minimum rest periods and adequate breaks. The directive took into account the Community *Charter of the fundamental social rights of workers* (9 December 1989). It provides that every worker in the EU must enjoy satisfactory health and safety conditions in his working environment and is therefore entitled to paid annual leave. The directive provides that each worker is to be entitled to paid annual leave of at least four weeks. From this, the court held that the right to paid annual leave is a particularly important principle of EU social law from which there can be no derogations by the member states. The right applies to all workers and no distinction should be drawn between workers employed under a contract of indefinite duration and those employed under a fixed-term contract. The court therefore held that the UK regulations were contrary to EU law as they have the effect of depriving certain workers of any right to paid annual leave.

Gender discrimination

Case C-50/96 *Deutsche Telekom AG v Lilli Schröder*, 10 February 2000. Ms Schröder was employed on a part-time basis by Deutsche Telekom from 1974 until 1994, when she retired. Since 1994, she received a statutory old-age pension. She had been excluded from a supplementary occupational retirement pension scheme until 1991, when the pensions agreement was changed. She instituted proceedings claiming a supplementary pension equivalent to the one she would have received if she had been a member of the scheme between 1974 and 1991. She argued that her exclusion was discrimination prohibited by article 141. 95% of the part-time employees working for Deutsche Telekom were female. The ECJ held that the exclusion was gender discrimination contrary to article 141. It then examined whether relying on the direct effect to that article is limited in time. The court held that the article is subject to a limitation in time. Periods of service will only be taken into account from 8 April 1976, the date of the judgment in Case 43/75 *Defrenne*.

FREE MOVEMENT OF GOODS

Case C-405/98 *Konsumentombudsmannen (KO) v Gourmet International Products AG (GIP)*, 8 March 2001. The applicant is the Swedish consumer ombudsman. The applicant sought an injunction restraining GIP from advertising alcoholic beverages in magazines. Swedish law prohibits such advertisements. GIP argued that this law was a prohibition, having an effect equivalent to a quantitative restriction. The Swedish court referred the matter to the ECJ. The court held that a prohibition on advertising such as this affects the marketing of products from other member states more heavily than domestic products. However, such a prohibition could be justified under article 30 on grounds of protection of public health. The reason for the ban on advertising was to combat alcohol abuse. The court held that this was a proportionate measure and was not a disguised restriction on trade.

INTERNET

The Council of Europe has drawn up a draft *Cybercrime convention*. This convention would harmonise laws on hacking, piracy, on-line fraud and child pornography. The draft convention will be presented to the committee of ministers in September for adoption. Ratification would then take place over a two-year period. The 43 members of the council are expected to ratify the convention, together with the US, Japan and other non-member states. For the convention to become effective, it must be ratified by at least five states, three of which must be Council of Europe members.

Conveyancing precedents updated
Launching an updated version of *Irish conveyancing precedents* (Butterworths Ireland) were Patricia Rickard-Clarke of solicitors McCann FitzGerald, the author of the book's section on wills *(left)*, and its editor Professor John Wylie

Further on up the road
Law Society President Ward McEllin and Director General Ken Murphy recently visited the Kildare Bar Association: *(front row, left to right)* Eva O'Brien, Elaine Cox, Ward McEllin, Thomas J Stafford, Ken Murphy and Margaret Aherne; *(back row)* Brian MacMahon, Niall Farrell, Maxwell Mooney, Cyril Osborne, Andrew Cody, Paul D'Arcy and Peter Flanagan

Shock to the system
Gillian Kelly, author of *Post-traumatic stress disorder and the law* (Round Hall Sweet & Maxwell, 2000), with Mr Justice Budd, who launched the book

You'll never walk alone
Photographed at the launch of *Murdoch's Irish legal companion* were *(from left to right)*: Don Lehane, joint managing director, Lendac Data Systems; Henry Murdoch, the author of the companion; Attorney General Michael McDowell; and Liam Chambers, business development officer of Lendac Data Systems

Grand designs
At the launch of a new Butterworths book, *Irish copyright and design law,* were *(from left to right)* the author, Dr Robert Clark; Ms Justice Mary Laffoy; Eugene McCague, managing partner of solicitors Arthur Cox; and Louise Leavy, managing editor of Butterworths Ireland

Diplomatic channels
Law Society President Ward McEllin with Michael Peart, chairman of the society's Education Committee, at a recent conferring ceremony in Blackhall Place for recipients of the *Diploma in applied European law (right)* and the *Diploma in legal French (left)*. Also pictured (*above left, front row*) are François Chambraud, director of the Alliance Française, and French Ambassador Gabriel de Bellescize

Keys to the Kingdom
Law Society President Ward McEllin and Director General Ken Murphy recently visited the Kerry Law Society, where a well-attended meeting in Tralee was presided over by Kerry Law Society President Joseph Mannix

Appetite for the law

Pictured at the launch of the *Irish digest* in the King's Inns recently were *(from left to right)* Dr Eamonn Hall, chairman of the Law Reporting Council of Ireland and consultant editor of the digest; Julitta Clancy, editor and compiler; Chief Justice Ronan Keane and Attorney General Michael McDowell. The *Irish Digest* contains summaries of more than 1,180 reported cases of the superior courts in Ireland, arranged under 125 principal subjects spanning a period of almost a decade.

Speaking in his capacity as the chairman of the Law Reporting Council, Dr Eamonn Hall observed that Irish judges had, over the last decade, played 'a pivotal role in the affairs of men and in the affairs of state'. He also noted that the digest 'represents a celebration of Irish law, a celebration of the judicial arm of government'. Dr Hall added that many practitioners regarded the digest as an indispensable source of law, containing as it does summaries and headnotes of the decisions of the courts as reported in the *Irish reports*, the *Irish law reports monthly*, and the *Northern Ireland reports* under 125 different subject headings, with numerous cross-references in comprehensive tables.

The Irish digest *is available for £120 from the business manager, Law Reporting Council, 4th floor, Áras Uí Dhálaigh, Inns Quay, Dublin 7, telephone 01 888 6571*

Murder in mind
The Law Reform Commission recently held a seminar on *Homicide: the mental element in murder*. At the event were *(from left to right)* Mr Justice Nial Fennelly of the Supreme Court; Mr Justice Paul Carney; Mr Justice Declan Budd, president of the Law Reform Commission; and Finbarr McAuley, Jean Monnet professor of criminal justice at UCD and member of the LRC

Calcutta run raises £140,000
Snooker star Ken Doherty holds a cheque for the money raised by the recent Calcutta Run. The proceeds of the 10k charity run will be divided between Fr Peter McVerry's Arrupe Society and John O'Shea's GOAL

Belfast agreement

Pictured at the special admission ceremony in the office of the Lord Chief Justice of Northern Ireland are *(left to right)* Director General Ken Murphy, President Ward McEllin, Lord Chief Justice of Northern Ireland Sir Robert Carswell, President of the Law Society of Northern Ireland John Neill, Senior Vice-President Elma Lynch and Vice-President of the Law Society of Northern Ireland Alan Hewitt

Law Society of Ireland President Ward McEllin and Senior Vice-President Elma Lynch were recently admitted as members of the Law Society of Northern Ireland by the Lord Chief Justice of Northern Ireland Sir Robert Carswell.

The special ceremony took place in the Lord Chief Justice's office in the Royal Courts of Justice, Belfast. The president and senior vice-president were accompanied by Director General Ken Murphy, who had been admitted as a member of the Law Society of Northern Ireland some five years ago.

The ceremony was attended by the President of the Law Society of Northern Ireland John Neill and his vice-president (who will succeed to the presidency next November) Alan Hewitt. Both John Neill and Alan Hewitt will be admitted as members of the Law Society of Ireland at a ceremony in Blackhall Place next December.

Ward McEllin said that these admissions emphasised the exceptionally close relationship between the law societies representing and regulating the solicitors in both jurisdictions in Ireland. Other evidence of this close relationship are the facts that five nominees of the Law Society of Northern Ireland are appointed as members of the Council of the Law Society of Ireland every year, and since 1991 compliance with certain minimal formalities is all that is required for a member of the Law Society in one Irish jurisdiction to become a member of the Law Society in the other.

International partnership

The relationship received international recognition on 6 August 2001 at the American Bar Association's annual meeting in Chicago, when John Neill and Ward McEllin were the two guest speakers at an event for Irish-American lawyers and businessmen hosted by the Industrial Development Board of Northern Ireland.

Historic victory for Law Society mooting team

The winning team: Loughlin Deegan and Barry Sheehan, flanked by their Law Society mentors, Colette Reid and Geoffrey Shannon

A Law Society team has won the Bar Council and Round Hall Press Irish Moot Court Competition for the first time ever. The competition (formerly the Butterworths National Moot Court Competition) is Ireland's premier mooting competition, attracting entrants from the country's universities and professional training institutes.

In the annual event, teams of four must prepare a 25-page memorial – on behalf of both plaintiff and defendant – to a fictional problem. This year's problem concerned e-commerce and was drafted by Prof Robert Clark of UCD.

The Law Society was represented by SADSI's Barry Sheehan, Jonathan Tomkin, Loughlin Deegan and Ann Brennan, who had to overcome teams from NUI Galway, Northern Ireland's Institute of Professional Legal Studies and the King's Inns to qualify for the final. (Due to work commitments and final exams respectively, Jonathan and Ann were unable to attend the advocacy stage, which was unfortunate, given the effort they had put into the moot earlier in the year.)

The final was held in the Supreme Court and was presided over by Mr Justice Adrian Hardiman, Ms Justice Mary Laffoy, Judge Bryan McMahon and Rory Brady SC. Loughlin opened the case for the plaintiff as lead counsel, and was followed by Barry as second counsel, who also handled the subsequent rebuttal. After about an hour and a half of mooting, the court rose to deliberate, and Loughlin Deegan and Barry Sheehan were named this year's winners.

Seminal issues

Pictured at a recent CLE seminar on family law issues in conveyancing transactions were *(from left to right)*: Barbara Joyce, the Law Society's CLE co-ordinator; Muriel Walls of solicitors McCann FitzGerald; Ms Justice Mary Laffoy; and Brian Gallagher of solicitors Gallagher Shatter

SADSI
Solicitors Apprentices Debating Society of Ireland

Black are back!

The reigning soccer champions, John Black & Co, retained the *George Overend Memorial Trophy* with a resounding 5-0 victory over Mason Hayes & Curran in the final played at Blackhall Place last month.

MHC, who had remained unbeaten all season (including a 3-1 victory over John Black & Co in the group stages), started as favourites. However, it was the winners who adapted better to the wet and greasy conditions underfoot, and went in at half-time with a four-goal cushion.

The runners-up started the second half like rats up a drainpipe but were unable to break down Black's defence, and the mountain that faced them proved impossible to climb. After the trophy was presented to the winners, the teams and supporters retired to the new College Bar for some well-deserved beverages, courtesy of MHC.

A special word of thanks to Brian Gill and Barry Kennelly of A&L Goodbody for organising the tournament, the Law Society for its continued support, and referee Fran McLaughlin.

Conor Delaney, PRO

SADSI ball 2001

The Talbot Hotel, Wexford Town, has been confirmed as the venue for this year's SADSI ball, which will take place on Saturday 13 October. A mail-shot will be sent out the week beginning Monday 3 September to confirm details of ticket prices and allocations per person. Be sure to note the date in your diaries, as it is certain to be a good night.

SADSI Career Development Day

Careers day took place on Friday 27 July in the Presidents' Hall, Blackhall Place. Throughout the day approximately 350 students listened attentively to the speakers, who related their professional experiences.

Broadcaster Gerry Ryan launched the event with a very entertaining, and often touching, account of his career. He also spoke about the legal issues which arise daily in the entertainment business. Adrian Burke from solicitors A&L Goodbody talked about life as a commercial lawyer and stressed the need for apprentices to discover what they enjoy most about the law and to pursue that avenue. David Soden captured many apprentices' imagination as he spoke frankly about the realities of being a sole practitioner.

The ICCL's Donncha O'Connell described what it is like to be the director of a non-governmental organisation and compared this kind of career to a secure pensionable job as a human rights lecturer in UCG. Claire Loftus, the chief prosecution solicitor to the DPP, gave an enlightening account of what it is like to work in the public sector.

Mark Deering, an in-house lawyer with TV3, spoke about going in-house and reiterated the need to be open and willing to take a risk, while RTÉ's Eilis Brennan talked about the New York Bar exams, about working in the United States, and described her transition from corporate law to the media with flair and enthusiasm. Finally, Analeen Sharkey from Benson and Associates spoke about salary scales at home and abroad. This speech certainly attracted large numbers and was very instructive.

Speakers at the recent SADSI careers day: *(back row, left to right)* Solicitor David Soden, Director General Ken Murphy, Deirdre Crowley, broadcaster Gerry Ryan, Michael Benson of Benson and Associates, solicitor Adrian Burke, Donncha O'Connell of the ICCL; *(front row)* solicitor Claire Loftus, Lillian O'Sullivan, Claire O'Regan and Analeen Sharkey

The event was followed by a wine reception and barbecue, courtesy of sponsors Benson and Associates. Thanks again to all of our speakers, our sponsors, and, of course, the apprentices who attended.

Deirdre Crowley, vice-auditor

Open day at Blackhall Place

Law Society Director General Ken Murphy and Education Committee chairman Michael Peart chat to apprentices at a recent open day in Blackhall Place for students on the new PPC2

Mock applications

Those of you from the Limerick region will be interested to know that at 3pm on Friday 14 September, mock applications will be held at the County Registrar's Court. Apprentices will be given an introduction to the court and shown how business is conducted there. Refreshments will be served later. For more details, contact the SADSI mid-western representative, John Herbert, on 087 9794464.

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(b) Have at least five years satisfactory experience as a Solicitor, including adequate experience of court work, after admission and enrolment as a Solicitor, and
(c) Possess a high standard of professional training and experience.

Salary Scale: £27,207 - £38,828 per annum. Entry on the scale up to the maximum is possible depending on the length of post qualification experience. **Application forms may be obtained from: The Human Resources Department, Fingal County Council, County Hall, Main Street, Swords, Co. Dublin; Tel: 01-8905650, OR The Information Unit, Fingal County Council, 46-49 Upper O'Connell Street, Dublin 1, OR at www.fingalcoco.ie**

The latest date for receipt of completed application forms is **FRIDAY 14 SEPTEMBER, 2001 AT 4.00PM**
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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 7 September 2001)

Regd owner: Patrick Coney; Corrantinner, Killinkere, Virginia, Co Cavan; Folio: 24107; Lands: Moodoge; **Co Cavan**

Regd owner: Patrick Lynch; Carrigabruse, Virginia, Co Cavan; Folio: (1) 13064, (2) 13223, (3) 16993; Lands: (1) Fartagh, (2) Enagh, (3) Fartagh; Area: (1) 19.681, (2) 58.437, (3) 38.50; **Co Cavan**

Regd owner: Honor and George Baird; Hazelwood Lodge, Upper Kilmacud Road, Dundrum, Co Dublin; Folio: 25132; Lands: Moat; Area: 0.0562 acres; **Co Cavan**

Regd owner: Nora Hendricken (deceased); Folio: 12994F; Lands: Roscat and Barony of Rathvilly; **Co Carlow**

Regd owner: Teresa McGovern; Cragg, Lahinch, Co Clare; Folio: 29468; Lands: Townland of Cragg; Area: 0.140 acres; **Co Clare**

Regd owner: The Industrial Development Authority; Folio: 22891F; Lands: Known as a plot of ground situate in the Townland of Rathvallikeen, the Barony of Kinsale and the County of Cork; **Co Cork**

Regd owner: John Coleman and Mary Coleman; Folio: 284L; Lands: Known as No 9 Redemption Road situate on the west side of the said road in the parish of St Anne's Shandon, and the County of Cork; **Co Cork**

Regd owner: Michael Quinn; Folio: 59600F; Lands: Townland of Aghfarrell and Barony of Upper Cross; **Co Dublin**

Regd owner: Joseph Prizeman; Folio: DN10720F; Lands: Situate in the Townland of Robinhood and Barony of Uppercross; **Co Dublin**

Regd owner: Seamus and Suzanne Dowling; Folio: DN117467F; Lands: Situate at 102 Suncroft Drive, Sundale, Jobstown, Tallaght, Co Dublin; **Co Dublin**

Regd owner: Maria Treacy and Michael Shalloe; Folio: 124239F; Lands: Known as Site No 24 Orby Close, 'The Gallops', Glencairn, Sandyford, Townland of Murphystown and Barony of Rathdown; **Co Dublin**

Regd owner: Paul Cryan and Niamh Ni Eidhin; Folio: DN95604F; Lands: Property known as 23 Carysfort Park, Parish of Stillorgan and Borough of Dun Laoghaire; **Co Dublin**

Regd owner: Joan Crilly and Jude Farrelly; Folio: DN99357F; Lands: Property known as 1 Abbeyvale Park, The Oaks, Lucan, County Dublin; **Co Dublin**

Regd owner: Laurence Clare and Aileen Clare; Folio: DN19440; Lands: Property situate to the west side of the road leading north from Swords to Broadmeadow in the town of Swords; **Co Dublin**

Regd owner: Sean Whooley and Noeleen Doherty; Folio: DN79865F; Lands: Property known as Site No 13, Swords Manor Crescent, Swords, County Dublin; **Co Dublin**

Regd owner: Richard Sheehan and Tara Lavery; 35 Moy Glas Avenue, Griffen Valley, Lucan, Co Dublin; Folio: 119312F; **Co Dublin**

Regd owner: Liam and Hazel Lawlor; Folio: DN573; Lands: Property situate in the Townland of Finnstown and Barony of Newcastle; **Co Dublin**

Regd owner: Thomas Savage; Folio: DN18207F; Lands: A plot of ground situate to the south side of the Howth Road in the Parish and District of Raheny; **Co Dublin**

Regd owner: Joseph Handibode and Rosaleen Mary Handibode; Eskerville, Lucan, Co Dublin; Folio: 6277; Lands: Co Dublin; **Co Dublin**

Regd owner: Brendan and Mary Byrne; Folio: DN61662L; Lands: Property situate on the North side of Tonlegee Road in the Parish of Coolock and District of Coolock East; **Co Dublin**

Regd owner: Myles Mac Donnchada and Marin Mhich Donnchada; Folio: 3739F; Lands: Townlands of Carrowroe South and Barony of Moycullen; Area: 0.2074 hectares; **Co Galway**

Regd owner: Thomas Campbell; Folio: 2291F; Lands: Townlands of Kilgarve and Barony of Moycarn; Area: 0.0354 hectares; **Co Galway**

Regd owner: Harry Feeney; Folio: 11025F; Lands: Townlands of (1) Kiltullagh, (2) Kiltullagh, (3) Kiltullagh; Area: (1) 6.2750, (2) 29.9260, (3) 6.5300 hectares; **Co Galway**

Regd owner: John Lane; Folio: 52599; Lands: Kilcolgan and Barony of Dunkellin; Area: 0.0254 hectares; **Co Galway**

Regd owner: Marie Kelly; Folio: 51332F; Lands: Situate at the Townland of Blackgarden, Barony of Dunkellin, Townland of Ballylin East, Barony Dunkellin, Townland Clashaganny, Barony Athenry, Townland Seefin, Barony Dunkellin, Townland Ballylin East, Barony Dunkellin, respectively; **Co Galway**

Regd owner: James and Bernadette Sweeney; Folio: 38881F; Lands: Townlands of Kilbeg and Barony of Clare; Area: 2.362 hectares; **Co Galway**

Regd owner: Michael Griffin; Folio: 32821; Lands: Townland of Cromane Upper and Barony of Trughanacmy; **Co Kerry**

Regd owner: Derry Brosnan; Folio: 31085; Lands: Townland of Fossa and Barony of Magunihy; **Co Kerry**

Regd owner: Maureen McMahon; Folio: 2264; Lands: Townland of Manor East and Barony of Trughanacmy; **Co Kerry**

Regd owner: James Carlon (deceased); Folio: 35311; Lands: Townland of Dromavally and Barony of Trughanacmy; Area: 1 rood, 11 perches; **Co Kerry**

Regd owner: Jeremiah Cronin; Folio: 754L; Lands: Townland of Kilcoolaght and Barony of Magunihy; **Co Kerry**

Regd owner: Delia Reddy; Folio: 22015F; Lands: Townland of Glebe North in the Barony of Kilcullen; **Co Kildare**

Regd owner: Michael O'Donnell; Folio: 12426; Lands: Townland of Derryvarroge

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in the Barony of Clane; **Co Kildare**

Regd owner: James Joseph O'Brien and Louise O'Brien; Folio: 15048; Lands: Bennetsbridge and Barony of Gowran; **Co Kilkenny**

Regd owner: Cyril Sherwood; Folio: 57R; Lands: Courtnabooly East and Barony of Kells; **Co Kilkenny**

Regd owner: Luke Gaule; Folio: 976 Co Kilkenny; Lands: Townland of Ballynooney and Barony of Knocktopher; **Co Kilkenny**

Regd owner: William Ryan; Folio: 14795; Lands: Townland of Ballygorey, Carrigeen; **Co Kilkenny**

Regd owner: John Ryan (deceased); Folio: 455; Lands: Jamestown and Barony of Iffa and Offa East; **Co Kilkenny**

Regd owner: Robert Hincks (deceased), Thomas Walsh (deceased), Robert Aylward (deceased), and Patrick Buggy; Folio: 14984; Lands: Kilmurray and Barony of Ida; **Co Kilkenny**

Regd owner: Mary Carroll; Folio: 4189F; Lands: Townland of Bunkey and Barony of Clanwilliam; **Co Limerick**

Regd owner: William Geary and Marie Geary; Folio: 11973F; Lands: Townland of Gorteen and Barony of Connello Upper; **Co Limerick**

Regd owner: Carmel Coughlan; Folio: 2264L; Lands: Townland of Sluggary and Barony of Pubblebrien; **Co Limerick**

Regd owner: Patrick Griffin; Folio: 21633F; Lands: Ranagissaun and Barony of Costello; Area: 3.066 hectares; **Co Mayo**

Regd owner: Sean Doyle; Drumconrath, Navan, Co Meath; Folio: 23287; Lands: Gravelstown; Area: 0.225; **Co Meath**

Regd owner: Maura Kelly; 4 Academy Street, Navan, Co Meath; Folio: 13223F; Lands: Dillonstown; **Co Meath**

Regd owner: Annie Egan (deceased); Folio: 757; Lands: Tully and Barony of Kilcoursey; **Co Offaly**

Regd owner: Henry Bryan; Folio: 13440; Lands: Rathfeston and Barony of Philipstown Upper; **Co Offaly**

Regd owner: AN Tong and AE Tong (deceased); Folio: 17427; Lands: Ballyfore Big & Rathlumber and Barony of Coolestown; **Co Offaly**

Regd owner: Damien Martin; Folio: 8164; Lands: Meenwaun, Clongawny More and Clongawny Beg and Barony of Garrycastle; **Co Offaly**

Regd owner: Annie Nutley (deceased); Folio: 4531; Lands: Ballyduff and Barony of Ballybrith; **Co Offaly**

Regd owner: James Reilly; 14 St Dominic's Terrace, Pearse Road, Sligo; Folio: 15203; Lands: Finnea; Area: 0.98125; **Co Sligo**

Regd owner: Thomas Conlon; Folio: 13572; Lands: Rathmadder and Barony of Coolavin; Area: 7.0770 hectares; **Co Sligo**

Regd owner: Michael Roper, Cliffoney, Co Sligo; Folio: 5398; Lands: Townlands of Cartronkillerdoo and Barony of Carbury; Area: 2.6810 hectares; **Co Sligo**

Regd owner: Thomas Conlon; Folio: 13572; Lands: Rathmadder and Barony of Coolavin; Area: 7.0770 hectares; **Co Sligo**

Regd owner: Martin Hogan; Folio: 23572 (Entry No 4); Lands: Grenanstown and Barony of Ormond Upper; **Co Tipperary**

Regd owner: Breda Bonelli; Folio: 733L; Lands: Parish of St Mary's and Borough of Clonmel; **Co Tipperary**

Regd owner: Caherbrack Trust Company Ltd; Folio: 333R; Lands: Townland of Caherbrack and Barony of Glenahiry; **Co Waterford**

Regd owner: John Orpen (deceased); Kealfoun, Kilmacthomas, Co Waterford; Folio: 11575; Lands: Townland of Kealfoun and Barony of Decies-without-Drum; **Co Waterford**

Regd owner: William Kelly; Sarsfields-town, Killucan, Co Westmeath; Folio: 2499; Lands: Gneevebeg; Area: 24.468 acres; **Co Westmeath**

Regd owner: Michael P Costello; Maheramore, Moate; Folio: 2814F; Lands: Bellanalack; Area: 0.663; **Co Westmeath**

Regd owner: Winifred O'Neill; Rathgarrett, Tyrellspass, Co Westmeath; Folio: 15432; Lands: Rathgarrett; **Co Westmeath**

Regd owner: Richard Claffey; Bonavally, Athlone, Co Westmeath; Folio: 6215R; Lands: Loughandonning; Area: 3.10625; **Co Westmeath**

Regd owner: James Reilly; 14 St Dominic's Terrace, Pearse Road, Sligo; Folio: 15203; Lands: Finnea; Area: 0.98125; **Co Westmeath**

Regd owner: Carol Ann Kelly; Folio: 296L; Lands: Seafield and Barony of Ballaghkeen North; **Co Wexford**

WILLS

Ball, Joanna, known as Joan Ball, late of 51 Palmerstown Drive, Palmerstown, Dublin 20. Would any person having knowledge of a will made by the above named deceased who died on 24 June 2001, please contact Murphy & Co, Solicitors, The Old Courthouse, Portlaoise, Co Laois, tel: 0502 31211 & 31592, fax: 0502 31223, e-mail: murphyand-co@oceanfree.net

Callaghan, James, late of Speenogue, Burt, Co Donegal. Would any person having knowledge of a will made by the above deceased who died on 30 June 2001, please contact Dunlevy & Barry, Solicitors, Quay Street, Donegal Town, tel: 073 21018

Cotter, Mary Frances (deceased), late of Castlewarden, Straffan, Co Kildare. Would any person having knowledge of a will made by the above named deceased who died 19 June 2001, please contact MacHales, Solicitors, Pearse Street, Ballina, County Mayo, tel: 096 21122, fax: 096 21179, e-mail info@machales.com

Donegan, Richard, late of 6 Halls Lane, Arklow, in the County of Wicklow. Any person having knowledge of the whereabouts of the will of the above named deceased, who died on 23 January 1999, contact Richard Cooke & Co, Solicitors, Wexford Road, Arklow, Co Wicklow. The said will was stolen from the safe of Richard Cooke & Co, Solicitors, on or about 5 December 1997

Dooney, Catherine (otherwise Triona), late of 33 Gracepark Meadows, Drumcondra, Dublin 9 (and Higher Education Authority, Marine House, Clanwilliam Court, Dublin 2). Would any person having knowledge of a will of the above named deceased who died on 29 June 2001, please contact Colette M McMahon, Solicitor, 39 Celtic Park Avenue, Dublin 9, tel: 01 8310574

Driscoll, Edmond, late of Curraheen, Ballymacoda, in the County of Cork. Would any person having knowledge of the original will made by the above named deceased who died on 25 June 2001, please contact Messrs John L Keane & Son, Solicitors, Youghal, Cork, tel: 024 92426, fax: 024 92529

Feeney, Paul, of 67 Beech Lawn, Dundrum, Dublin 14 (previously of 26 Hermitage Lawn, Rathfarnham, Dublin 14). Would any person having knowledge of a will made by the above named deceased who died on 12

June 2001, please contact Donal T McAuliffe & Co, Solicitors, 57 Merrion Square, Dublin 2, tel: 6761283, fax 6619459

Ferrer, Manolo, late of Clyde Court, Clyde Road, Dublin 4. Would any person having knowledge of a will made by the above named deceased who died earlier this year, please contact Rory Williams, Solicitor, 35 Barrow Street, Dublin 4, tel: 01 6189322, fax: 01 6163733

Flynn, Francis (deceased), late of Balinlug, Killanne, Enniscorthy, Co Wexford. Would any person having knowledge of a will made by the above named deceased who died on 16 April 2001 and resided during his lifetime at Ballinlug, Killane, Enniscorthy, please contact Frizelle, O'Leary & Co, Solicitors, Slaney Place, Enniscorthy, Co Wexford, tel: 054 33547, fax: 054 34880

Harney (née Fowler), Catherine (deceased), late of 7 Grassendale Court, Grassendale Road, Liverpool L19 ONJ, England and formerly of Whitepark, Gowran, Co Kilkenny. Would any person having knowledge of the whereabouts of any will made by the above named deceased who died on 16 March 2001 in Liverpool, please contact John Lanigan & Nolan, Solicitors, Abbey Bridge, Dean Street, Kilkenny, tel: 056 21040/22941, fax: 056 65980, ref: EW

Hayes, Maureen (deceased), late of 56 Parnell Street, Kilkenny. Would any person having knowledge of a will executed by the above named deceased who died on 26 April 2001, please contact Owen O'Mahony & Company, Solicitors, tel: 056 61733, ref: OOM

Lucey, Dan (deceased), late of 45 Evergreen Road, Cork. Would any person having knowledgeof a will executed by the above named deceased who died on 23 June 2001, please contact Anne L Horgan & Co, Solicitors, 3 Convent Road, Blackrock, Cork, tel: 021 4357729, fax: 021 4357070

Mackey, Richard (deceased), late of Polerone, Mooncoin, Co Kilkenny. Would any person having knowledge of a will executed by the above named deceased who died on 10 March 1945, please contact Kenny Stephenson Chapman, Solicitors, Newtown, Waterford, tel: 051 875855, fax: 051 877620

Mahon, John (otherwise Jack), late of Studfield, Donard, in the County of Wicklow. Would any person having knowledge of a will made by the above named deceased who died on 13 April 2000, please contact Millett & Matthews, Solicitors, Baltinglass, County Wicklow, tel: 0508 81377, fax: 0508 81180

McDonnell, Michael, late of 70 Terenure Road West, Terenure, Dublin 6W. Would any person having knowledge of a will made by the above named deceased who died on 9 April 2001, please contact McKeever Rowan, Solicitors, 5 Harbourmaster Place, IFSC, Dublin 1, tel: 6702990, fax: 6702988, ref: BY/AR/021114/0008/7

McSweeney, John, late of Clonlea, Kilkishen, in the county of Clare. Would any person having knowledge of a will made by the above named deceased who died on 17 May 2001, please contact Desmond J Houlihan & Company, Solicitors, Salthouse Lane, Ennis, Co Clare, tel: 065 6842244, ref: DK/28,725

Phelan, Michael, late of 8 St Mary's Court, Gowran, County Kilkenny and previously of St Joseph's Home, Kilmoganny and previously of Tullahought, Piltown, County Kilkenny and previously of Wadding Manor, Ferrybank, Waterford and previously of 10 William Street, Kilkenny. Would any person having knowledge of a will made by the above named deceased who died on 14 May 2001, please contact Derivan Sexton & Co, Solicitors, New Street, Carrick-on-Suir, County Tipperary, tel: 051 640007

Quinn, Michael John, late of 6 Grealishtown, Bohermore, Galway. Would any persons having knowledge of the whereabouts of a will of the above named deceased, please contact Patrick MacGrath & Son, Solicitors, O'Rahilly Street, Nenagh, County Tipperary, tel: 067 31207, fax: 067 34256, e-mail: pmgsolrs@tinet.ie

Smyth, Graham (deceased), late of Ballydarton House, Fenagh, Co Carlow. Any person having knowledge of a will executed by the above named deceased who died on 3 July 2001, please contact Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4, tel: 01 6689622, fax: 01 6689004

EMPLOYMENT

Solicitor required for a precedent-setting case on a contingency fee basis. Areas of expertise: pension entitlement of part-time workers, independent contractors to the Irish state, and old age benefits under the 'European code of social security' based on 'residency'. Replies to **Box No 70**

Trainee solicitor currently attending advanced course (PPC2I) seeks position in medium-sized firm (commencing October 2001) for remaining nine months of apprenticeship. Reply to **Box No 71**

ERNST & YOUNG
Investment Management Group

Solicitor required for Ernst & Young's Investment Management Group in Dublin to work with our team in advising international clients on structuring, establishing and listing investment funds, including hedge funds. One to two years' relevant investment funds PQE.

Please forward CV to: Philip Oxley, Ernst & Young, Ernst & Young Building, Harcourt Street, Dublin 2, e-mail: philip.oxley@ie.eyi.com

Solicitor with extensive business experience seeks link with medium-size general practice firm in Dublin. Aged 42, former

MD of IFSC multinational, and more recently CEO of a successful technology company, now developing own consultancy to provide legal and professional services to technology and SME companies. Extensive contacts in business, finance and legal professions. Wishes to refer any broader legal work and clients to an established firm. Also available for work as locum/assistant/consultant to the established firm. Qualified in 1995, two years' PQE in commercial law/litigation/employment law. Apprenticed in prominent Dublin firm. Computer skills, technology aware. Please reply to **Box No 72**

Locum solicitor required for Midlands office (35 miles from Dublin). Must be experienced in conveyancing, probate and litigation. Mid-October to end of January. Reply to **Box No 73**

Conveyancing solicitor, ten years' PQE. Seeks position in Dublin City Centre/Dublin northside. **Reply to Box No 74**

County Louth: solicitor with two to three years' PQE required. Experience in conveyancing and litigation essential. Please reply in writing to JB Hamill & Co, Solicitors, 2 Demesne, Dundalk, Co Louth

Apprentice wanted for busy general practice in south-west Dublin. Apply with CV to Romaine Scally & Co, Solicitors, 4 Main Street, Tallaght, Dublin 24, fax: 4599510 for the attention of Anne O'Driscoll

MISCELLANEOUS

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

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

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

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

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

Seven-day publican's licence for sale. Contact Thomas K Madden & Co, 1 Camlin View, Longford, tel: 043 41192, fax: 043 41561

For sale: ordinary seven-day publican's licence. Reply to Padraig J O'Connell, Solicitor, Glebe Lane, Killarney, Co Kerry, tel: 064 33278, fax: 064 34286

Wanted: bound 1998 acts of Oireachtas. Contact Kinsella Heffernan Foskin, 14 Parnell Street, Waterford, tel: 051 877766, fax: 051 877231

Sole practitioner with small lucrative practice in south-west county Dublin wishes to hear from interested parties with view to amalgamation or sale. **Reply to Box No 75**

For sale: ordinary seven-day publican's licence. Contact VP Shields & Son, Solicitors, Parkway House, Barrack Street, Loughrea, Co Galway, tel: 091 841044/841220, fax: 091 842156

Small solicitor's practice for sale in Dublin 6 area. Sole practitioner retiring. Would consider merger/association/employment basis in Dublin 2, 4, or 6 area. Reply in confidence to **Box No 76**

Wanted: one set of bound volumesof acts of the Oireachtas for 1996 and 1997 (English version). Bilingual version would also be considered. Please contact George V Maloney & Co, Solicitors, 6 Farnham Street, Cavan, tel: 049 4331444 or maloney@iol.ie (ref: JM)

TITLE DEEDS

The Irish National Foresters Benefit Society, Branch St Patrick No 245, Carlow, premises at the Foresters Hall, College Street, Carlow. Would any person having knowledge of the whereabouts of the original/counterpart conveyance dated 31 August 1946 made between William Patrick Browne Clayton of the one part and Gerard Purcell, Francis Hutton and George Cunningham of the other part or any other title documents in relation to the above property, please contact Lorraine Nolan, Solicitor, Frank Lanigan Malcomson & Law, Solicitors, Court Place, Carlow, tel (0503) 31745, e-mail: lnolan@mlaw.ie

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 the purchase of the freehold estate of property situate at 17 High Street, Dublin 8: an application by Patricia Murphy

Take notice that any person having any interest in the freehold estate of the property known as 17 High Street in the Parish of St Audoen, City of Dublin, held under indenture of lease dated 18 May 1932 and made between William Birney of the one part and Thomas Coyle of the other part for the term of 150 years from 25 March 1932 subject to the yearly ground rent of £12 and to the covenants and conditions therein contained.

Take notice that Patricia Murphy intends to submit an application to the county registrar for the City of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the freehold interest in the aforesaid property and that any party ascertaining that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

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

Date: 12 July 2001

Signed:Patrick Tallan & Company (solicitors for the applicant), Main Street, Ashbourne, County Meath

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

Take notice that any person having any interest in the freehold estate of the following property: Premises at Shannon Terrace, Old Kilmainham, Dublin 8.

Take notice that Irish Cone and Wafer Manufacturing Company Limited intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the Irish Cone and Wafer Manufacturing Company Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/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.

Date: 13 July 2001

Signed: Cusack McTiernan (solicitors for the applicant), 6 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Mark Doherty of Port Road, Letterkenny in the county of Donegal (applicant) and persons unknown to (respondents)

Take notice that the applicant intends to submit an application to the county registrar, Courthouse, Letterkenny in the county of Donegal for the acquisition of the freehold interest in the premises described in the schedule hereto ('the property') and any persons having an interest in the freehold estate or any intermediate estate between the freehold and the leasehold interests held by the applicant in the property are hereby called upon to furnish evidence of their title to the solicitors for the applicant within 21 days of the date of this notice.

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

Schedule

All that and those the property described in an indenture of lease, dated 4 January 1901, between Launcelot D Dowdall of the one part to Joseph Patterson of the second part as more particularly described as 'all that and those tenement and premises as now held by the vendor under the said herein before recited indenture of lease having a frontage of the said street of 86 feet, 6 inches and measuring in the rear 48 feet, 3 inches and containing depth from front to rear to the east side 102 feet and on the west side 86 feet, 3 inches or thereabouts all said several admeasurements more or less which said premises are situate and lying and being in Ramelton Road in the town of Letterkenny in the parish of Conwall, Barony of Kilmacrennan and County of Donegal and held for a term of 99 years'.

Signed: O'Gorman, Cunningham & Co (solicitors for the applicant), 16 Upper Main Street, Letterkenny, Co Donegal

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: An application by the Woollen Mills Limited, having its registered office at 45/46, Wellington Quay, Dublin 2

Take notice that any person having any interest in the freehold estate or any leasehold estate of the following property: 45/46 Wellington Quay and part of premises formerly known as 12/13 Temple Bar together with the passageway on the west side of number 12 Temple Bar, all situate in the city of Dublin.

Take notice that the Woollen Mills Limited Intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests 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 premised to the below named within 21 days from the date of this notice.

In default of any such notice being received, the Woollen Mills Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the 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.

Date: 3 August 2001

Signed: Gore & Grimes (solicitors for the applicant), Cavendish House, Arran Court, Smithfield

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 the purchase of freehold estate of property situate at 418 South Circular Road, Dublin 8: an application by Thomas Ward and Gretta Ward, both of 38 Wainsfort Park, Terenure, in the City of Dublin

Take notice that a any person having interest in the freehold estate being part of the property held under an indenture of lease dated the 29 June 1896, between William Hamilton Maffet of the one part and Richard McHale and Lisa McHale of the other part for the term of 150 years from 1 April 1896, subject to the yearly rent of £50 but indemnified against the payment of £44.15s thereof and the covenants and conditions therein contained.

Take notice that Thomas Ward and Gretta Ward intend to submit an application to the of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7 for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the said property to the below named within 21 days from the date of this notice.

In default of any such notice being received, John Moran intends to proceed with the application before the County Registrar at the end of 21 days from the date of this notice and will apply to the County Registrar for the City of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.

Schedule

All that part of the premises comprised and demised by the said lease and therein described as: 'all that and those the dwellinghouse, tonyard, drying house and small field at the rear thereof situate on the north side of Dolphin's Barn Lane in the County of the City of Dublin together with the several handler's vats and letches now in and upon the said premises, which said premises are meared and bounded on the south west partly by premises in the possession of William Coleman and partly by land property of the Corporation of the City of Dublin and partly by the South Circular Road, on the north west by Mr Leeche's holding and on the north east partly by Mr Laurence Byrne's holding and partly by premises in the tenure of the said William Coleman, on the South East by Dolphin's Barn Lane, which said premises are now known as 35 Dolphin's Barn Lane as more particularly described in the map endorsed hereon', formerly known as 4 St Margaret's Terrace and later as 22 South Circular Road, Rialto and now as 418 South Circular Road, Dublin 8.

Date: 5 June 2001

Signed: Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2

LOST TITLE DEEDS

Ellen Linehan, 2 Leeview Terrace, Blarney Street, Cork. Would any person having knowledge of original title documents relating to 2 Leeview Terrace, Blarney Street, Cork, please contact Peter Quigley, Solicitor, 8 South Mall, Cork, tel: (021) 427 4364, fax: (021) 427 4365