

## Regulars

News	2
Letters	7
Tech trends	26
Stockwatch	28
Book reviews	35
Briefing	39
<i>Council reports</i>	39
<i>Committee report</i>	42
<i>Legislation update</i>	43
<i>Practice notes</i>	44
<i>Annual report of the Disciplinary Tribunal</i>	46
<i>Personal injury judgments</i>	49
<i>Eurlegal</i>	52
People and places	57
Apprentices' page	60
Professional information	61

COVER PHOTO: roslyn@indigo.ie



## ▶ Cover Story

## 10 Papists, porter, and burning bricks

Thank God for the English and their funny little ways. Many of their more archaic and unusual laws were finally repealed here in 1962, but some are still in force. Henry Murdoch takes a light-hearted look at this ludicrous legal legacy

## 14 Hats off to Elma

She doesn't fly, she's never played rugby, but new Law Society President Elma Lynch does have the dubious distinction of nearly being thrown out of court for not wearing the appropriate headgear. Here, she talks to Conal O'Boyle about her career and her plans for the year



## 18 Nothing ventured

Over the last ten years, venture capitalists have poured hundreds of millions of pounds into Irish companies. The cake may be getting smaller but, for the right companies, there are still plenty of chances to get a slice. Barry O'Halloran reports



## 22 Neighbourhood watch

We used to be taught that the answer to the well-known question 'who is thy neighbour?' was that 'thy neighbour is all mankind'. But not if you're a lawyer. Michael Peart explores the issues surrounding duty of care in the light of a recent Supreme Court decision



**ORDER YOUR GAZETTE DESK DIARY NOW!  
SEE INSERT IN THIS ISSUE**

**Editor:** Conal O'Boyle MA. **Assistant editor:** Garrett O'Boyle. **Designer:** Nuala Redmond. **Editorial secretaries:** Catherine Kearney, Nicola Crampton. **Advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 837 5018, fax: 884 4626, mobile: 086 8117116, e-mail: seanos@iol.ie. **Printing:** Turners Printing Company Ltd, Longford. **Editorial Board:** Pat Iggoe (Chairman), Conal O'Boyle (Secretary), Eamonn Hall, Mary Keane, Ken Murphy, Michael V O'Mahony, Michael Peart, Keith Walsh

The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, Editor or publishers. The Editor reserves the right to make publishing decisions on any advertisement or editorial article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.  
E-mail: c.oboyle@lawsociety.ie Law Society website: www.lawsociety.ie

Volume 95, number 10  
Subscriptions: £45



# Little wins Law Society media award

**R**TÉ television reporter Joe Little has been named Overall Winner of the Law Society's *Justice Media Awards* competition. This competition aims to reward outstanding journalism in the printed or electronic media which contributes to the public's understanding of the law, the legal system or any specific legal issue.

Little won the top prize for his special *Primetime* documentary on the Stardust disaster 20 years on. At a ceremony in the Law Society's Blackhall Place headquarters last month, Immediate Past-President of the Law Society, Ward McEllin, presented the prize to Little, whose report also won the broadcast category in the *Justice Media Awards*. As Overall Winner, he received a *Dublin Crystal* vase and a cheque for £1,000.

The winners in each of the four other categories in the competition won a *Justice Award*, comprising a *Dublin Crystal* Joyce plate (and a £500 cheque), with the runners-up receiving a Certificate of Merit (and a cheque for £100).

The winner of the *Justice*



Overall winner: RTÉ's Joe Little

*Award in the Daily Newspapers* category was Carol Coulter of the *Irish Times* for her article *Want a divorce? First choose your judge*, published in February.

A Certificate of Merit went to Justine McCarthy of the *Irish Independent* for her article entitled *State of disgrace*, dealing with the state's approach to the Kathryn Sinnott litigation.

The winner of the *Justice Award in the Non-Daily Newspapers* category was Jerome Reilly of the *Sunday Independent* for an article entitled *Comment is free, but facts cost dear*, on the costs of the Beverly Cooper-Flynn libel

action against RTÉ.

Certificates of Merit went to Margaret Rossiter of the *Nationalist* newspaper in Tipperary for a very moving account of a lonely rape victim's experience during the week-long trial of her alleged attackers, and Tony Galvin of the *Tuam Herald* for his article entitled *Whistle-blowing on drunken drivers is not as easy as it sounds*, which appeared in August of this year.

In the *Magazine* category, the judges awarded two Certificates of Merit, one to Carol-Anne O'Reilly of *Consumer Choice* for an article on bullying in work and the

other to TP O'Mahony for his article in *America* magazine headlined *Abortion and the courts in Ireland*.

In the **Radio** category, the *Justice Award* went to Roisin Boyd and Ryan Tubridy of RTÉ's *Five-Seven Live* for a week-long series entitled *Children in trouble*, prompted by the growing number of court cases involving children. Barry Cummins of Today FM won a Certificate of Merit for his interview with Kathryn Sinnott, the mother of Jamie Sinnott.

The *Justice Award* for **Television** was presented to RTÉ's Joe Little for his special *Primetime* documentary on the Stardust disaster 20 years on.

## Law Society Gazette Christmas publication

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

## ONE TO WATCH: NEW LEGISLATION

### Company Law Enforcement Act, 2001

This act became law in July, and some sections have been brought into force by SI 391/2001 and SI 438/2001. On 27 November, SI 523/2001 and SI 524/2001 commence those sections relating to the office of the new Director of Corporate Enforcement, Paul Appleby.

The director of corporate enforcement (DCE) will be an independent person appointed for periods of five years, with an office and staff. He will take over the functions of the minister in relation to investigation and enforcement of the *Companies Acts*. The act gives the director considerably enhanced powers. It tightens up the filing of information in the Companies Office and establishes a Company Law Review Group on a statutory footing to monitor, review and advise the minister on company law matters.

The increased powers of the DCE

and the new filing regime (to come into effect next March) are expected to have a major impact on compliance with the rules and corporate governance in general. Any practitioner who advises those involved in running companies will need to be aware of the provisions of this act.

Part III of the act deals with the investigation of suspected offences by the DCE under the *Companies Acts* and company investigations under part II of the *Companies Act, 1990*. The following are important features:

- Section 14 refers to a table which lists the powers and functions of the minister under the *Companies Acts* which are to be transferred to the DCE without amendment
- Section 19 requires minute books to be made available to the DCE on request to facilitate investigation of a company's affairs
- Section 21 provides that the DCE may apply to the High Court for

appointment of an inspector to investigate the affairs of a company, and such an inspector may be a member of the DCE's staff. This makes sense as such a person may already have acquired knowledge of a company's affairs through preliminary investigations

- Section 22 expands the related companies to which an investigation may be extended with the permission of the court, to include companies with which the company under investigation has a commercial relationship
- Section 23 amends section 10 of the 1990 *Companies Act*, which requires a company under investigation and its officers and agents to produce all books and documents and give all other assistance to inspectors. It preserves a lien held by anyone over such books and documents, and, in the event of non-compliance, the inspector may certify

this to court, which may act as it thinks fit, for example by directing compliance, and, failing that, holding the person in contempt. The section is also broadened to include accountants, book keepers or taxation advisors along with auditors

- Section 29 replaces section 19 of the *Companies Act, 1990* (the section used by the minister to undertake examinations in some high-profile cases). It extends the power to examine books and documents of a company under investigation to books and documents which may contain information about that company, but which do not belong to that company. It also makes it an offence to answer questions with false and misleading information, or to destroy, mutilate, falsify or conceal any book or document if under notice of an order requiring inspection by the DCE. Costs may be imposed at the

# New officer team in place

The Law Society has a new Council and officer team, with Dublin solicitor Elma Lynch taking up the reins of office for the next year. Lynch was deemed elected to the post after serving as senior vice-president last year, while Geraldine Clarke was elected senior vice-president, with Philip Joyce as junior vice-president.

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

Name	Votes
1. Geraldine Clarke	1,482
2. Owen Binchy	1,360
3. Brian Sheridan	1,360
4. John D Shaw	1,286
5. John O'Connor	1,284
6. Kevin O'Higgins	1,197
7. Moya Quinlan	1,183
8. John Costello	1,177
9. Gerard Doherty	1,177
10. Michael Boylan	1,173
11. Stuart Gilhooly	1,105
12. Angela Condon	1,036
13. Hugh O'Neill	998
14. Andrew Dillon	995
15. Thomas Murran	955

The following candidates were not elected and the number of



**New officer team:** Law Society President Elma Lynch (*far left*) with Senior Vice-President Geraldine Clarke and Junior Vice-President Philip Joyce

votes received by them appear after their names:

Name	Votes
16. Peter Allen	919
17. John Dillon-Leetch	918
18. Sean Durcan	895
19. Dominic Dowling	886
20. Bill Stokes	729
21. TC Gerard O'Mahony	289

As there was only one candidate nominated for each of the two relevant provinces (Connaught and Munster), there was no election and the candidate nominated in each instance was returned unopposed, as follows:

Connaught: Rosemarie Loftus; Munster: Eamon O'Brien.

Council members are elected for two-year terms: the sitting Council members who were deemed elected last year are: John P Shaw, Anne Colley, Keenan Johnson, Michael Peart, Gerard Griffin, Donald Binchy, Elma Lynch, Patrick O'Connor, Simon Murphy, Philip Joyce, James MacGuill, Orla Coyne, John Fish, James McCourt, Michael Irvine, Edward Hughes, James Sweeney and John B Harte.

## STRESS MANAGEMENT FOR LAWYERS

A seminar on *Time and stress management for lawyers* will be held on 1 February 2002 in Blackhall Place. The seminar covers stress, beating burnout, organising your work environment and playing to your strengths. The course tutor, Rob Parsons, is a best-selling business author and international speaker on management issues. For further information, see the insert in this month's issue or call Ruth Browne on tel: (0)29 20442035.

## LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME

Unit prices: 1 November 2001  
Managed fund: 342.316p  
All-equity fund: 93.485p  
Cash fund: 188.766p  
Pension protector fund: –

## PRIZE BOND WINNERS 2001

The winners of the Law Society's prize bond draw were: Thomas J Kelly, Co Wexford; Mary Twomey, Co Kerry; Kevin McGilligan, Dublin; BV Hoey, Drogheda; Peadar O Maolain, Co Offaly; Denis McDowell, Dublin; Patrick Cody, Co Carlow; and Michael Cody, Co Carlow.

discretion of the court. A new section 19A creates an offence where a person who knows or suspects that the DCE is investigating or may investigate an offence under the *Companies Acts* destroys or conceals any documentary evidence that may relate to the offence. The section also creates a presumption that the person destroying or concealing was aware of the existing or incipient investigation or the relevance of the evidence

- Section 30 substitutes a new section 20 of the 1990 *Companies Act*. A search warrant may now be obtained on reasonably based suspicion that books and documents are held on named premises. Such documents may now be held for six months, and on further application, for a longer period. The officer named in the search warrant may operate any computer found on the premises and may

require any person there to facilitate access, to give the password and to help extract information in a visible and legible form. Anyone obstructing a search or seizure of information or failing to assist is guilty of an offence

- Section 31 relates to publication of information obtained in the course of investigations. In future, it will be the decision of the DCE, not the minister, to disclose information under the criteria of section 21 of the 1990 *Companies Act*
- Section 32 gives power to the DCE to require banks to give information in relation to an investigation under section 19 of the 1990 act, whether or not the company under investigation is (or was) a customer of the bank. This will expose the accounts of other companies or persons to the DCE in the course of section 19 investigations
- Section 33 permits the DCE to exer-

cise his powers in response to a request from abroad, but the DCE may decline to assist if there is no appropriate contribution to costs

- Section 36 extends the duty of a stock exchange to report apparent breaches of section 91 of the *Companies Act, 1990* (exchange of interests in shares) to the DPP and to the DCE, and once the DCE or the DPP institutes proceedings, the exchange, every officer of the company concerned and anyone else with relevant information is required to give all reasonable assistance in connection with the proceedings
- Section 37 extends the duty of a stock exchange to report suspected insider dealing to the DPP and to the DCE, and to give all reasonable assistance in connection with any proceedings
- Section 38 lifts the duty of professional secrecy imposed by section

118 of the 1990 act on relevant authorities, members or employees of a stock exchange in relation to the DCE and imposes a duty to report any suspected breach of company law.

Other sections of the act relate to restrictions and disqualifications of directors, and winding up and insolvency (expected to come into force early next year). The sections relating to improving compliance with new filing obligations are scheduled to come into effect on 1 March next. General supervisory powers over auditors come into effect on 28 November. Provisions relating to transactions involving directors are already in force, as are a considerable number of amendments to tighten up and facilitate the supervision of companies. **G**

*Alma Clissmann is the Law Society's parliamentary and law reform executive.*

# Not surprisingly, our bespoke Pensions fit like a glove.

Self-directed pensions are what today's self-directed people want. Davy has used the benefits of recent legislation to make the Davy Retirement Portfolio range more attractive than anything of its kind before. In short, pension funding is now one of the most efficient methods of investing capital

for the longer term. And because it's self-directed it's set to appeal to a wide range of high net worth individuals who want to remain just that - high net worth *and* individual. Call today to find out about Davy Personal, Directors and ARF Retirement Portfolios.



Davy. We do our homework.



# Former solicitor Finnegan is new High Court president

Mr Justice Joseph Finnegan has been appointed president of the High Court on the retirement at the end of November of Mr Justice Frederick Morris.

Mr Justice Finnegan, who has worked both as a solicitor and a barrister, was appointed a judge of the High Court in 1999. He was educated at Synge Street CBS, Dublin, St Mary's College, Dundalk, UCD, the Law Society and King's Inns. He qualified as a solicitor in 1966, practising in Dublin for over a year before becoming assistant secretary of the Law Society from 1968 to 1972. He practised again as a solicitor until 1978, when he was called to the bar. He was



The new President of the High Court Joseph Finnegan

called to the Inner Bar in 1990.

Law Society President Elma Lynch congratulated the new High Court president on his appointment. 'Like his predecessors, he will play a very special role under the *Solicitors Acts* in the

maintenance of the highest standards of conduct within the solicitors' profession,' she said. 'On a personal level, we are delighted to see the second most senior judicial position in the state being held by a former solicitor. We wish him every success and happiness in his challenging new role'.

• Kathryn Delahunt has been appointed a judge of the Circuit Court and sat as a judge for the first time on 3 December. A partner for many years in the Dublin law firm of Vincent & Beatty, she qualified as a solicitor in 1979. She is the first female solicitor to be appointed a Circuit Court judge and has been assigned to sit in Dublin.

## COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in November: Michael P McMahon, 5/6 Upper O'Connell Street, Dublin 1 – £43,363.

## PAYBACK TIME FOR US SUPPORT

The Ireland Funds have launched an appeal to the Irish business community to raise money for the families of the victims of the 11 September terrorist attacks in the United States. The funds were created 25 years ago and during that time have distributed grants totalling \$150 million to hundreds of community groups and charities north and south of the border. The Ireland Funds around the world hope to raise \$1 million to provide relief for those affected by the attacks. Anyone wishing to contribute can send a cheque to: the Ireland Funds USA Appeal, 5 Foster Place, Dublin 2. For further information, contact the funds' director, Kieran McLoughlin, on tel: 01 662 7878 (website: [www.irlfunds.org](http://www.irlfunds.org)).

## Bertie comes to Blackhall



An Taoiseach Bertie Ahern (centre) is greeted on his arrival at Blackhall Place by the then president Ward McEllin (left) and director general Ken Murphy

An Taoiseach, Bertie Ahern, was guest of honour at a dinner in Blackhall Place recently, hosted by then president of the Law Society, Ward McEllin, writes Ken Murphy. The taoiseach was accompanied by the Minister for Social, Community and Family Affairs, Dermot Ahern.

The occasion represented an opportunity, which was taken, for the society to brief the taoiseach and the minister on a range of issues of concern to the solicitors' profession. The taoiseach is well aware that the society's headquarters at

Blackhall Place lies within his constituency of Dublin Central, although it is 'perhaps not a typical house in this constituency', he quipped.

Although an exchange of views on a range of important issues was very much part of the evening, it was primarily a social occasion with opportunities for levity. For example, Ward McEllin to Bertie Ahern: 'I think I have been in *Phoenix* magazine more often than you have this year, taoiseach'. Interjection by Dermot Ahern: 'But Ward, you don't have your own diary in *Phoenix*!'.



## Irish take control of CCBE

Law Society Council member John Fish has been elected president of the Council of European Bars and Law Societies, the umbrella body that represents the interests of Europe's legal professions before the EU institutions. Fish, a senior partner in the Dublin law firm Arthur Cox, is only the second-ever Irishman to hold this prestigious position. His term of office as CCBE president 2001/02 lasts one year.

## SOLICITORS TRANSFERRING TO THE BAR

The Bar Council has announced that solicitors planning to transfer to the bar must submit their applications to the Law Library Committee between the first Monday in March and the first Monday in May. Applications must be accompanied by the appropriate fee. For more information, or to obtain a copy of the *Membership rules for the Law Library*, contact the Bar Council on tel: 01 817 5027.



## State Claims Agency



Under the provisions of the *National Treasury Management Agency (Amendment) Act, 2000*, the management of certain personal injury and property damage claims against the State has been delegated to the ntma. When carrying out its new claims management and associated risk management functions, the ntma is to be known as the **State Claims Agency**.

The Agency's mandate is to manage claims with the aim of minimising the State's liability. The intention is to apply best commercial practices with the aim of ensuring that State claims are investigated thoroughly and are resolved fairly and cost-effectively.

The Agency will manage certain claims against the State, individual Ministers, the Attorney General, the Commissioner of the Garda Síochána, prison governors, community and comprehensive schools and certain other bodies. Excluded from its remit are cases under the Garda Compensation Acts, cases alleging abuse of children in residential institutions and cases alleging noise-induced hearing loss. In relation to such claims, existing arrangements will continue to apply.

Please note that legal proceedings and other correspondence which would previously have been addressed to the Chief State Solicitor's Office should in future be directed to this address:

Claims Litigation Unit  
State Claims Agency  
Treasury Building  
Grand Canal Street  
Dublin 2

Phone (01) 664 0900

Fax (01) 664 0890

Email [info@stateclaims.ie](mailto:info@stateclaims.ie)

Website [www.stateclaims.ie](http://www.stateclaims.ie)



# Letters



## Asking questions of the SMDF

*From: Andrew Dillon, Kinsale, Co Cork*

I believe that it is important to bring to your notice certain matters about which you might not otherwise know.

The Solicitors' Mutual Defence Fund Ltd was formed on or about 11 March 1987. This, as you know, is an insurance company formed for the purposes of providing professional indemnity insurance to practising solicitors and members of the Law Society.

In the articles of association of the SMDF Ltd, it is stated at article 14 that the number of directors shall not be less than seven and not more than 11, of whom not less than six shall at the time of their appointment be members of the Council of the Law Society.

At article 16 it states that the Council for the time being of the Law Society shall be entitled by notice in writing under the hand of a duly authorised member of the Council or officer of the Incorporated Law Society of Ireland lodged at the registrar's office of the company at any time to appoint any person to be a director either to fill a vacancy or as an additional director or to remove any director from office, however appointed.

There is then a sidebar agreement, dated 1987, made between the Solicitors' Mutual Defence Fund Ltd and the Incorporated Law Society of Ireland. In this agreement, it states at paragraph 5 that the SMDF agrees so far as lies within its power not to amend its memorandum and articles without prior notice to and in consultation with the society.

It goes on at paragraph 6 to state that 'the company agrees so far as lies within its power so to do to ensure that at all times a majority of its directors shall

be members of the council of the society in accordance with the articles of association of the company in force as at the date hereof'. The agreement contains other matters which need not concern us here.

The worrying aspect of this for members of the SMDF is that the board of directors of the company is in effect controlled by certain members of the Council of the Law Society. In my three years sitting on the council during 1995, 1996 and 1997 I never heard reference made to the appointment or discharge of directors of the SMDF, nor did I ever note that the matter was listed on the agenda for discussion at all. I am therefore not certain quite who or how directors become elected or chosen by the council of the society to sit on the board of the SMDF. I am aware that the following directors appear as of 12 October 2001. They are Maurice Curran (former society president), Elma Lynch (current society president), Laurence Shields (former society president), Michael Houlihan (former society president), Patrick Groarke (solicitor), Thomas D Shaw (former society president) and Geraldine Clarke (current Council member). Now, the only current members of the Council are Elma Lynch, Larry Shields and Geraldine Clarke. I assume that Maurice Curran, Michael Houlihan and Tommy Shaw would be regarded as safe pairs of hands.

It must be evident that the board of directors of the SMDF gets to nominate which firms' solicitors will be on the panel of defence solicitors in the unhappy event that one of the members of the company is sued for negligence or must call on their professional indemnity insurance for whatever reason. A quick look

at the list of 17 firms of solicitors who are on this panel of defence solicitors is of some interest. Maurice Curran is a director, and the firm of Mason Hayes & Curran is on the defence panel. Laurence Shields is a director, and the firm of Laurence Shields & Company is on the defence panel. So is the firm of Michael Houlihan & Partners in Ennis; Patrick Groarke & Company of Longford; Tommy Shaw's firm, JA Shaw in Mullingar; and Geraldine Clarke's firm, Gleeson McGrath Baldwin. Other lucky people are the office of Bruce St John Blake (former president). Other offices which include former presidents are Augustus Cullen & Company, Matheson Ormsby Prentice, Vincent & Beatty, and now Patrick McEllin & Company of County Mayo.

There is a pattern to all of this. There are some excellent firms of solicitors on the defence panel, all of whom have had some intimate contact with the Council of the Law Society but who have not been either past presidents nor are they current SMDF board members.

It is not, in my opinion, appropriate that members of the board of directors of the SMDF should nominate themselves to benefit from being on the panel of defence solicitors. Those people may think it wholly appropriate, but it unfortunately leaves a question mark over the reasons why such a firm may have been

so appointed. I believe that directors of the SMDF should not benefit in any personal way or be seen to benefit in any personal way other than by receipt of ordinary directors' emoluments.

It is unfortunate that, having had the wisdom to oversee the setting up of the Solicitors Mutual Defence Fund, that certain members of the council, certain former members of the Council and former presidents have seen fit to maintain total control of the SMDF unto themselves.

I believe, and it is only an opinion, that the directors of the SMDF should be independent of, and outside the control of, the Council of the Law Society.

The SMDF, like any other company, has to have an annual general meeting. I attended this meeting on one occasion in 1995. I was the only member in attendance who was not either a director or a solicitor on the defence panel. It is a pity that none of you who are members go to the AGM to make inquiry how your defence fund is actually operated.

Both on principle and as a matter of economic choice I am not a member of the SMDF and therefore have no current right to attend AGMs or, for that matter, to make lawful inquiry about the company from its officers. Those of you who are members should begin to take an interest and start asking questions.

## High praise indeed

*From: Fergal Foley BL*

Please allow me to congratulate director general Ken Murphy on his performance on the Marian Finucane show recently, setting the record straight

about the legal profession after the wholly inaccurate attack the previous day. It is heartening for a barrister to know that there is somebody able to take up the cudgels in our defence.





# What Ulster Bank can offer you....

*So you are going to be a Solicitor?*

*You've probably enough studying to do without feeling stressed out about your finances. So let Ulster Bank help.*

*Our Professional Student Package is specially tailored for Trainee Solicitors by giving you the chance to borrow additional money (and at a special low rate) as you complete each stage of your studies. Not only that but you can choose to delay repaying your study loan until you've had a chance to build up a decent income.*

- **Current Account**

Servicecard or Cashcard and Chequebook.

- **Overdrafts**

Overdrafts with up to £1,500 interest-free.

No account maintenance fee and transaction charges within agreed overdraft limit.

No arrangement fee.

- **Commission Free Travel Facilities**

- **Credit Card**

Available on application.

- **Anytime Banking**

**Free Registration with Ulster Bank Anytime**

Access to your account 24 hours a day, 7 days a week, via telephone or the internet.

- **Professional Student Loan Scheme**

Study and maintenance loans up to £15,000 (maximum of £10,000 per annum).

Preferential Interest Rate.

Capital repayment holiday for the duration of your study period and up to a maximum of six months after your final exam.

No arrangement fee.

- **Holiday Loan Scheme**

Travel loan of up to £1,500 if you need to take a break from your studies.

Preferential Interest Rate.

No arrangement fee.

- **Commission Free Irish Drafts & Money Orders**

FOR FURTHER DETAILS  
CONTACT YOUR NEAREST  
ULSTER BANK BRANCH

OR

**FREEFONE 1800 70 70 70**

We have a legal obligation to ask all new account holders for acceptable identification e.g. current full local passport, full driving licence or a student identity card bearing a sealed photograph and signature. In addition we require separate verification of your current permanent address before opening an account e.g. utility bill, bank or building society statements (originals). If you are unable to provide any of the above, please speak to a member of staff.

The Bank reserves the right to refuse a deposit, decline to open an Account or, on reasonable notice to require an Account to be closed without giving a reason for such a decision. We may close the account immediately on notice to you if you materially or persistently breach this agreement or if it is necessary to protect you or us.

Services which involve borrowing are applicable to customers aged 18 or over. Loans are granted subject to status and conditions. Security may be required. This package is only applicable to Trainee Solicitors. Written quotations are available on request from Ulster Bank Limited, Sales & Marketing PO Box 145, 33 College Green, Dublin 2 or from any Ulster Bank branch.

Telephone calls with Ulster Bank will be monitored/recorded to maintain and improve our services.





## Conveyancing in euro

From: Grainne Murphy,  
Enniscorthy

On perusing the euro Land Registry and stamp duty tables, I am sure I will find them most useful as and from 1 January 2002. However, I note that in the non-residential property section of the stamp-duty table that there is provision

made for a rate of 3% twice. I note the usual disclaimer is listed at the top of the table, but obviously this is a misprint.

### The Editor replies:

Indeed it is. Apologies for any confusion arising out of our misprinting the table. A corrected version appears on page 44.

## DUMB AND DUMBER

From: Eugene O'Sullivan,  
Kilkenny

The following is an excerpt from the dental report of one of my clients, who fainted and fell in a hospital ward, injuring her jaw and teeth:

'Not having seen Ms X since August 2000, she attended my practice on 23/2/2001 with pain in the lower right quadrant. She explained that LR4 was sore with hot/cold stimuli causing the symptoms which were lasting up to one hour.

She further explained that her baby had headbutted her in this region a few days previously'.

**Eugene O'Sullivan wins the bottle of champagne this month. But he would, wouldn't he? He was the only entrant, after all. Send your examples of the wacky, weird and wonderful in the legal world to the Editor, Law Society Gazette, Blackhall Place, Dublin 7, or you can fax us on 01 672 4877 or e-mail us at c.boyle@lawsociety.ie.**

## Competitive streak

From: Andrew Whittaker, editor,  
Competition journal

Your *Eurlegal* article about the heads of the proposed *Competition Bill* as published by the government in July says that the bill 'does not address the issue of whether or not the prohibition on restrictive agreements, decisions or concerted practices is applicable to an agreement, decision or concerted practice that benefits from an EU block exemption' (November issue, p45, item no 12).

Fortunately, the draft bill does actually cover this, which the present *Competition Act* does not. Head six, section 1(d)(ii) of the draft says that if you can show that your agreement, decision or concerted practice benefits from an individual or block exemption by the European Commission, or if, though it is caught by article 81(1) of the treaty, it is saved by article 81(3), then this will be 'a good defence'.

The Department of

Enterprise, Trade and Employment's 'note' about the same head six says that the section containing the defence of showing that your agreement is saved by article 81(3) will not be commenced until the current negotiations to reform the administration of EU competition law have been completed. It is anticipated that that reform will take place through the issuing of a new EU regulation, which would give national courts and competition authorities the duty and the right to evaluate the full economic effect of business agreements, that is, under article 81(3) as well as 81(1).

It is in head six, sections 1(a) and 2(a), that the bill proposes to make it an offence in Irish law to act in a way that is prohibited by articles 81 and 82 of the *EU treaty*, thus bringing such breaches under the responsibility of the Competition Authority to investigate and prosecute.

## Murdoch's Irish Legal Companion

You cannot be an expert in everything that's why Murdoch's Irish legal companion is different. It's designed to offer you immediate legal information.

- Containing 6,500 legal definitions
- The full text of thousands of cited Irish Acts and Statutory Instruments
- Extensively Cross Referenced
- Comprehensive Bibliography
- A diagrammatic presentation of the Irish justice system, showing the interlinking of the justice system and jurisdiction of the courts
- Extensive Internet Links
- Easy Searching

But don't just take our word for it:

*"Apart from saving oceans of shelf space, the CD also makes it much easier to track down that elusive chunk of law"*

— IRISH INDEPENDENT

*"A hugely impressive legal research resource, which will, I believe prove to be invaluable to judges, practitioners, garda, students, libraries the public service and enterprise"*

— MICHAEL MC DOWELL SC, ATTORNEY GENERAL

*"From bibliographic reference for the academic researcher, to a notes facility to add personalised commentary this product has something for everybody"*

— GARDA REVIEW

### ORDER TODAY AND DON'T YOU GET LEFT BEHIND

Version*	CD-ROM only	Online only	Online & CD-ROM Ex VAT
	Ex VAT	Ex VAT	
Small business edition (Less than 10 employees)	£1R160	£1R160	£1R210
Library edition	€203	€203	€267
	£1R350	£1R350	£1R400
	€445	€445	€508
Large enterprise edition*	£1R400	£1R400	£1R450
	€508	€508	€571

\*This is a price per site, VAT is charged at 20% P&P of £5 Applies to all CD-ROM orders Online service subject to a 50% annual access fee in year 2



Since its launch Murdoch's Irish Legal Companion has reached thousands of searchers on a daily basis.



DETACH OR PHOTOCOPY AND RETURN

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Payment option: ☐ Cheque enclosed ☐ Pay by Credit card

Visa/Mastercard: Authorised Amount £ \_\_\_\_\_

Account No: \_\_\_\_\_ Expiry: \_\_\_\_\_

Signature: \_\_\_\_\_

To arrange payment by Purchase order or for any other enquiries: Lendac Data Systems; Unit 6 Trinity College Enterprise Centre, Pearse Street, Dublin 2; Email milc@lendac.ie Tel 01 677 6133, Fax 01 671 0135 or visit <http://milc.lendac.ie>

Many archaic and bizarre laws were finally repealed in 1962, but some are still in force. Henry Murdoch takes a light-hearted look at some old legislation and comes up with some unusual and oddly enlightening examples

It is just as well for the many 'popish' solicitors and barristers in Ireland today that in 1962 the *Statute Law Revision (Pre-Union Irish Statutes) Act* finally repealed (in case there was any doubt) the 1733 act (7 Geo II: cV) which stated that no person could be admitted as an attorney or licensed to be a solicitor in the Four Courts in

of popery have been and daily are greatly eluded and evaded ...'.

The 1733 act also went on to prevent any person from being admitted as a barrister or solicitor if they married any woman of the 'popish religion', or permitted their children to be educated as Catholics. Such a person 'shall henceforth be deemed a papist

# *Papists, porter*

Dublin 'who hath not been a Protestant from his age of 14 years'.

The purpose of the 1733 act is clear from its preamble: 'Whereas the laws now in force against popish solicitors have been found ineffectual by reason of the difficulty of convicting such solicitors ... to the great prejudice of the Protestant interest of this kingdom ... and whereas by the means of such popish solicitors, the acts against the growth





and disabled from being a barrister ... or solicitor'. But there was some hope for the repentant, since the disability could be removed where the person within one year of such marriage 'procure such wife to be converted to the Protestant religion'.

There was no equivocation in the 1733 act. Solicitors and barristers were not only Protestant – they were also male. What a comparison with the modern provisions on equality and discrimination in the *Employment Equality Act, 1998* and the *Equal Status Act, 2000*.

The 1962 legislation repealed or amended a whole

which places restrictions on the sale of intoxicating liquor on credit, was not concerned with the drinking of alcohol in small quantities. It was, and remains, an enlightening piece of legislation.

The *Tippling Act 1735* was originally known as *An Act to Prevent the Evil arising by the Retailers of Beer, Ale, Brandy, Rum, Geneva, Aquavita, and other Spirituous Liquors, giving Credit to Servants, Day-Labourers, and other Persons, who usually work or ply for Hire or Wages*. It was renamed the *Tippling Act 1735* in 1962. The act was originally intended to be a temporary measure (section 2), but was made a

# and burning bricks

series of other pre-1922 acts that (to quote the preamble to the statute) 'may be regarded as spent or which have ceased to be in force ... or which have, by lapse of time or otherwise, become unnecessary'. However, a quick trawl would suggest that there are other laws and practices that were not captured by the 1962 act or subsequent legislation and which are curious, enlightening or (in some cases) of questionable relevance.

Examples relate to granting credit on the sale of alcohol, burning bricks, marrying a relation, and the facts that 'guilty' does not always mean guilty of the crime charged, that a board of directors can be a court, that a 'seat' can be a place where you cannot sit, that Dublin can have its own specific powers of arrest, and that we still have the trappings of a monarchy even though Ireland has been a republic for more than 50 years.

## A little of what you fancy

What does the word 'tippling' conjure up? Well, 'tipple' is defined in a non-legal dictionary as 'to make a habit of taking alcoholic drink, especially in small quantities'. However, the *Tippling Act 1735*,

perpetual measure by a subsequent statute and is currently in force.

The preamble to the act gives a graphic description of its objectives: 'Whereas many great inconveniences have arisen, and do daily arise, from the credit usually given by retailers of strong beer, ale, brandy, rum ... and other spirituous liquors, to servants, day-labourers and other persons, by means of which ... [they] are induced and tempted to resort too frequently to the houses or shops of the retailers of such liquors, where they often drink to excess, and thereby frequently run into debt, and lay themselves under the temptation of purloining their masters' goods to discharge such debts, and do further by that means destroy their health ... and are often thrown into gaol, where they lie in a miserable and starving condition, to the ruin of themselves and their families'.

While effectively dealing with a social problem, the 1735 act does raise the question as to whether buying a bottle of wine in your local off-licence with a credit card this Christmas gives rise to an offence.

## Another brick in the wall

One old law still in force is the prohibition on the burning of bricks in the city of Dublin as provided by the *Burning of Bricks (Dublin) Act 1770*. This act, originally named *An Act to prevent the Pernicious Practice of burning Bricks within the City of Dublin, or the neighbourhood thereof*, was renamed the *Burning of Bricks (Dublin) Act 1770* by the *Short Titles Act, 1962*, which confirmed that sections 1, 2 and 3 were unrepealed sections.



The act states: 'Whereas large quantities of bricks are frequently burned within the city of Dublin, and in the neighbourhood thereof, by means whereof the inhabitants of the said city are grievously annoyed, and the lives of many weakly persons has been lost ... for remedy whereof be it enacted ... no person shall make, or cause to be made, burn, or cause to be burned, any bricks within the distance of two measured miles from the public lamps of the city of Dublin'.

It is not clear what was in bricks in 1770 that made the burning of them so objectionable. Maybe animal dung had something to do with it!

### Keeping it in the family

The *Marriage Act 1537*, introduced during Henry VIII's reign, sets out the degrees of consanguinity (by blood) and affinity (by marriage) relationships within which parties cannot marry. Any marriage in breach of the prohibited degrees is a void marriage.

For example, a man could not marry his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, father's brother's wife, mother's brother's wife, wife's father's sister, wife's mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter, brother's son's wife, sister's son's wife, wife's brother's daughter, and wife's sister's daughter. Analogous prohibitions applied to women.

The only statutory amendments to these prohibited degrees were made by the *Deceased Wife's Sister's Act 1907* and the *Deceased Brother's Widow's Act 1921*, under which a man was permitted to marry his deceased wife's sister and a woman could marry her deceased husband's brother. These changes were largely motivated by social conditions arising from wars in which Britain was a participant.

While the remaining prohibited degrees are still in force, they are now open to challenge following the ruling by Mr Justice Smyth in the High Court in June 2001, in which he granted a declaration that the marriage of Mrs Winnie Kavanagh to her late aunt's husband was a valid marriage. In this case, counsel for Mrs Kavanagh had argued that the 1535 act owed itself to the 'dynastic difficulties' of the six-times-married monarch.

### Guilty but not guilty?

And then we have the 'special verdict' introduced during the reign of Queen Victoria by the *Trial of Lunatics Act 1883*, which is still in force and which provides for a verdict of 'guilty but insane'. However, this provision has been interpreted by our courts as a verdict of acquittal – that is, of 'not guilty by reason of insanity'.

The only order which the court may make in the case of such a verdict is an order that the accused be kept in custody until such time as the executive is satisfied that it is safe to release the accused. This

raises all kinds of difficulties when the accused regains, or claims to have regained, sanity. Good examples of these difficulties can be found in *DPP v Gallagher* ([1991 SC] 1 IR 31), *Application of Gallagher (No 2)* ([1996 HC] 3 IR 10), and *O'Halloran v Minister for Justice* ([2000 HC] 1 ILRM 234).

### When a board of directors is a court

The board of directors of the publicly-quoted company Bank of Ireland is legally called a 'court' as a result of its establishment by the *Bank of Ireland Act 1781*, as amended in 1791 and 1797, and its charter under these acts.

Under the bank's first charter, the members of its court of directors were required to subscribe to the declaration contained in *An Act to Prevent the Further Growth of Popery* – so that Catholics were barred from being appointed to the court. This was a source of constant embarrassment to the bank in its early years, until the charter was subsequently amended.

The bank got itself caught up in the politics of the day in other ways. When our Dáil and Seanad were established, a natural home for them and a historical link to the past would have been the beautiful building known as Parliament House, near Trinity College. This had been the seat of the previous Irish parliament some 120 years earlier, until it was prorogued on 1 August 1800 pursuant to the *Act for Union of Great Britain and Ireland 1800*. The British government was taking no chances of another Irish parliament being created, so in selling Parliament House to the Bank of Ireland in 1803 for £40,000, they insisted that the deed of conveyance contain a provision requiring the bank to sub-divide and alter the chambers (in which the Irish House of Lords and the Irish House of Commons had met), so as to preclude their being used again as public debating rooms. The current Banking Hall in Parliament House stands partly in the space previously occupied by the House of Commons.

### When is a seat not a seat?

Section 20 of the *Intoxicating Liquor Act, 1927* provides that a person must not be admitted to a theatre after 9.30pm unless he had previously engaged and paid for a 'seat' in that theatre. This is to prevent a theatre bar being used as a normal bar. The courts have recently interpreted 'seat' as including a place of standing (*DPP v Tivoli Cinema Ltd*, [1999 SC] 2 ILRM 153).

### In the rare old times

There are special 'arrest without warrant' provisions in the *Dublin Police Act 1842* which do not apply outside Dublin, ostensibly because Dublin thieves in the 1840s were more difficult to apprehend in the city's narrow alleyways. The act was the subject of a review in 1997 by the High Court, which held that it was not contrary to our constitution to have



different arrest provisions in Dublin from the rest of the country (*Molyneux v Ireland*, [1997 HC] 2 ILRM 241).

### King for a day

Despite the fact that we won our independence from Britain in 1922 and have been a republic since 1949, judges of the Irish superior courts continue to be addressed in the language of the British monarchy, for example, 'My Lord' or 'Your Lordship'. Judges in these courts continue to wear a wig, except when dealing with family law matters. These wigs may have historical importance, but they are relics of a bygone age associated with royal courts. District Court judges do not wear wigs and neither the quality of justice in their courts nor the respect shown to their office suffers.

Since the *Courts and Court Officers Act, 1995*, a barrister or solicitor cannot be required to wear a wig in any court. However, most barristers continue to wear a wig out of preference. There are many reasons advanced for this, including the 'gravitas' it may lend to a younger member of the bar. A criminal barrister once jokingly remarked that, in criminal matters, the wig was necessary so that the jury could clearly distinguish between the accused and the lawyers.

While many old statutes and practices are still in force, there has also been considerable updating of the law. For example, the *Criminal Law Act, 1997*

abolished the distinction between a felony and a misdemeanour, as the distinction over the years had become blurred. The act also repealed a further series of pre-1922 statutes, which had been replaced by more modern provisions or which were now redundant or outdated – for example, the *Sunday Observance Act 1695*, the *Riot Act 1787* (from whence came the phrase 'reading the riot act'), the *Whipping Acts 1820 and 1862*, the *Hard Labour Act 1822*, the *Trial of Felonies Act 1836*, the *South Australia Act 1842*, the *Penal Servitude Acts 1857 and 1864*, and the *Garrotters Act 1863*.

There are also many old statutes still in force that have stood the test of time by providing a good foundation for their particular area, in some cases being subsequently amended to take account of modern and EU requirements. Examples are the *Perjury Act 1586*, the *Statute of Frauds 1695*, the *Conveyancing Act 1634*, the *Registration of Deeds Acts 1707 and 1709*, the *Landlord and Tenant (Ireland) Act 1860* – called Deasy's act – the *Partnership Act 1890*, and the *Sale of Goods Act 1893*. These statutes are all alive and well today.

So 'old' in law may mean curious, enlightening, and perhaps even dated, but – like wine – not necessarily bad. **G**

*Henry Murdoch is a barrister and author of Murdoch's dictionary of Irish law and the CD-ROM Murdoch's Irish legal companion.*

# leaders...

## in the quest for excellence...

You're a problem-solver. You need answers. You need speed and accuracy. You need a back-up service that is efficient and cost-effective. In short, you need the professionals at Rochford Brady, Ireland's largest legal services organisation.

law searching • summons serving • town agents • company formation

• title investigations • enquiry specialists

**rochford brady**

rochford brady legal services limited  
dollar house  
2-5 wellington quay  
dublin 2  
ireland

tel: 1850 529 732

fax: 1850 752 436

e-mail: [rochford@lawsearch.ie](mailto:rochford@lawsearch.ie)

website: [www.lawsearch.ie/rochford](http://www.lawsearch.ie/rochford)

## New president Elma Lynch talks to Conal O'Boyle about her career and her plans for her year in office

**S**he doesn't fly, she's never played rugby, but new Law Society President Elma Lynch does have the dubious distinction of nearly being thrown out of court for not wearing the appropriate headgear.

Back in 1970, if you were a female solicitor, hats were *de rigueur* for appearances in court. As a newly-qualified solicitor, Lynch kept one in her office. Although the head-covering rule was abolished shortly afterwards, no-one seems to have told the fashion-police in Cork. Lynch reckoned that the judge she was appearing before (who was originally

# HATS OFF TO ELMA

from Dublin) would have little problem with a bareheaded female solicitor, but first she had to get past the Rebel County's version of the Taliban.

'There was a young garda who was on duty', she recalls, 'and he tapped me on the shoulder and said: "You're not going in without a hat". Now, the case was almost settled, and it didn't actually matter that much, but my junior counsel had to come out to try to reason with the garda. He pointed out that I was a solicitor and that I was no longer obliged to wear a hat in court because the rules had been changed. But the young garda was having none of it. As I recall, he said something like: "I don't care what she wears, she's not going into that courtroom with nothing on her head". That was probably about 1972'.

Elma Lynch had no particular family links to the law – nor to millinery, for that matter – since her

father was an army officer from west Cork and her mother was a civil servant. But she always had an interest in the law and was not averse to popping down to the Four Courts with her friends during the summer to see what was going on. Those were the days when you had to make your entertainment, before the world switched from black-and-white to colour for most Irish people.

But the Lemass years of the mid-1960s meant that a booming Ireland needed more solicitors, so Lynch opted for law in UCD. Some 31 years later she's never regretted a minute of it. 'It's been a very fulfilling life for me', she says. 'The friends I've made have been as important as the work I've done. And I don't mind taking on something new, some new area of law. I actually find that interesting. I like it when new areas of work open up'.



As a young female solicitor in the 1970s, she was unaware of any 'glass ceiling' or sex discrimination in the traditionally male legal profession. 'I never thought there was', she says. 'In fact, our male colleagues were probably nicer to us; they seemed delighted to have us around. I don't think anybody ever refused to deal with me because I was a woman'.

Of course, one reason for that might have been the development of family law during the 1970s, which, although it was still a crude instrument, became a real growth area for the legal profession. 'Anywhere I worked', she recalls, 'none of the men in the practice ever wanted to do family law. I don't think they really liked it, nor had that great an aptitude for it. Now, of course, there are many running very successful family law practices'.

The gender profile of the profession has changed utterly too. When Lynch qualified, she was one of perhaps 20 women in a class of 120 apprentices. In recent years, there have been more female apprentices going through Blackhall Place than male apprentices.

One other change she has noted over the years has been the decline in deference in court. 'There was certainly more respect for judges back then', she says, 'but that's not necessarily the case any more. And maybe that's not such a bad thing, because there was a time when the judges were right even when they were wrong. And no matter how badly they treated you, you didn't speak up. But that's gone, and it's right that it's gone'.

Lynch admits that her own career owes much more to luck than planning. 'I've always tended to let things

Legal & General Software

## LEX ACCOUNTING SOFTWARE

IS NOW

**the**  
**leading accounts**  
**software for**  
**solicitors**

ASK OUR  
CUSTOMERS

- ✓ Lex is euro-ready
- ✓ Lex is easy to use
- ✓ Lex is well supported
- ✓ Lex is the cheapest on the market

The legal profession is  
our **main market**

**We cannot afford  
to mess up!**

Call Michael Gilmartin  
**01-872 5522**  
E-Mail: [Legal@iol.ie](mailto:Legal@iol.ie)

Legal & General Software  
13 Upper Ormond Quay, Dublin 7



happen rather than worry too much about the future. I'm a very lucky person, but conversely I believe that there is nothing you can do to change your luck'. So far, the lucky streak has stood her in good stead.

After qualification in 1970, she worked for two years with her former master, Benedict Daly, in the Dublin firm Wilkinson & Daly, before joining Arthur O'Hagan & Sons as an assistant solicitor. Then, in 1978, she rejoined her former master in the newly-formed firm of Daly and Lynch. When Daly was appointed to the District Court bench in 1981, Lynch practised on her own for a while before her former assistant solicitor Michael Crowe joined as a partner in the firm. Four years ago, the firm amalgamated with Kenneth Morris, and the new firm of Daly Lynch Crowe & Morris was formed. That firm now practices out of the Corn Exchange on Dublin's Burgh Quay. Lynch, not surprisingly, tends to look after some family law cases, but primarily she deals with licensing law, conveyancing and commercial law matters.

As far as she recalls, the only hard career decision she had to make was whether to rejoin Benedict Daly. 'I agonised over that for a while', she admits. 'It was a very big step because at the same time I was offered a partnership in the firm that I was leaving. I mean, who knows if I made the right decision or not, but my attitude is that it doesn't matter. I made the decision so I had to go with it. There was no point in sitting around thinking about whether I might have had an easier life if I had stayed in a bigger firm'.

It is this same relaxed manner that now sees Elma Lynch as president of the Law Society for 2001/02. She had been a Dublin Solicitors' Bar Association nominee on the Law Society Council for three or four years, before standing for election to Council in her own right in 1987. She was somewhat surprised when she found herself elected. 'I mean, I didn't actually work that hard, you know. It just fell into place. I didn't make a thousand phone calls, asking people to vote for me. It just happened'.

During her time on Council, she has sat on the registrar's, parliamentary, law reform, conveyancing, criminal, premises and public relations committees, and the *Gazette* editorial board, as well as chairing the Finance Committee two years ago. She also spent some years as a member of the Disciplinary Tribunal. Given this track record, it's no surprise that she believes the Law Society is doing a good job in representing its members' interests, but she does feel that there's always room for improvement. For example, she's worried that the huge growth in the number of solicitors in recent years may lead to a corresponding decline in the collegiality that has traditionally been a hallmark of the profession.

'At our recent AGM', she says, 'a young female solicitor from Kerry stood up to ask whether we had any plans to introduce a mentoring programme for newly-qualified solicitors. She was quite right, and we do need such a programme. I know when I first qualified, if I didn't know how to do something, I'd

## FACT FILE

### ELMA LYNCH

**Occupation:** Solicitor (admitted to Roll of Solicitors in 1970). Partner in the Dublin law firm Daly Lynch Crowe & Morris

**Education:** Secondary: Loreto Abbey, Rathfarnham, Dublin; third level: BCL (Hons) from University College, Dublin

**Law Society career:** First elected to Law Society Council in 1987. Junior Vice-President 1996, Senior Vice-President 2000, President of the Law Society for year 2001/2002. Has served on most of the society's committees during her 15-year tenure on Council, including finance, registrar's, conveyancing and criminal law

find out who did and I'd phone them. But maybe I just had a bit of a hard neck! I suppose it's regrettable that we've come to the point where we need a structured mentoring programme, but it may be necessary to counteract the feeling of isolation experienced by some young practitioners'.

As president of the Law Society, Lynch will have a tough battle on her hands if the government pushes ahead with its plans to introduce a new Personal Injuries Assessment Board. But she's in no mood to compromise on such a crunch issue.

'I don't think it is in the public interest', she says. 'You have to ask yourself why is the government doing this. Is it just to cut solicitors' fees, is it to bring insurance premiums down or is it to reduce the amount of damages paid out to victims of negligence? I suspect that in large measure it's just a political football – but ordinary people are going to be very badly affected. And I intend to fight it every step of the way'.

During her term of office, Lynch will be presiding over celebrations to mark the 150<sup>th</sup> anniversary of the granting of the Law Society's charter. She believes that this should be an opportunity to reflect on the profession's heritage and to reaffirm its commitment to the most rigorous professional ethics and conduct.

'Solicitors have made a great contribution to Irish society over the years, and we have been able to change with the times', she argues. 'But the one thing that should not change is our fundamental belief that the interests of the client always come first. Now, that doesn't mean we can use this as an excuse for treating our solicitor colleagues in an unprofessional way. It means that we are here to serve the needs of the public as a whole. We've done it marvellously for 150 years, and we have every reason to be proud. As president, I will be encouraging my colleagues to reflect on our traditional values and never to lose sight of the code of ethics and conduct that make us a unique profession.'

'We're still here after 150 years, so we must be doing something right'.

Elma Lynch. Living proof that you don't need a hat to get ahead. **G**

Over the last ten years, venture capitalists have poured hundreds of millions of pounds into Irish companies, and many of the beneficiaries were small businesses. The cake may be getting smaller but, for the right companies, there are still plenty of chances to get a slice. Barry O'Halloran reports

# Nothing



## MAIN POINTS

- Venture capital investments in small businesses have grown rapidly since the mid-nineties
- Investors are more cautious, but good opportunities still available
- Need for credible business plans and good management

Once upon a time, for most Irish companies raising capital meant a trip to the bank to ask for a loan. But since the mid-nineties, investors have been playing an increasing role in funding small businesses in this country. In fact, venture capital became one of the buzzwords of the boom – in some quarters you were nobody if you weren't in the process of raising it.

Venture capital is precisely what it sounds like. Typically, an investor provides finance for a company in return for a shareholding in it. Instead of joining the list of creditors that have to be paid off at some point, they share the risk of the business failing. But in return, they expect, well, a return. This means that the investment's value should be considerably enhanced within a defined period of time, and possibly that the stake can be sold at a decent profit if the company



# ventured

itself is sold or even floated on the stock market.

The money generally comes from three sources: Irish institutions and funds, foreign investors, and private individuals. According to the last survey from the Irish Venture Capital Association (IVCA), the body that represents Irish investors, its members placed £376 million with 400 companies in the four years to 31 December 2000.

The report, compiled by law firm Matheson Ormsby Prentice for the association, shows that Irish funds and institutions invested £164 million in 144 companies last year. This was a considerable increase on the previous year, when £140 million was placed with 128 businesses.

The survey was based on a 100% response from IVCA members, and the association calculates that the figures represent over half of all venture capital investment activity. A global private equity report produced jointly by PriceWaterhouseCoopers and multinational investor 3i helps to complete the picture. It shows that a total of \$250 million (or around £217 million\*) was invested in Irish companies last year.

It also gives an idea of just how fast the market grew over the last five years. In 1997, venture capital investment totalled just \$43 million (£37 million\*), meaning that in the three years to 2000, the annual rate of growth was 55% – well ahead of the global average increase for the same period of 35%.

The main beneficiaries of this investment activity were small businesses, many of them at the beginning of what their backers hoped would be long and prosperous careers. Jim Meates, senior associate in law firm A&L Goodbody's commercial department, says that while a few of the investments were of the order of £10 million to £15 million, most were in the £1 million to £3 million bracket. The modest amounts themselves indicate that the businesses involved were small.

## Forever blowing bubbles?

Technology drove much of the growth. The IVCA estimates that the hi-tech sector mopped up over 70% of the funds invested here. More than 71% of companies benefiting from a series of funds operated jointly by Enterprise Ireland and a range of private

sector partners were software developers, while 9% were in communications technology.

PriceWaterhouseCoopers/3i puts it at 80%.

There were two reasons for this. First, technology companies (particularly Internet companies) became the Holy Grail for investors between 1998 and 2000. Because many of them had flotation plans, getting in on the ground floor meant there was a possibility of lucrative returns if and when they went to the stock market.

Second, technology companies have to spend large amounts of money on research and development before they can start generating decent levels of revenue. This – and the level of risk involved – means that they are not attractive to lenders, but the opportunity of getting a good return at the end of the day makes them more suitable for venture capital.

However, there are fears that since the technology bubble has burst (or, depending on your point of view, sanity returned to the marketplace), the money is beginning to dry up. Some of the more pessimistic commentators predicted earlier this year that it could be halved. Luckily, they were wrong.

According to Goodbody's Jim Meates, a recent report shows that private equity investment in this country totalled \$215 million (£186 million\*) so far this year. 'That means that it's at almost the same level as last year', he says.

At this stage, nobody is willing to predict what the figures for the full year will look like. MOP's corporate finance partner, Andrew Doyle, who worked on compiling the IVCA survey, believes that there has been a slow down, but says it's impossible to put a figure on it at this stage. Gavin Bourke of Trinity Capital, a fund that specialises in supporting technology companies at the early stages of their development, says that private individuals and some foreign investors are less active than last year. This was foreseen as far back as a year ago, but before the World Trade Center attack. That event could have a more medium-term impact on the market here, as US investors



may be less willing to invest their money outside America.

For the moment, the good news is that there is cash available for investment in potentially profitable businesses. Shay Garvey of Delta Partners, which this year closed off its euro 90 million (£71 million) equity II fund, recently said that there are about 500 'backable' companies in Ireland. He added that the quality of businesses approaching his firm is higher than last year.

Investors are not just looking for large companies or only at the technology sector. A glance at the current Enterprise Ireland seed and venture capital fund report shows that between 1994 and 1999 the state agency and its private sector partners backed everything from a mushroom grower and distributor to a company that makes machines for removing chewing gum from footpaths. That was in addition to a raft of technology and communications businesses.

As a result of the recent shake-up in that sector, investors now avoid the consumer-oriented dotcom businesses, and instead focus on those developing their own products. For instance, Bourke says Trinity's focus is primarily on software companies that own the intellectual property in their products and that sell mainly to the corporate sector. He adds that 'given the risks involved in investing in early-stage technology companies, it would be important that the company have the potential to realise significant returns for investors'.

#### The man with the plan

So just how do investors judge a company's potential, and how does the company demonstrate it? Anyone seeking venture capital has to put together a business plan. According to Gavin Bourke, this should include realistic financial projections and details of the actual funding requirements. He also stresses that in the current climate companies should be able to show that they can fund themselves for a period of over two years.

The business plan should also have clear details

about the company's products, its target market and the potential to develop both. 'It's important to know the compelling reasons for the corporate purchaser to buy what the company is offering', says Bourke. 'Also, how close the company is to that marketplace, how well it knows and understands potential customers, and if it has sold products or services to this marketplace previously'.

MOP's Andrew Doyle says that the people best placed to draw up the business plan and provide this information are those running the company – the management team who will implement the plan. Investors regard management as crucial to the business, and its perceived ability to run the company and deliver on its targets will be central to its success in getting funding.

As well as a credible business plan, the management will need to show that it is on top of things by getting regulatory details right. Jim Meates emphasises that before a company seeks capital, it should ensure that it has a full register of members and directors, and that its annual returns, accounts and any other documents that should be filed with the Companies Registration Office are actually filed and available. If it's appropriate, there should be complete records of any intellectual property owned by the company.

'When it comes to corporate governance, you really should have your house in order', Meates says. 'You'd be surprised by the number of companies that do not, and it is one thing that we say to people who come to us looking for advice in this area'. After the investment is secured, investors will want to see that the company has a properly constituted board that carries out its business in accordance with the *Companies Acts*.

In some cases, they will appoint a representative to the board to safeguard their interests. In a similar vein, some venture capital companies will provide on-going support and advice to businesses in which they have invested, particularly if they are at the early stages of their development or growth.

#### Taking the first steps

Assuming that your business clients have drawn up a business plan and have their houses in order, the next question is: where do they go? A variety of institutions and companies are active in the Irish market. These include companies like Trinity, which is currently cash-rich (having just raised funds itself), and Delta, which works largely with early-stage funding for technology companies. A number of others, such as ACT Venture Capital and Hibernia Capital Partners work with a broader range of businesses. ICC, the former state bank, also has an active venture capital arm.

A number of high-profile Irish companies not normally associated with financial services have also been active in this market, such as Smurfit (through Smurfit Venture Investments) and, more surprisingly, Guinness Ireland, which operates a

## SOURCES OF VENTURE CAPITAL

- ACT Venture Capital Ltd, Jefferson House, Eglinton Road, Donnybrook, Dublin 4, tel: 01 2600966
- Campus Companies Venture Capital Limited Partnership, Arancoast Ltd, Molesworth House, 8/9 Molesworth Street, Dublin 2, tel: 01 6790818
- Delta Partners Ltd, ICL Building, South County Business Park, Leopardstown, Dublin 18, tel: 01 294 0870
- Enterprise Ireland, Merrion Hall, Strand Road, Dublin 4, tel: 01 857000
- Hibernian Group plc, Haddington House, Haddington Road, Dublin 4, tel: 01 607 8707
- ICC Venture Capital, 72-74 Harcourt Street, Dublin 2, tel: 01 415 5555
- Trinity Venture Capital Ltd, Dunleary House, Dun Laoghaire, Co Dublin, tel: 01 2846135



fund in partnership with Ulster Bank.

Julie Sinnamon, manager of investment services with Enterprise Ireland, says that those seeking investors either approach venture capital houses directly or they go to the corporate finance sections of the various Irish stockbroking houses (which at this stage are all based in Dublin).

'Corporate financiers act as intermediaries', she explains. 'They will first of all talk to the people looking for money and then go out and approach the people providing the funds with a view to getting one or a number of them on board – often a number of funds will invest in one company'.

Enterprise Ireland itself is playing a role in the venture capital market. Working in partnership with private sector investors, the state agency has established and managed 15 funds with a total value of euro 90 million (£71 million) since 1995.

Enterprise Ireland provided euro 44 million (£35m), while its partners provided the balance.

The latest figures available for these funds show many of them were not fully subscribed by the end of last year. For example, only £2.95 million of the £7.5 million available from the Alliance investment capital fund was taken up. The campus companies' venture capital fund had committed just over £2

million of the £6 million at its disposal. This fund places between £30,000 and £500,000 in businesses operated by staff, students and graduates of Irish colleges.

The 15 funds are aimed primarily at small and medium-sized businesses in the early stages of their development. Some of them will provide a second round of funding to companies that they have backed and whose success indicates that they are worth taking to the next stage of growth.

If you or one of your clients is preparing to dip a toe into the country's still large pool of venture capital, there is one final thing worth remembering. Valuations have fallen dramatically from the heady days of 1999 and early 2000. This means that venture capitalists are looking for proportionately larger shareholdings for their money than last year.

But it is this that is keeping them interested. According to Gavin Bourke of Trinity, the more realistic valuations mean investment opportunities are more attractive. 'For cash-rich venture funds, this is a very good time to be investing', he says.

**\* \$/£ exchange rate calculated at \$1.15 to £1. G**

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

## GUARANTEED More Destructive than a GREAT WHITE...



# HANNAY®

Document, Data and Product Destruction

01 838 5200

[www.hannay.ie](http://www.hannay.ie)



Confidential materials collected from HOME, OFFICE and INSTITUTIONS throughout DUBLIN and IRELAND.  
For information or to order direct call 01 838 5200 or visit [www.hannay.ie](http://www.hannay.ie)

# Neighbourhood

## MAIN POINTS

- *Glencar Exploration plc v Mayo County Council*
- Case law dealing with scope of duty of care
- Contrast between English and Irish positions

We used to be taught in religion class that the answer to the well-known question ‘who is thy neighbour?’ was ‘thy neighbour is all mankind’. But for lawyers, the answer must be more circumspect. Michael Peart explores the issues surrounding duty of care in the light of a recent Supreme Court decision

In a legal context, the ‘neighbour principle’ relates to the category of people to whom we owe a duty of care, and, if such a duty of care exists, whether the loss claimed is one to which responsibility attaches.

The Supreme Court judgment in *Glencar Exploration plc v Mayo County Council* (unreported, 31 July 2001) affects both of these questions, but mainly the former. The result of the decision clarifies the law in this jurisdiction by interpreting the Supreme Court’s earlier decision in *Ward v McMaster* ([1985] IR 29 HC; [1988] IR 337 SC) in a way that brings our law back into line with recent English decisions such as *Murphy v Brentwood DC* ([1991] 1 AC 398), which effectively closed the floodgates that it was feared had opened following previous decisions, in particular *Junior Books Limited v Veitchi Company Limited* ([1983] 1 AC 520).

### The facts of the case

Before dealing with the *Glencar* judgment itself, it is useful to outline briefly the facts of the case. As far back as 1968, the plaintiffs had been granted ten prospecting licences for exploring for gold deposits in an area south of Westport, Co Mayo. Between 1968 and 1992, Glencar spent close to £2 million in prospecting for gold under the terms of their licences. In 1991, they entered into a joint venture with another company, Newcrest Mining Limited, a major Australian gold producer, as further investment would be required to enable the encouraging results to be turned into commercial mining production. However, shortly after this joint venture was set up, Newcrest withdrew from the project after, it was alleged, the inclusion by Mayo Co Council in its February 1992 county development plan of a complete mining ban in Mayo.

In subsequent judicial review proceedings, Blayney J found that the inclusion of the mining ban was *ultra vires* but adjourned the plaintiff’s damages claim with liberty to apply. In due course, the damages claim came before Kelly J in the High Court, who delivered judgment on 20 August 1998 in which he dismissed the claim for damages. While Kelly J

found that Mayo Co Council was negligent in adopting *ultra vires* the mining ban, he nevertheless decided that the negligence in question did not give rise to any right to damages. In effect, he found that while the council had been negligent, it was not in breach of any duty of care owed to the plaintiffs as a result of which they suffered loss and would be entitled to damages. The plaintiffs appealed this finding to the Supreme Court.

### The Supreme Court decision

The relevant part of the judgment of the chief justice for the purpose of this article is that dealing with the ‘neighbour principle’. In other words, the question was whether the plaintiff was a body to which the duty of care was owed and, if so, whether the loss suffered as a result was one which could sound in damages. The chief justice dismissed the appeal, but in doing so set out the history and development of the law, both in this jurisdiction and in England.

In order to appreciate the significance of Keane CJ’s judgment, one must compare the development of the neighbour principle both in this jurisdiction and in England. Until the late 1980s, there was much convergence between the two jurisdictions. However, with the 1991 overruling of previous decisions, the law in England was revised. We, however, did not follow suit. We now appear to have reconverged following the *Glencar* judgment, not so much by an overruling of *Ward v McMaster*, but by a reinterpretation of it.

The starting point is the notorious ‘snail in the ginger beer’ case of *Donoghue v Stephenson* ([1932] AC 562), so beloved by all students of the law of negligence. Prior to this case, some contractual relationship with the tortfeasor was necessary before a claim for damages could succeed. Mrs Donoghue, however, had consumed at least a portion of a bottle of ginger beer that she had been given by a friend, who had bought it in a café. Lord Atkin famously found that in spite of the absence of any contractual relationship between the manufacturer of the ginger beer in question and Mrs Donoghue, she was

# ood watch



entitled to recover damages for negligence.

Following this decision, recovery continued to be restricted to claims arising from injury to the person or injury to property. The position was that, provided that the necessary 'proximity' was established between a plaintiff and a defendant, and that the 'foreseeability' of injury was established, recovery of damages was possible. 'Pure economic loss' – as opposed to damages for injury to the person or property – remained irrecoverable, in general, until the decision in *Hedley Byrne Limited v Heller & Partners* ([1964] AC 465), when pure economic loss

caused by negligent misstatement was for the first time found to be recoverable in damages. For almost the next 20 years, the situation remained that, negligent misstatement apart, pure economic loss was irrecoverable both here and in England.

## Criteria of care

After *Donoghue v Stephenson*, the principles determining the range of the duty of care were at least unclear, no precise definition being decided in England. Much judicial ingenuity was used from time to time to bring otherwise irrecoverable losses within the scope of *Donoghue v Stephenson*. The concepts of 'proximity of the parties' and 'foreseeability' were to the forefront, but the question (which arose if the floodgates were not to be opened) was: what limits on recovery still existed, especially following *Hedley Byrne v Heller & Partners*? Ultimately, in *Anns v Merton Borough Council* ([1978] AC 728), Lord Wilberforce's 'two-stage test' emerged.

The test meant that, provided the necessary proximity exists, only some considerations (such as public policy) ought to deprive a plaintiff of his recovery of loss. This clearly had the potential to extend the scope of the duty of care to a wider range of claimants, particularly in the area of pure economic loss, since there is no mention in Lord Wilberforce's statement of excluding pure economic loss. It was not surprising that there was no universal acceptance of this formula.

Perhaps the high-water mark in this regard came in *Junior Books Limited v Veitchi Company Limited*, when pure economic loss was found to be recoverable by a plaintiff company against a flooring firm that was sub-contracted by contractors employed by the plaintiff company to carry out work to its factory premises. This was a significant extension beyond what had been previously decided, since the plaintiffs were once-removed from direct contractual relations with the defendants. It should be noted at this stage that it was *Junior Books* that was followed in this country in *Ward v McMaster*, but more will be said about this later.

Following the decision in *Anns v Merton Borough Council*, there was much judicial disquiet in England, the feeling being that Lord Wilberforce's 'two-stage test' had been thought to do more than in fact was intended by the decision. For example, in *Governors of Peabody Donation Fund v Sir Lindsay Parkinson & Company Limited* ([1985] AC 210), Lord Keith of Kinkel expressed the view that 'in determining whether or not a duty of care of a particular scope was incumbent on a defendant, it is material to take



into consideration whether it is *just and reasonable* that it should do so' (emphasis added).

This view, as we shall see, appeals to Keane CJ in his *Glencar* judgment, in restricting his view of the scope of the duty of care. This concept was expressed by Lord Bridge in *Caparo Industries plc v Dickman* ([1989] 1 AER 798; [1990] 2AC 605) as follows: 'the situation should be one in which the court considers it *fair, just and reasonable* that the law should impose a duty of given scope on the party for the benefit of the other' (emphasis added).

Ultimately, in *Murphy v Brentwood DC*, the House of Lords overruled the *Anns* decision and all cases flowing from it. In that case, Lord Keith of Kinkel stated that, in his opinion, 'it is clear that *Anns* did not proceed upon any basis of established principle, but introduced a new species of liability governed by a principle indeterminate in character but having the potentiality of covering a wide range of situations, involving chattels as well as real property, in which it had never hitherto been thought that the law of negligence had any proper place'.

He went on to state that he would 'hold that *Anns* was wrong decided as regards the scope of any private law, duty of care resting on local authorities in relation to their function of taking steps to secure compliance with building bye-laws or regulations and should be departed from. It follows that *Dutton v Bognor Regis UDC* ([1972] 1QB 373) should be overruled, as should all cases subsequent to *Anns* which were decided in reliance on it'.

### The Irish position

Having seen the development of the law in England up to the overruling of the *Anns* 'two-stage test', we must now look at the situation in Ireland in order to appreciate the significance of the *Glencar* judgment in relation to the scope of the duty of care.

As Keane CJ states in *Glencar*: 'The decisions in *Donoghue v Stevenson* and *Hedley Byrne v Heller* &

*Partners* have been considered and adopted in our courts in a number of cases and unquestionably represents the law in this jurisdiction'.

He also points out that the 'two-stage test' adopted by Lord Wilberforce in the *Anns* case has been thought to be the appropriate test in this country, having regard to the decision of the Supreme Court in *Ward v McMaster*. In this regard, he refers to the third edition of McMahon and Binchy's *Law of torts*.

That work contains four pages of extremely detailed commentary and footnotes dealing with the virtues of the *Ward v McMaster* decision, and in particular with the judgment of McCarthy. It goes to some lengths to point out that the 'three-step approach' of McCarthy J is the correct one here. That approach was that if the proximity and foreseeability requirements were satisfied, then (provided there was no compelling exemption based on public policy) the plaintiff could succeed. The authors comment that as recently as July 1998 in *Forshall and Fine Arts Collections Ltd v Walsh*, Barrington J (Lynch and Barron JJ concurring) stated that he had 'no doubt' that the plaintiff 'fell within the proximity or neighbourhood principle as described in the cases of *Ward v McMaster* and *Caparo Industries plc v Dickman*'. The authors express puzzlement at the inclusion of *Caparo* in this sentence, given the fact that it differs from *Ward v McMaster*.

But in *Glencar*, the chief justice carries out an extensive examination of the judgment in *Ward v McMaster* in the High Court (Costello P) and then examines the Supreme Court judgments in the same case, which were delivered by Henchy J and McCarthy J. In effect, he downgrades the 'three-stage test' of McCarthy J to mere *dicta*. He states in this regard:

'Since Finlay CJ and Griffin J expressed their agreement with the judgment of Henchy J and McCarthy J, it is not clear that the observations of the latter in relation to the two-stage test in *Anns* necessarily formed part of the *ratio* of the decision. Given the far-reaching implications of adopting in this jurisdiction a principle of liability in negligence from which there has been such powerful dissent in other common-law jurisdictions, I would not be prepared to hold that further consideration of the underlying principles is foreclosed by the *dicta* of McCarthy J in *Ward v McMaster*'.

He then concludes that 'there is in my view no reason why courts determining whether a duty of care arises should consider themselves obliged to hold that it does in every case where injury or damage to property was reasonably foreseeable, and

## LORD WILBERFORCE'S 'TWO-STAGE TEST'

Dealing with the scope of the duty of care in *Anns v Merton Borough Council* ([1978] AC 728), Lord Wilberforce stated the 'two-stage test' in the following terms:

'First, one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage, there is a sufficient relationship of proximity or neighbourhood, such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a *prima facie* duty of caring exists.

'Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty, or the class of person to whom it is owed, or the damages to which the breach of it may give rise'.



For innovative solutions just click...



the notoriously difficult and elusive test of “proximity” or “neighbourhood” can be said to have been met unless very powerful public policy considerations dictate otherwise. It seems to me that no injustice will be done if they are required to take the further step of considering whether, in all the circumstances, it is just and reasonable that the law should impose a duty of a given scope on the defendant for the benefit of the plaintiff, as held by Costello J at first instance in *Ward v McMaster*’.

### Established principles

This re-examination by the chief justice of the case law dealing with the scope of the duty of care, and the test which ought to be applied, is clearly resonant of the speech of Lord Keith of Kinkel in *Murphy v Brentwood*. Clearly, the chief justice is of the view that *Ward v McMaster* went too far and departed from ‘established principles’. However, there is certainly a contrary view, namely that confining the resolution of cases to ‘established principles’ prevents recovery in otherwise deserving cases by refusing to extend the range of cases in which recovery ought to be possible. Some plaintiffs will now be effectively without a remedy for actual losses suffered through no fault on their part.

Admittedly, the chief justice’s decision has left the judiciary some discretion in the matter by stating that a judge ought to ask whether ‘it is just and reasonable that the law should impose a duty of a given scope on the defendant’, but against this it must be said that greater uncertainty will now exist as to whether recovery will be possible. After all, judges vary in the exercise of that discretion.

It should be remembered that in the overruling of the *Anns* decision in *Murphy v Brentwood*, Lord Keith stated that in doing so ‘it follows that *Dutton v Bognor Regis Urban District Council* ([1972] 1 QB 373) should be overruled, as should all cases subsequent to *Anns* which were decided in reliance on it’. The *Dutton* case involved a defective house. The builder had built the house, having obtained planning permission. The defendant’s inspector had inspected the foundations during the course of construction, and had passed them. On completion of the house, the builder sold it to a purchaser who, some months later, sold it to the plaintiff. Shortly after Mrs Dutton moved in, the house began to subside because of defective foundations. The claim was for the cost of repairs – that is, pure economic loss. Lord Denning found for the plaintiff, even though she was a subsequent purchaser. He found that the defendant council owed a duty of care on the *Donoghue v Stevenson* principles, namely a duty owed to the ultimate consumer.

**The chief justice’s decision has left the judiciary some discretion in the matter by stating that a judge ought to ask whether ‘it is just and reasonable that the law should impose a duty of a given scope on the defendant’**

Lord Denning had this to say in *Dutton*: ‘The damage here was not solely economic loss. It was physical damage to the house. If Mr Tapp’s submissions were right, it would mean that if the inspector negligently passes the house as properly built and it collapses and injures a person, the council are liable; but if the owner discovers the defect in time to repair it – and he does repair it – the council are not liable. That is an impossible distinction. They are liable in either case’.

Many would feel that such a plaintiff ought to recover her losses, yet this is the very case that was overruled in *Murphy v Brentwood*, since *Anns* had followed it. If a similar case occurred in Ireland, recovery would have been possible under the *Ward v McMaster* principles, but, following *Glencar*, one could not be certain of success.

The so-called floodgates argument is that, by an expansion of the scope of the duty of care, claims of an indeterminate class will be extended to an indeterminate range of people and that an unfair burden will be cast upon local authorities and other similar bodies, which presumably these days includes insurance companies. That is the public policy consideration underlying the restriction of the scope of the duty of care. The contrary argument is, of course, that these are the very bodies who have shoulders broad enough to carry that burden, and in the case of insurance companies they are paid premiums calculated to meet the claims. On the other hand, the deprived plaintiff is in no position to bear the loss. Time will tell whether the judges will use their discretion in a way which displays some sympathy for the unfortunate plaintiff who suffers a loss or whether they will yield to these so-called public policy considerations.

Finally, dealing with the question of recovery for economic loss, there are ominous signs in the chief justice’s judgment when he states: ‘we were not invited in the present case to overrule our earlier decisions in *Siney* [referring to *Siney v Dublin Corporation*] and *Ward v McMaster*. I would expressly reserve for another occasion the question as to whether economic loss is recoverable in actions for negligence other than actions for negligent misstatement and those falling within the categories identified in *Siney* and *Ward v McMaster* and whether the decision of the House of Lords in *Junior Books Ltd v Veitchi Company Ltd* should be followed in this jurisdiction’.

We will watch that space with interest! **G**

*Michael Peart is a partner in the Dublin law firm Pearts.*

www.legalit.ie



# Tech trends

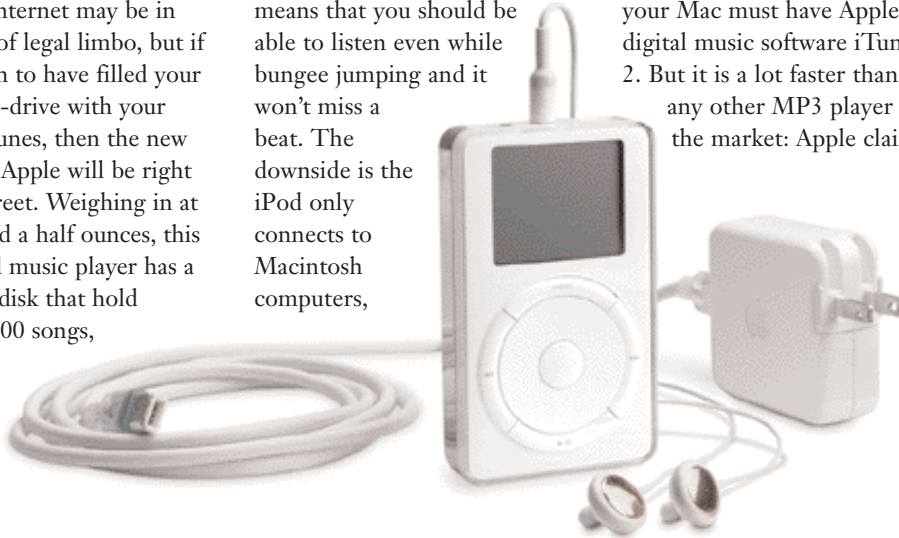
## Sing while you're swinging

**D**on't ask, don't tell. Downloading music files from the Internet may be in some sort of legal limbo, but if you happen to have filled your Mac's hard-drive with your favourite tunes, then the new iPod from Apple will be right up your street. Weighing in at only six and a half ounces, this new digital music player has a 5GB hard disk that hold around 1,000 songs, which is equivalent to 100 CDs. Its

ten-hour battery and state-of-the-art skip protection means that you should be able to listen even while bungee jumping and it won't miss a beat. The downside is the iPod only connects to Macintosh computers,

through Apple's proprietary FireWire connection, and your Mac must have Apple's digital music software iTunes 2. But it is a lot faster than any other MP3 player on the market: Apple claims

that the iPod can download an entire CD's worth of music in just ten seconds. Available for around £361.59 (€450) excluding VAT from the Apple Store ([www.store.apple.com](http://www.store.apple.com)) and computer outlets.



## Taxing times



## Fat boy slimmed

**I**f your firm is serious about its 'clean desk' policy, then maybe it should take a look at the new slimline NetVista X41 from IBM. The

company claims that the PC's 'integrated flat panel design' screen takes up to 75% less desk space than standard desktop computers. Despite its slim appearance, the NetVista still manages to pack a punch. It comes with a Pentium 4 processor, and – depending on your specifications – a hard drive of up to 40GB, memory of up to 2GB, powerful 3D graphics and 16MB of video memory. And, if you can get away with it on work time, the 16x DVD with integrated audio and stereo speakers should maximise your viewing pleasure.

Available from computer outlets for between £1,379 (€1,750) and £2,157 (€2,740) excluding VAT, depending on specifications.



## A little belter

**W**ell, it's about time someone invented one of these. You know the way your mobile phone waits until you've mislaid your charger before it runs out of juice? And it always when you need

it most? The new Scribble keyring phone charger can



change all that. Designed to clip on a keyring and powered by an ordinary 9-volt battery, the keyring charger is available for most models of mobile phone, including Nokia, Ericsson, Motorola, Panasonic, Sony, Siemens and Sagem. Available on-line from [ScribblePDA.com](http://ScribblePDA.com) for around stg£6.95 (€9.50).

**W**orking on a computer can be taxing, but sometimes that's no bad thing. Indeed, it's what you'd hope for when searching the new digital resources from the good people at Tax World, who aim to impart a wealth of knowledge, including the complete text of the Irish tax code, legislative and case-law precedents in both Ireland in the UK, and concise commentary. Previously available only as the three bound volumes that collectively make up the *TaxBook*, you can now opt for a disk-based version, *TaxDisc*, which is fully searchable, or an on-line version, *TaxLive 2001*, which is continually updated by the authors. *TaxDisc or a years' access to TaxLive will cost about £400 for a single user; more for a multi-user network licence, depending on the number of users and options selected. For further information, contact Tax World at 01 872 8881 or visit their website, [www.taxworld.ie](http://www.taxworld.ie).*

## Nowhere to hide from your e-mails now

**T**ired of ringing 'back to base' to catch up on your calls after a morning in court? So was north Dublin solicitor James Kennedy of Michael J Kennedy and Co in Baldoye – except that he decided to do something about it. The end result is SmartNote, a new service that

links your mobile phone to your office PCs and converts your e-mails to text messages that can be sent directly to your mobile. The service also includes a calendar function to remind you of scheduled appointments. According to Kennedy, the service was

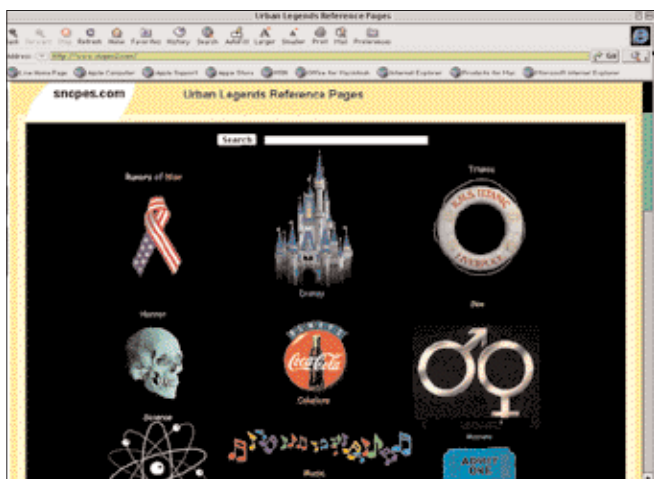
originally tailored for the legal profession but is now taking off among other disciplines, such as engineering and consultancy. The service costs €100 a year for single user or €500 a year for multiple users.



SmartNote

*For further information, contact James Kennedy at SmartNote on 01 832 1057, e-mail [info@smartnote.ie](mailto:info@smartnote.ie) or log on to [www.smartnote.ie](http://www.smartnote.ie) for a demonstration.*

# Sites to see



**Urban legends** ([www.snopes.com](http://www.snopes.com)). You remember that prediction from Nostradamus that did the rounds following the events of 11 September? Utterly bogus – and this site will tell you why. This weird and wacky site is dedicated to verifying or debunking urban legends or stories that sound too good to be true. The perfect place to visit if you want to tell your best friend he's a bare-faced liar and get away with it.



**Cross-border business** ([www.borderbizlaw.com](http://www.borderbizlaw.com)). This site is hosted by Monaghan solicitors Morgan McManus and provides business law advice to both start-up and mature businesses on both sides of the border, including advice on insurance, taxation systems, employment law, and planning and environmental law in both jurisdictions. It also provides links to useful government and state-agency websites.



**Dublin Solicitors' Bar Association** ([www.dsba.ie](http://www.dsba.ie)). Everything you need to know about the largest bar association in the country but were afraid to ask. Includes details of forthcoming events and seminars, information on the association's helpline, and an on-line version of the DSBA newsletter *The Parchment*.



**Partnership law** ([www.partnershiplaw.ie](http://www.partnershiplaw.ie)). Practical information for anyone interested in partnership law, from Dr Michael Twomey, author of *Partnership law*. The site includes sections on recent developments in this area of law and a summary of cases from common-law jurisdictions.





# Desperately



Michelle O'Keefe: There is a variety of investment vehicles available to private investors that, in a balanced portfolio, can help to diversify your capital and reduce your exposure to risk

**Uncertain economic times and market volatility may discourage direct investment in shares. But there are products available that may help cushion your investment from risk, writes Michelle O'Keefe**

**W**orsening global economic conditions and on-going uncertainty about the possibility of further terrorist attacks have made security an overriding concern for many people, both in relation to their investments and to their personal lives. With the downward slide in share prices over the past year, many investors – particularly older investors – are reluctant to put all their money into the stock market.

But you can still find products that provide both capital guarantees and capital growth over a specified time period, although with a lower potential for growth than might apply to direct investment in shares. These include:

- Unitised with-profit bonds
- Unit-linked funds
- Tracker bonds

- Index funds
- Unit trusts/investment trusts.

Before investing in any of these products, however, you should seek independent expert advice, as product offerings vary considerably from institution to institution.

## Unitised with-profit bonds

With the on-going volatility in the stock market, there is now a huge appetite among Irish investors for products with capital guarantees. With-profit bonds allow you to invest in a range of assets, such as shares, property, cash and government gilts, and provide guarantees for the repayment of capital at the end of the investment term. These products declare annual bonuses that are also guaranteed, provided the bond is held to maturity.

Recent rates of return on with-profit bonds have been in the region of 6% gross a year. However, one particular product is currently providing a 9.5% gross guaranteed rate of return on the first anniversary for investment amounts of £50,000 plus – a far cry from current deposit rates. It should be noted, however, that this guarantee only applies if you hold the bond for the full term. If these types of products are encashed early, specified penalties apply.

Another point to bear in mind is that in a rising market

this type of investment will not produce the same returns as direct share investments.

With-profit bonds can also be used to provide an annual income and can be written in trust. Under current legislation, when you exit a with-profit bond you must pay tax at the standard rate of 20% plus a 3% exit levy on any gains made. However, you have no further tax liability.

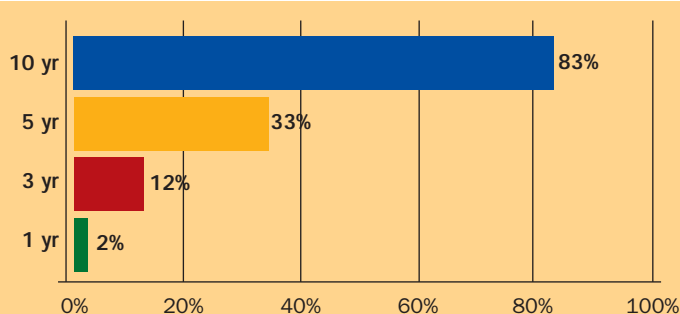
## Unit-linked funds

Unit-linked funds provide a simple way for people to make investments. These are 'pooled' funds where your money is combined with that of other investors under the management of a life-assurance or investment management company. These funds allow for diversification of holdings across a broad spread of investment vehicles, including shares, cash, gilts and property. You can also choose from funds that provide exposure to specific markets or sectors.

Unit-linked managed funds are most suited to investors who have neither the time nor the expertise to manage their investments and to investors who have small amounts of funds but who want maximum exposure to the markets.

Take, for example, guaranteed managed unit-linked funds. These provide a capital guarantee at the end of a specified period (typically five years), letting you participate in the market without any risk to your capital. But in

## AVERAGE GUARANTEED MANAGED FUNDS PERFORMANCE\*

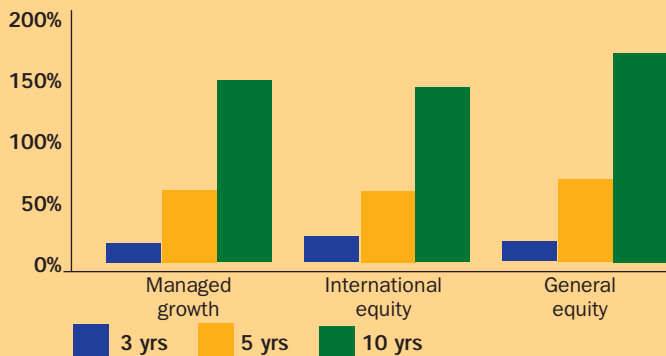


\*Performance to 16 November 2001. Past performance may not be a reliable guide to future performance. (Source: MoneyMate)



# seeking stability

## AVERAGE MANAGED FUNDS PERFORMANCE\*



\*Performance to 16 November 2001. Past performance may not be a reliable guide to future performance. (Source: MoneyMate)

reducing your capital risk, you also reduce your exposure to the stock market and thus your potential for growth.

Underlying investments in guaranteed managed funds tend to be in international shares together with a large proportion in secure investments such as cash, gilts and corporate bonds. The taxation of these funds is the same as described for with-profit bonds.

### Unit trusts

These are pooled investment vehicles offering investors the opportunity to diversify their holdings through collective investments. Professional managers, generally based in the large investment houses in the UK and elsewhere, invest the pooled funds in a variety of asset classes, usually concentrating on specific markets or sectors.

Examples of unit trusts include specific equity funds, securities funds, money market funds, and futures and options funds. Strict regulations govern

unit trusts, aimed at restricting excessive exposure and ensuring reasonable diversification and liquidity.

The main difference between an offshore unit trust and a unit-linked fund is that unit-linked funds are structured as life-assurance policies.

### Tracker bonds

Tracker bonds are offered by a number of investment management companies. They allow you to invest in shares with little or no risk to your capital. Some of these products provide 100% capital

guarantees at the end of the product term, while others only give an 85-90% capital guarantee but allow for higher equity participation with the potential for higher growth.

Tracker bonds are known as 'passive' investments because the rate of return achieved is tied directly to the performance of one or more stock markets. If the market index has risen by the end of the investment term (typically three to six years), then you would receive the capital guarantee plus a profit linked to a percentage of the market's index. If the market falls, you will still get your capital back at the end of the term.

These products are becoming increasingly popular in view of the current market volatility, but you should be wary of products quoting a large potential rate of return. Ideally, this type of investment should only be used for a portion of your funds, as tracker bonds are quite inflexible and do not allow for withdrawal of capital during the investment period.

### Index funds

These funds also track the performance of well-known

indices as closely as possible. In the US, index funds are one of the largest investment vehicles for private investors and they are becoming increasingly popular in Ireland. These funds are 'passively' managed, which means that the investment house providing the product does not use its own expertise or judgement to identify shares – instead, it simply aims to track the performance of the chosen index as closely as possible.

The difference between an index fund and a tracker bond is that an index fund is open-ended, meaning you can leave your money in the fund for as long as you wish. There are no capital guarantees with an index fund, but you benefit from the full growth in the market (rather than a set percentage of the growth as is the case with tracker bonds). Index funds are regarded as medium-risk products while tracker bonds are considered low risk.

These descriptions should give an insight into the variety of investment vehicles available to private investors in addition to direct investments in shares. In a balanced portfolio, these types of investments can help to diversify your capital and reduce exposure to risk.

## AVERAGE PERFORMANCE OF IRISH UNIT LINKED FUNDS\*

Type of fund	1 year	3 years	5 years	10 years
Managed growth fund	-7.39%	16.74%	59.23%	141.88%
International equity fund	-17.66%	21.81%	57.21%	134.55%
General equity fund	-14.39%	16.82%	63.71%	162.13%
Guaranteed managed fund	2.21%	11.63%	33.47%	83.38%

\*Performance to 16 November 2001. Past performance may not be a reliable guide to future performance. (Source: MoneyMate)

*Michelle O'Keefe is a director of Davy Stockbrokers' private clients unit. Please note that investments may fall as well as rise in value. The information provided here is intended as a guide only and not as a substitute for professional tax advice. You should consult your tax advisor for detailed advice about the rules that apply in your individual circumstances.*

# harvestLaw

THE LEADING ACCOUNTS PACKAGE FOR LEGAL FIRMS

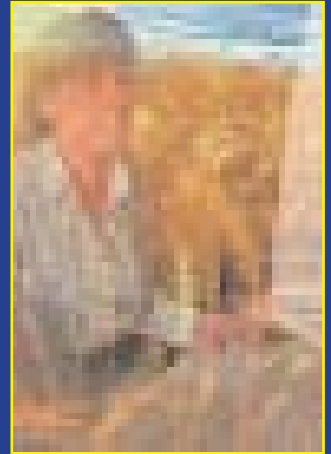
Announces the arrival of:

## HARVEST LAW for WINDOWS

Running under Windows 95, 98, NT V4, ME and 2000

Are you €uro ready?

- Full upgrade paths for existing DOS users
- Free conversions from other accounting systems where possible
- Fully Euro compatible and convertible



HARVEST SOFTWARE, 15 PARNELL ST WATERFORD  
TEL 051-872111 FAX 051-872880 E-MAIL [harvestsoft@iol.ie](mailto:harvestsoft@iol.ie)

## THE GOLDEN PATH TO PROFIT



# SORRENTO 2002

Law Society of Ireland Annual  
Conference

4-7 April, 2002



SPONSORS :



Jardine Lloyd Thompson Ireland  
Limited

**Bank of Ireland**



Solicitors' Mutual Defence Fund Limited



## MESSAGE FROM THE PRESIDENT

Dear Colleague,

I have pleasure in inviting you to join me at the Society's Annual Conference in Sorrento on 4th to 7th April, 2002.

The charming city of Sorrento is quaintly positioned along the majestic Amalfi coastline. I look forward to meeting you there, for what I hope will be a stimulating Conference in a truly enchanting location.



This year the theme of the Conference will be "Professional Indemnity: When Saying Sorry Isn't Enough" and you cannot fail to be impressed by the panel of distinguished speakers who will address a wide range of topics.

We are most grateful to our sponsors - Bank of Ireland, Bank of Ireland Asset Management, Jardine Lloyd Thompson Ireland Limited, Solicitors' Mutual Defence Fund and Osborne Recruitment for their continued support of the Law Society's Conference and I would ask you to give them your favourable consideration in return.

I thank all of you who have made advance bookings and I hope those who have not yet booked will now do so and look forward to a memorable conference which we hope will be enjoyed by all.

Elma Lynch  
President

## BUSINESS SESSION

### Professional Indemnity Insurance: When Saying Sorry isn't Enough

#### SPEAKERS WILL INCLUDE:

##### Michael Houlihan

Michael Houlihan is senior partner in Michael Houlihan & Partners, Solicitors, in Ennis, Co. Clare. He has been for many years a panel solicitor to the Solicitors' Mutual Defence Fund and a board member of the Fund.

He qualified in 1963 and joined his father, the late Ignatius M. Houlihan, in the family firm in Ennis and built up an extensive practice in subsequent years. He specialised in personal injury litigation, company law and local government law, but there is scarcely a branch of the law in which he has not been professionally involved.

He has been closely associated with the Council of the Law Society for the past 30 years; he was first elected to the Council in 1970 and was elected President in 1982/83.

Michael Houlihan is very well known abroad; he has for many years attended the sessions of the American Bar Association and the International Bar Association.

He has many interests, business and social, outside the law. These include membership of the Advisory Board of the Ireland Fund and his interest in Shannon Development, of which he is a former Chairman.

His hobbies include opera, films and swimming; with his wife Joan, he likes to spend his holidays at opera seasons in Europe and the U.S.A.

##### Cyril Forbes

Cyril Forbes is Deputy Chairman of Jardine Lloyd Thompson Ireland Limited, the Irish arm of Europe's largest owned insurance brokers Jardine Lloyd Thompson Group plc. Until 1998 he was Managing Director of Kennedy Forbes Ltd, the niche corporate brokers he set up in 1974, which merged with Jardines.

Cyril has over 35 years insurance experience as both an underwriter and a broker at Lloyd's and in Ireland. He is an acknowledged expert in solicitors' professional indemnity insurance. In 1987 he spearheaded, with the large solicitor firms, the introduction of competitive insurance premiums in Ireland for the profession, at the same time as the SMDF started offering cover.

In 1997 he was part of the team advising the influential November Group in London who wanted, and ultimately obtained, an open market insurance situation for solicitors in England and Wales.

In 1999 Jardines were appointed brokers to the SMDF, and now are the largest handlers of solicitors' professional indemnity insurance in Ireland – based on their reputation for providing competitive premiums, pragmatic problem resolution and hands-on risk management.

Amongst his directorships, including being a past-Chairman of the Crafts Council of Ireland, he is currently a director of Dublin Docklands Development Authority.

##### David Byrne

David Byrne was appointed European Commissioner for Health and Consumer Protection in September 1999. His responsibilities include European policy and legislation on food safety, the establishment of the European Food Authority, the regulation of genetically-modified organisms in Europe, the response to the BSE crises, the implementation of the new European Public Health Strategy, developing consumer confidence in internet transactions, as well as representing the interests of European consumers in new policy developments.

Before becoming European Commissioner, David Byrne was Attorney General. In that role, he was one of the negotiators of the Good Friday Agreement in April 1998 and oversaw the major constitutional amendments required by that Agreement.

After obtaining a Bachelor of Arts at University College Dublin, he was called to the Irish Bar in 1970, on qualifying as a Barrister at Law at the King's Inns. He was called to the Inner Bar in 1985. He is a Fellow of the Chartered Institute of Arbitrators and also an Honorary Member of the American Bar Association. He was recently conferred with an Honorary Fellowship of the Faculty of Public Health Medicine.



## PACKAGE A – based on Charter Flight - Cost: £685.00/ 870.00 per person share

- n The cost includes return flights (Dublin/Naples/Dublin), taxes, transfers, three nights' bed and breakfast at the Sorrento Palace, Welcome Reception, Conference Seminar and Gala Banquet. Surcharges could apply in respect of changes in air fares or increases in insurance premiums or VAT/tax rates in respect of the hotel.

### Charter Flight

- n 4 April 2002 depart Dublin at 9.00 am arrive Naples 1.00 pm  
7 April 2002 depart Naples 6.00 pm arrive Dublin 8.00 pm  
(All times are local and subject to Air Traffic Control restrictions. However, we are endeavouring to secure later departure and earlier return flight times so that we may facilitate those wishing to travel from Cork, Shannon, etc. Exact times will be detailed in your booking confirmations. The charter flight will be allocated strictly in order of bookings received.)

- n Those delegates not allocated to the Charter flight will be accommodated on scheduled flights which will incur a supplemental charge and transfer charges.

**Note:** Connecting flights from Cork, Shannon etc. can be arranged by Sadlier Travel. Please complete relevant section on the reservations form.

## PACKAGE B – based on Scheduled Flights

- n Delegates travelling on scheduled flights will travel via various European cities and will have the option of extending their stay subject to airline and hotel availability.
- n Price will be based on the charter package but will not include airport transfers and may incur airline and hotel surcharges.
- n Delegates intending to travel on scheduled flights should return a completed reservations form as soon as possible with details of their preferred travel arrangements.

## REGISTRATION FEE

- n Payable by delegates only and not accompanying persons £74.81/ 95.00

## BOOKING ARRANGEMENTS

- n **The closing date for receipt of bookings is 18th February 2002.**
- n Please complete the reservations form and return with deposit of £300.00/ 380.00 per person travelling.
- n **Contact Details**  
If you would like any further information please contact any member of the Organising Team:  

Sarah Ellins (Law Society)	Tel: (01) 672 4823	Email: s.ellins@lawsociety.ie
Gerry Griffin (Chairman)	Tel: (01) 490 1185	
James McCourt	Tel: (01) 660 6377	
Gerry Doherty	Tel: (01) 834 4255	
Mary Keane	Tel: (01) 672 4800	
- n For information on extending your stay please contact the conference travel agent:  
Alan Benson/Angela O'Brien, Sadlier Travel, 8-9 Westmoreland Street, Dublin 2.  
Tel: (01) 670 4880 Fax: (01) 670 4883 Email: alan@sadlierttravel.com

## CANCELLATIONS

- n Delegates are advised that cancellations made after 18th February 2002 will be subject to a 100% cancellation charge (full invoiced amount).
- n Travel insurance will be automatically invoiced at approximately £20.47/ 26.00 (actual cost to be confirmed) per person unless delegates indicate on the reservations form that they have their own insurance and provide the name of the company with whom they are insured.
- n No contract shall arise until a full deposit has been received and a Booking Form (which will be sent with written confirmation of acceptance of the reservation) has been signed and returned.



All delegates will be accommodated in the Sorrento Palace \*\*\*\*. The hotel offers a choice of restaurants, bars and tea lounges, room service, TV, air-conditioning, outdoor swimming pool, tennis courts, boutiques and hair and beauty salon.

## SOCIAL PROGRAMME

- n The conference will open on Thursday evening with a Welcome Reception for all participants.
- n On Friday an optional all-day tour is available to Positano via hydro-foil boat tour along the Amalfi Coast past Capri and dock in Positano for a 3<sup>1/2</sup> hour stopover for lunch (not included) and time at leisure.
- n On Saturday afternoon a half-day tour to Pompeii (tour price includes entrance to Roman ruins) is also available.
- n The Conference Banquet will be held on Saturday night. Dress – smart informal.

## PROGRAMME

### THURSDAY, 04 APRIL 2002

<b>Afternoon</b>	Arrival at Naples Airport. Transfer to hotel for check-in and conference registration
<b>Evening</b>	Welcome Reception for all participants - sponsored by Osborne Recruitment
<b>Venue:</b>	Sorrento Palace

### FRIDAY, 05 APRIL 2002

<b>All day</b>	Day tour to Positano departing at 10.00 am Hydro-foil boat trip along the Amalfi coastline. 3 <sup>1/2</sup> hour stop-over in Positano for shopping and lunch (not included). A list of recommended restaurants will be supplied.
<b>Evening</b>	At leisure

### SATURDAY, 06 APRIL 2002

<b>Morning</b>	Conference Business Session – Professional Indemnity: When Saying Sorry Isn't Enough - sponsored by Jardine Lloyd Thompson Ireland Limited and Solicitors' Mutual Defence Fund Limited
<b>Venue:</b>	Conference Centre, Sorrento Palace

<b>Afternoon</b>	Half-day tour to Pompeii (2.00 pm – 5.30 pm)
------------------	--

<b>Evening</b>	Reception – sponsored by Bank of Ireland Asset Management Conference Banquet and Dancing – sponsored by Bank of Ireland
<b>Venue:</b>	Sorrento Palace (Dress: smart informal)

### SUNDAY, 07 APRIL 2002

<b>Morning</b>	Departure
----------------	-----------



# Book reviews

## *Liber memorialis:* Professor James C Brady

Oonagh Breen, James Casey and Anthony Kerr (editors).

Round Hall Sweet & Maxwell (2001), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-215-X. Price: £98.

Professor James C Brady was above all a gentleman and a scholar – an attribution at times casually made when someone has passed on, but not so in this instance. The deep well of affection for Jim that was manifested at his obsequies at University Church, Dublin, in June 1998 is now reflected in a more concrete way. This book, published in his memory, contains some 20 essays and is edited by three of his former colleagues from the UCD law faculty.

The essays address a wide range of legal topics, most of which are in the equity/property/succession areas with which Jim himself was particularly associated. The essays are all of a high quality, as would be expected from the pantheon of essayists who contributed. The contributors are mainly members of the UCD law faculty but include other

luminaries, such as Chief Justice Ronan Keane and former Circuit Court judge John Buckley (both of whom would have known Jim professionally during their respective periods as members of the Law Reform Commission), Professor John Wylie (of property and conveyancing textbooks fame), Professor Desmond Greer of Queen's University, Belfast (one of Jim's third-level *alma maters*) and Dr Albert Power (the director of education and training at the Institute of Chartered Accountants in Ireland and formerly holding a similar position in the Law Society).

It would be inappropriate for a reviewer of such a volume to mention some essays as being better than others. This book is both for those who were privileged to know Jim – as a perpetuation of his memory – as well as for every lawyer, legal

practitioner and academic alike, who may browse the book confident in the knowledge that any essay selected may be read and appreciated for its own intellectual worth in less than an hour. However, common to such compilations, some essays have titles clearly designed to attract the casual reader, such as *Grating expectations? The protection of legitimate expectations in European Community law and in autochthonous Irish law* (Gavin Barrett), *"A false, mawkish and mongrel humanity"? The early history of employers' liability in Ireland* (DS Greer), or *Prayers unanswered: how contract law views religion* (Paul A McDermott), to mention a few.

This *Liber memorialis* begins in the most appropriate way with the text of the address delivered at Jim's funeral mass by his lifelong friend, Sean Ballance, who accompanied Jim through his Newry Christian

Brothers schooling and then Queen's. Sean, with utmost realism, referred to the Jim so many knew and admired in the final phase of his life in this way: 'Jim suffered from multiple sclerosis for over 20 years and ... he fought it in every way for all that time. He worked right up to the end at the very limit of his physical strength. Jim never succumbed to self-pity, Jim Brady was a valiant man'.

Sean concludes by quoting from Emerson: 'a friend may well be recognised as *the* masterpiece of nature'. Many, like Sean, will have lost a masterpiece with Jim's passing, but at least now there is the consolation of having this memorial volume of essays – each of which Jim would have been delighted to grade A+. **G**

*Michael O'Mahony is a partner in the Dublin law firm McCann Fitzgerald.*

## Findlaters: the story of a Dublin merchant family 1774-2001

Alex Findlater. A&A Farmer, Beech House, 78 Ranelagh Village, Dublin 6. ISBN: 1-899047-69-7. Price: £35 hardback.

This book is a portrayal of members of the Findlater family, Dublin merchants, at work and at play, in politics, religion and business over the last 175 years. Sir William (Billy) Findlater, solicitor, twice president of the Law Society, brewery proprietor, member of parliament for Monaghan and the man who endowed the coveted Findlater scholarship for solicitors, is among the Findlaters portrayed in this fascinating book.

The author, the fifth Irish

generation of Findlaters, modestly states that the Findlaters were neither ascendancy nor peasantry, but were part of the new merchant and professional class of the time, first Presbyterian and then Church of Ireland. An ancestor of the author, also called Alexander, was in the 1860s the benefactor of the Abbey Presbyterian Church, Parnell Square, known as Findlater's Church.

The book chronicles many social issues. The author is conscious of past religious

differences in Ireland over the three centuries of the family history and notes there was a lot of insecurity as the Protestants moved from being part of a British Isles religious majority to an island minority in Ireland. This is illustrated by the story of the delegation dispatched by the General Synod of the Church of Ireland on 12 May 1922 to enquire of Michael Collins 'if they were permitted to live in Ireland or if it was desired that they should leave the country'. The author states

that this sensitivity caused the vast majority of Protestants to keep their heads well below the parapet and refrain from stating any views on church and state, even in the privacy of the family. The author states that the family kept 'mum' about the great power of the Catholic Church in the middle of the 20th century and did not have any strong political allegiances.

The portrayal of Billy, later Sir William, Findlater (born in 1824), and a member of the Findlater family who is well-



# Contract Law

Part of the **Butterworths**  
**Irish Law Library**

By **Paul Anthony McDermott**

Contract Law will appeal to both practitioners and students alike. For students, it sets out the law clearly and explains it in straightforward language. It will appeal to practitioners because it considers every major Irish contract law case and explores in detail practical matters such as construction of contracts, breach of contract and contractual remedies.

## A comprehensive text on Contract Law

- Completely up-to-date: Covers recent legislative developments such as the Electronic Commerce Act 2000 and the Distance Selling Regulations 2001
- Comprehensive (over 1,000 pages) and indepth treatment of the subject
- Written in a clear, straightforward style

## The Author

**Paul Anthony McDermott** is a well established author having already written two books for Butterworths *Res Judicata* and *Double Jeopardy* and *Criminal Law* (co-author), both of which have been very well received. He is a practicing barrister and lectures in UCD on this topic and in the Honourable Society of King's Inns.

## PRIORITY ORDER FORM : Contract Law

☐ ISBN: 1 85475 360 6

Guide Price: £95.00

Publication date: November 2001

Product Code: CL

Format: Hardback

Name: .....

E-mail: .....

Firm: .....

Address: .....

.....Postcode: .....

Telephone: .....

Orders are subject to a charge of £3.50 p&p in the UK and £4.50 p&p for overseas customers. Prices are subject to change without notice.

☐ We like to keep our customers informed of other relevant books, journals and information services produced by Butterworths Tolley or by companies approved by Butterworths Tolley. If you do not wish to receive such information, please tick the box.



**Butterworths**  
LexisNexis™

Butterworths (Ireland) Limited is a division of Reed Elsevier (UK) Ltd  
Registered office: Arthur Cox Building, Earlsfort Terrace, Dublin 2  
Registered in Ireland number 60402



known to lawyers, is an interesting aspect of the book. Billy was admitted as a solicitor in 1846, starting his professional career at the beginning of the famine of 1845-9. He subsequently practised on his own account as William Findlater & Co, ultimately taking his nephews, Edward Neptune Blood and Adam Lloyd Blood into partnership. The practice continued until 1956, finally closing on the death of Ken Lloyd Blood, son of Adam Lloyd Blood.

The author states that Billy started his public career – as many do – in the organisation of their profession, by becoming a member of the Council of the Law Society in the late 1850s.

Billy was elected president of the Law Society in 1877/8. In the same year, he endowed the society with the Findlater Scholarship at a cost of approximately £62,000 in present day terms (then £1,000) and in 1900 added to its value by transferring £865, estimated at today's value as £52,000, of railway debenture stock to be held on the same trust as his original gifts. The scholarship is currently awarded for the best overall performance in the professional and advanced courses and is regarded in many senses as the 'blue ribbon' of the society's educational awards.

Billy Findlater became interested in politics and was

elected to the House of Commons in 1880 and actively participated in the debates on Gladstone's *Land Act* of 1881 and other legislation. Although a staunch liberal, Billy supported Gladstone, but like most Presbyterians he was not prepared to go down the home rule path. He was out of parliament by the time Gladstone brought in his first *Home Rule Bill*. In 1896, he was elected president of the Law Society for the second time, apparently despite a resolution passed some 20 years before that no-one would be eligible for re-election to that office. In 1896, Billy Findlater received a letter from the lord lieutenant offering

him a knighthood during his year as president of the Law Society. Sir William was prominently involved in the Dublin Artisan Dwelling Company, was deputy lieutenant of County Dublin and served for 44 years as a member of the Council of the Law Society. He died in April 1906 at the age of 82.

This book is easy to read and gorgeously produced. Alex Findlater has written a handsome and accessible book which will be enjoyed by anyone who loves Dublin and is interested in business. **G**

*Dr Eamonn Hall is company solicitor of Eircom plc.*

## Contract law in an e-commerce age

Simon P Haigh. Round Hall Sweet & Maxwell (2001), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-224-9. Price: £38.

What first attracted me to this paperback volume was its title. As one who is still uninformed about the impact of e-commerce on such areas as electronic signatures, distance selling, offer and acceptance on the web, the *Unfair contract terms directive* and so on, this book is obviously a valuable educational resource at an introductory level.

It is a short book (342 pages of text) compared to existing major works on the law of contract, and that itself has a certain appeal, particularly for students and others who do not necessarily want an in-depth and comprehensive treatment of this area. Having said that, however, the book is replete with case references and deals extensively with all aspects of contract law in a very readable

and clear way. In his preface, the author states that 'this text is not meant to be, or to be treated as, a direct alternative to any of the weightier tomes on the subject. Rather it is perhaps to be viewed as an abridged introduction to the subject, which is handled in a far more detailed way in those works. I have set out the guiding principles only'.

Each chapter contains all the basic principles, and refers to the leading relevant cases. At the end of each section, where appropriate, the author includes a section dealing with the effect of various pieces of e-commerce legislation, such as EU directives, the statutory instruments implementing them, the *Electronic Commerce Act, 2000*, and so on. There is also an entire section dealing

generally with e-commerce regulations.

The author qualified as a solicitor in England and Wales in 1995, having worked for a large London firm as a commercial lawyer since 1993. He enrolled as an Irish solicitor in 1999 and now practises with the Dublin firm McCann FitzGerald. The experience of working in both jurisdictions puts him in an excellent position to write a work such as this.

His treatment of the subject matter displays an expertise and knowledge which enables him to write with authority. Any reader of this book will find it an excellent guide through the law of contract, and both lawyer and non-lawyer will find the additional material on the area of e-commerce an

invaluable introduction to a developing area of law.

Most of us have begun to conduct business on the Internet, even if it is only to purchase a book or a plane ticket. However, only when we read this book do we realise what an uncertain world we have entered. Judicial interpretation of e-commerce legislation is in its infancy and will no doubt contribute to a greater understanding of the legislation in due course. In the meantime, this work is an excellent and useful source of knowledge to those as yet unburdened by any legal knowledge in the area of e-commerce. I wholeheartedly recommend it. **G**

*Michael Peart is a partner in the Dublin law firm Pearts Solicitors.*

## Company law

Catherine McConville. Round Hall Sweet & Maxwell (2001), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-172-2. £11.95 paperback.

This is a basic book on the law for companies. It has a mere 148 pages of basic information followed by a short six-page index. The list of cases cited and of legislation runs to

less than 15 pages. And that's it.

So it is not an attempt to push Keane, Courtney or Forde off the bookshelves. But, taken on its stated terms, it is a worthy publication. Part of the

publisher's *Nutshells* series, it aims to provide 'a concise and straightforward synopsis' of company law. This it does well.

It is aimed primarily at the law student. Practitioners are,

or we should be, students. In our careers, we dare not stop learning. We must remain open to updating and revision. For many of us who practice company law, not solely, but as

part of general practice, this book can only be useful.

If you want to check on what a 'Bell Houses clause' is, or clarify the distinction between a company's objects and its powers, simple explanations are in chapter four. Kept awake at night by the rule in *Foss v Harbottle*? Go to chapter 10. It's brief, but it's there.

Chapter 12 on the duties of the directors is useful. It reminds us of the basic common-law duties of directors to act *bona fide* for the benefit of

the company; to exercise due care, skill and diligence (the test is partly objective, mainly subjective); and to account to the company for all personal benefits received as a result of being a director.

Importantly, the chapter on directors' duties does refer to case law and statutory developments, whereby the directors also owe a duty to creditors of the company in cases of doubtful solvency and insolvency, when the directors' minds should turn towards the

creditors. The statutory duty since 1990 to have regard to the interests of the employees is also noted.

Finally, the 1998 *Crinde Investments v Wymes* case, which went to the Supreme Court, is referred to, suggesting a duty also to certain shareholders in circumstances of mutual confidence and trust. The old simple formula that the directors only owe a duty to the company has, in the best legal traditions, its own train of exceptions.

Surprisingly, there is no

mention of the most significant company legislation since 1990, the *Company Law Enforcement Act*, a hugely significant piece of legislation, enacted earlier this year.

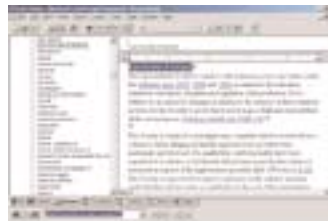
Yet, on its stated terms, this is a good book. It is a useful primer and can only help students of all ages towards an understanding of the sometimes byzantine complexities of company law. **G**

*Pat Igoe is principal of the Dublin law firm Patrick Igoe and Company.*

## Murdoch's Irish legal companion

**Henry Murdoch.** Available from Lendac Data Systems (tel: 01 677 6133). Price: £100 for a personal edition, £210 for a small firm license.

I liked the *Irish legal companion*. I found it easy to navigate and (although I only viewed some of the entries) the content appeared to be up-to-date and useful. The *Folio-Views* format, which will be familiar to users of the AG's office's Irish statute book CD-ROM, allows quick and



effective searching of the dictionary.

The hyperlinks throughout the text add significant value to the product as compared to a printed book. Another nice feature is the inclusion of the full text of Irish acts and statutory instruments which are mentioned in the text (and which are therefore likely to be the most important). I thought that the

*Companion* would be of particular use to busy practitioners, allowing them to orient themselves quickly in any area of Irish law. **G**

*John Mee was dean of the faculty of law at UCC until October 2000. He is a trustee director of the British and Irish Legal Information Institute (BAILII).*



SPANISH LAWYERS

**RAFAEL BERDAGUER**  
ABOGADOS

#### PROFILE:

**S**panish Lawyers Firm focussed on serving the need of the foreign investors, whether in company or property transactions and all attendant legalities such as questions of immigration-naturalisation, inheritance, taxation, accounting and bookkeeping, planning, land use and litigation in all Courts.

#### FIELD OF PRACTICES:

**G**eneral Practice, Administrative Law, Civil and Commercial Law, Company Law, Banking and Foreign Investments in Spain, Arbitration, Taxation, Family Law, International Law, Immigration and Naturalisation, Litigation in all Courts.

Avda. Ricardo Soriano, 29,  
Edificio Azahara Oficinas, 4 Planta, 29600 Marbella, Malaga, Spain

Tel: 00-34-952823085 Fax: 00-34-952824246  
e-mail: [rberdaguer@mercuryin.es](mailto:rberdaguer@mercuryin.es)

## Irish Stenographers Ltd

**Director: Sheila Kavanagh**

*Experts in*  
**Overnight Transcripts**

*Specialists in*  
**Court Reporting**  
**Medical Cases / Arbitrations**  
**Conferences / Board Meetings**

*Contact:*  
**Hillcrest House,**  
**Dargle Valley, Bray, Co. Wicklow.**  
**Telephone/Fax: (01) 286 2184**  
*or*  
**4b Arran Square, Dublin 7**  
**Telephone: (01) 873 2378**

# Report of Law Society Council meeting held on 6 September 2001

## **Motion: Solicitors' accounts regulations**

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

**Proposed:** Gerard Doherty

**Seconded:** Owen Binchy

Gerard Doherty reported that correspondence had been received from two bar associations, two solicitors, the Institute of Chartered Accountants and the Chairman of the Conveyancing Committee in relation to the amended draft regulations circulated in July. As a result, a small number of further amendments were being proposed. These provided:

- For an exemption from the requirement to lodge to client account for cheques/drafts made out to a purchaser's solicitor or endorsed by the client, where the cheque/draft was required to be paid without delay to a vendor in respect of the balance of the purchase price of the property. The fact that this had occurred must be reflected on the client's file
- That a solicitor was required to transfer interest from client to office account either within three months of the date on which it had been credited by the bank or before the end of the accounting period, whichever was the later
- That, when calculating the total of credit balances due to all clients, a solicitor could not offset debit balances arising in relation to one client against credit balances relating to another client
- For an extension in the time period for preparing the six-monthly and annual reconciliation statements from one month to two months.

Patrick O'Connor expressed reservations about adopting the regulations without circulating them again to the profession.

Mr Doherty said that the society had gone to a great deal of trouble to acquaint every bar association with the contents of the regulations and had also gone a great deal of the way to accommodate their concerns. As president of the DSBA, David Martin confirmed that the association believed that the regulations should be adopted. The regulations had been circulated to all members, meetings had been held and correspondence was entered into with the society, a special general meeting had been held and only one voice had been raised in opposition to the regulations.

Hugh O'Neill said that the society had consulted with its members for almost six months and had taken on board all reasonable suggestions. At some stage, the consultation had to stop and the society had to exercise its regulatory function in order to protect clients' monies and the compensation fund. Simon Murphy confirmed that the Southern Law Association had unanimously approved the regulations at its most recent meeting.

John Dillon-Leetch said that he did not believe that further consultation would yield any additional meaningful points. Philip Joyce said that the purpose of the regulations was to identify, maintain and protect clients' monies in the hands of solicitors and they should be approved. James McCourt said that any solicitor who wished had been afforded an opportunity to comment on the regulations. The DSBA sub-committee was satisfied with the final draft regulations and he urged

that the Council would approve them.

On a show of hands, the Council overwhelmingly approved the draft regulations, as amended, with two votes being recorded in opposition to their adoption.

## **Continuing professional development (CPD)**

Michael Peart outlined the contents of a discussion document on CPD. He said that, because of increased demands and pressures, the number of practitioners attending CLE courses was not as high as it might be and the CPD proposal represented a mechanism to encourage solicitors to attend. The proposed scheme would require 12 hours of CPD over a two-year period, four of which could be by means of private study.

The president and the secretary of the Law Society of Scotland outlined the Scottish experience of the introduction of CPD and noted that the Scottish scheme required 20 hours of CPD a year, five of which must be in management. It operated as an honour-based system, with practitioners completing a CDP card. They confirmed that a direct benefit from the introduction of CPD had been a rejuvenation of many of the local bar associations.

While the principal catalyst for change in Scotland had been the master policy for professional indemnity insurance, there was now a culture of ongoing training within the profession and an acceptance of the benefits of the scheme. At the outset, the society had introduced CPD only for its younger members. However, it would strongly recommend its introduction for all members of

the profession from the beginning.

In relation to enforcement, it confirmed that a solicitor would not be referred to the Disciplinary Tribunal for failure to attend the required number of hours. However, a solicitor would be referred to the tribunal for falsification of his CPD records.

James MacGuill said that he did not believe the Irish legal profession would favour the introduction of compulsory CPD. He believed the system would be open to abuse and would be pointless unless there was a system of testing and sanctions for non-compliance.

Kevin O'Higgins said he would favour some form of incentives for attendance, perhaps by means of reduced professional indemnity insurance premiums. Michael Irvine said it was the very basis of the scheme that there was a desire within the profession for life-long learning and he felt a majority of the profession would support the proposal.

Patrick Casey supported the proposal, provided there were adequate resources and the decentralisation of information, including links between the bar associations and the Law Society library. Orla Coyne said the DSBA saw CPD as the way forward, provided there were incentives and clarification in relation to the nature of any sanctions that would apply.

John Harte said that the benefits of CPD should first be promoted to the profession, together with a commitment and assurances in relation to the provision of support and adequate resources by the society. Stuart Gilhooly expressed surprise that there should be any opposition to the proposal. He said that, even if there were a



small number who didn't participate wholeheartedly, the vast majority would benefit from the scheme. He believed that compliance should be monitored by way of random audit.

Edward Hughes noted that associations other than local bar associations would also like to be involved in the provision of CPD. John Costello queried whether a requirement of 12 hours was sufficient. He believed that topics such as ethics, client care and practice management should be covered. Anne Colley suggested that the society might consider sanctioning a minimum

of 12 hours in each two-year period, while incentivising any extra hours undertaken.

Moya Quinlan queried whether the question of legitimate expectation had been considered, particularly in relation to older members of the profession. The Council agreed, by 32 votes to 1, that the task force should proceed to develop its proposal with the Council's support in principle for the concept of CPD.

#### **Report of the Practice Management Task Force**

The Council approved the

report of the task force, which had been chaired by Ward McEllin, and agreed that practice management advice and information should be provided by the Law Society to its members, that this advice should be delivered at a macro level and should be targeted at the small to medium-sized practice and that the society should not engage in the provision of consultancy-type advice and should not attempt to deliver assistance on a one-to-one basis.

Given the limited resources available, it was agreed that the

society should concentrate on:

- Publishing a practice management newsletter or supplement to the *Gazette* on a biannual basis
- Conducting an annual benchmarking survey among the profession
- Publishing a suite of management publications such as the *Marketing handbook*
- Developing a practice management section on the society's website
- Expanding the CLE programme to include seminars on practice management topics.

## Report of Law Society Council meeting held on 5 October 2001

#### **Sympathy**

The Council observed a minute's silence in memory of past president, Gerald Hickey, who had died recently.

#### **Motion: Euro changeover regulations**

On the proposal of Gerard Doherty, seconded by Simon Murphy, the Council unani-

mously approved the Solicitors Acts, 1954 to 1994 (*Euro Changeover*) Regulations 2001.

#### **Motion: Pro bono report**

On the proposal of John Costello, seconded by Michael Peart, the Council noted the recommendations contained in the report of the *Pro Bono* Task Force, which envisaged the

establishment of a charity independent of the society to promote *pro bono* work within the legal profession. Mr Costello recorded his appreciation to the society for its financial contribution to the charity. The president noted a letter received from FLAC recording its appreciation for the £52,240 contribution to FLAC received

from the society's members to date in the current year.

#### **EU directive on money laundering**

John Fish reported that, because of the recent tragic events in America, there was increasing pressure within the EU to enact measures of the nature contained in the direc-

## Diploma courses at the Law Society

Make an early  
New Year's  
resolution ... Sign  
up now for one of  
the Law Society's  
diploma courses!

**Following the successful completion of the first Diploma in commercial law, the Law Society is pleased to announce that another Diploma in commercial law will commence on 9 February 2002 and run until 7 December 2002.**

The long-running Diploma in applied European Union law will be offered again from 27 April 2002 until 2 November 2002.

Further details and application forms are available now from Michelle Nolan, Information & Administration Executive, at [m.nolan@lawsociety.ie](mailto:m.nolan@lawsociety.ie).

tive. The fate of the directive would probably be determined during the following week and, with the current level of political will in support of such measures, it was likely to be passed.

#### Revenue audits: access to client account information

The director general reported on a meeting that had been held with the Revenue Commissioners on the previous Friday to discuss the legal position pertaining to the confidentiality of client account information since the judgment in the *Miley* case. As it was the stated intention of the Revenue to resume audits of solicitors' practices in the near future, the meeting had focussed on the desirability of an agreed memorandum of understanding between the society and the Revenue in relation to the confidentiality and disclosure issues arising in the course of an audit.

A working group had been

established, comprising representatives from both the Society and the Revenue, to seek to agree such a memorandum of understanding before the resumption of audits. The society's representatives on the working group were John O'Connor, Brian Bohan and Miriam Delaney. However, no final agreement would be entered into without the approval of the Council.

#### CCBE

Geraldine Clarke reported that the CCBE had appointed Jonathan Goldsmith, current head of the International Department of the Law Society of England and Wales, as its new secretary general.

She also reported that the EU Commission was conducting a review of all directives relating to the recognition of diplomas and the right to practice in other member states. A working paper and question-

naire had been received by the Department of Justice, Equality and Law Reform, who were dealing with TP Kennedy on the matter.

#### Increased jurisdictions of the courts

Patrick Casey said that the impact of the proposed increased jurisdictions was a matter of concern to the members of the Southern Law Association and there was a view that a more pro-active approach should be taken on the issue of increased fees and increased resources. David Martin confirmed that a paper had been prepared for submission to two separate costs drawers seeking advice on the issue of costs. In relation to back-up services and additional resources, the Litigation Committee had liaised with the Courts Service in the preparation of their submission.

Patrick O'Connor said that

the District Court bench had indicated that they would require an additional five judges at a minimum, while the Circuit Court bench had indicated a requirement for an additional ten judges. It was clear that the judiciary could not assume the additional workload without increased resources. There were similar difficulties in relation to the county registrars and other court staff.

Gerard Griffin said that, as the new jurisdictions were due to come into operation on 1 January 2002, he believed that the society should increase its calls for urgent revision of the District Court fees and a positive commitment to the assignment of sufficient resources. The director general confirmed that the matter had been raised with the minister, but agreed that the society would reinforce its efforts to have the matter dealt with urgently. **G**

## LAW AGENCY SERVICES

ENGLAND & WALES

**Fearon & Co**

SOLICITORS

Established 1825



- **Fearon & Co** specialise in acting for Irish residents in the fields of probate, property and litigation
- Each solicitor is available by direct line, fax or e-mail. Conferences can be easily arranged
- **Fearon & Co** is committed to the use of information technology to help improve both the quality and speed of service for the benefits of all clients both at home and abroad
- The firm's offices are within half an hour of London Waterloo station and within a short travel from both Gatwick and Heathrow airports, with easy access from the London orbital M25 motorway
- No win, no fee arrangements are available in appropriate cases

#### PHONE NOW FOR A BROCHURE

Westminster House

12 The Broadway, Woking, Surrey GU21 5AU England

Fax: +44 (0)1483 725807

Email: enquiries@fearonlaw.com www.fearonlaw.com

**LITIGATION**

**Martin Williams**

**PROPERTY**

**John Phillips**

**PROBATE**

**Francesca Nash**

Tel: +44 (0)1483 776539 Tel: +44 (0)1483 747250 Tel: +44 (0)1483 765634

## WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of X pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund-raising purposes.

The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.



5 Northumberland Road, Dublin 4. Tel: (01) 668 1855  
15 Bridge Street, Cork. Tel: (021) 4509 918

# Committee report

## CONVEYANCING

As announced in last month's *Gazette*, the revised conveyancing documentation is now available for distribution to the

profession, and practitioners can expect to receive a mail-shot before Christmas containing a sample of each of the society's revised documents, being the building agreement, conditions

of sale and the requisitions. If the society's precedent transfer for building estates is not available before Christmas, it will be distributed separately in the New Year. Practitioners should note

that the revised documents may be purchased from the society and an order form has been included for this purpose below.

**If sending payment after 1 January 2002, please ensure it is for the euro amount.** The Conveyancing Committee recommends that practitioners use the revised documents from 2 January 2002 onward. It is also recommended that practitioners take time to read the explanatory memoranda accompanying the revised documents so as to fully familiarise themselves with the changes made and with the new provisions introduced.

The society, in conjunction with the Dublin Solicitors' Bar Association, has published pre-contract checklists for vendors and purchasers. These can be ordered through the society and have been included on the order form. **G**

### ORDER FORM

Revised Law Society conveyancing documents: new pre-contract checklists (jointly with DSBA)

☐ I enclose my cheque for  
£ \_\_\_\_\_ / € \_\_\_\_\_

☐ Please charge my  
☐ Access ☐ Visa  
☐ Mastercard ☐ Eurocard  
Credit card number \_\_\_\_\_

Expiry date: \_\_\_\_\_

Signature: \_\_\_\_\_

Month/year \_\_\_\_\_

	Packet size	Price (incl VAT)	P&P	No of packets	Amount due £/€
Requisitions on title (2001 edition)	50	£48 €61	£5.50 €7		
Conditions of sale (2001 edition)	50	£24 €31	£5.50 €7		
Building agreement (2001 edition)	50	£18 €23	£3 €3.60		
Pre-contract check lists	25 Purchase 25 Sale	£25 €32	£5.50 €7		

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Please return to Maureen O'Grady, Law Society of Ireland, Blackhall Place, Dublin 7.

## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS CHIEF PROSECUTION SOLICITOR

**P**ractitioners should note that from **Monday the 3rd of December 2001** the newly appointed Chief Prosecution Solicitor will act as Solicitor to the Director of Public Prosecutions. Ms. Claire Loftus will take over all functions currently carried out by the Chief State Solicitor on behalf of the Director.

Pending re-location to new premises in January 2002 the Office of the Chief Prosecution Solicitor will be located in:

**Osmond House,  
Little Ship Street,  
Dublin 8.  
Telephone: 4176100  
Fax: 4757160**

The relevant rules of court have been amended to reflect this development. All references in the rules to the Chief State Solicitor in relation to criminal matters involving the Director should be read as referring to the Chief Prosecution Solicitor.





# LEGISLATION UPDATE: 16 OCTOBER – 19 NOVEMBER 2001

## ACT PASSED

### ***Electoral (Amendment) Act, 2001***

**Number:** 38/2001

**Contents note:** Amends and extends the *Electoral Acts, 1992 to 1999*, the *European Parliament Elections Acts, 1992 to 1999*, the *Presidential Elections Acts, 1992 to 1997*, the *Local Elections Acts, 1974 to 1999*, the *Referendum Acts, 1992 to 1998*, the *Seanad Electoral (University Members) Acts, 1937 to 1973*, the *Seanad Electoral (Panel Members) Acts, 1947 to 1972*, and provides for related matters

**Date enacted:** 24/10/2001

**Commencement date:** Commencement order/s to be made (per s1(9) of the act): 1/11/2001 for sections 1 to 4, 9, 10, 14, 15, 24, 26, 28 to 48, 50, 51, 52, 54 (other than paragraph (k)) and 55; 1/1/2002 for sections 11, 16, 18 to 21, 23, 49, 56 to 58; 15/2/2002 for sections 5 to 8, 12, 13, 25 and 27 (per SI 497/2001)

## SELECTED STATUTORY INSTRUMENTS

### ***Circuit Court (Fees) (No 2) Order 2001***

**Number:** SI 486/2001

**Contents note:** Sets out in euro amounts the fees to be charged in Circuit Court offices with effect from 1/1/2002; provides for the exemption from fees of certain proceedings, including family law proceedings. Revokes *Circuit Court (Fees) Order 2001* (SI 252/2001)

### ***Companies (Fees) Order 2001***

**Number:** SI 477/2001

**Contents note:** Provides for: 1) a progressively increasing late filing fee where an annual return is not received by the registrar on time; 2) no charge in respect of the registration of certain documents with the Companies Registration Office where, in addition to submitting a hard copy, the material is also supplied electronically to the CRO; and 3) sets out in euro amounts the fees payable to the registrar of companies with effect from 1/1/2002. Amends the *Companies (Fees) Order 1997* (SI 358/1997) as amended

**Commencement date:** 26/10/

2001 for articles 3 and 4; 1/1/2002 for articles 5, 6 and 7 of the order

### ***Companies (Forms) Order 2001***

**Number:** SI 466/2001

**Contents note:** Amends the *Companies (Forms) Order 1964* (SI 45/1964) by replacing form 47 with form C1 (particulars of a charge created by a company incorporated in the state/certificate that the charge was presented for registration in the country where the property is located)

**Commencement date:** 23/10/2001

### ***Diseases of Animals Act, 1966 (Foot and Mouth Disease)***

#### ***(Restriction on Imports from the United Kingdom) (No 3) Order 2001***

**Number:** SI 490/2001

**Commencement date:** 22/10/2001

### ***District Court (Fees) (No 2) Order 2001***

**Number:** SI 487/2001

**Contents note:** Sets out in euro amounts the fees to be charged in District Court offices with effect from 1/1/2002; provides for the exemption from fees of certain proceedings, including family law proceedings. Revokes *District Court (Fees) Order 2001* (SI 253/2001)

## European Communities

### ***(Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2001***

**Number:** SI 472/2001

**Contents note:** Make provision in relation to the effect on domestic legislation of council regulation (EC) no 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (*Brussels II regulation*)

**Commencement date:** 23/10/2001

## Finance Act, 2001

### ***(Commencement of section 50) Order 2001***

**Number:** SI 471/2001

**Contents note:** Appoints 22/10/2001 as the commencement date for section 50 of the

*Finance Act, 2001* (amendment to section 310 of the *Taxes Consolidation Act, 1997* so as to provide capital allowances in respect of capital contributions made by non-domestic water users to local authorities for the purpose of funding new water supply infrastructure)

### ***Foot and Mouth (Restriction on Movement) (No 6) (Revocation) Order 2001***

**Number:** SI 470/2001

**Commencement date:** 19/10/2001

### ***Freedom of Information Act, 1997 (Prescribed Bodies) (No 4) Regulations 2001***

**Number:** SI 475/2001

**Contents note:** Prescribe each of the bodies listed in the schedule to the regulations as a public body for the purposes of the *Freedom of Information Act, 1997* by their inclusion in paragraph 1(5) of the first schedule to the act. Bodies listed include universities, institutes of technology, colleges of higher education, regional authorities and regional assemblies

**Commencement date:** 1/10/2001

### ***Local Government Act, 2001 (Commencement) Order 2001***

**Number:** SI 458/2001

**Contents note:** Appoints 9/10/2001 as the commencement date for sections 1(1), 1(6), 1(7), 2 to 4, 6 to 8 and 247; 9/10/2001 for section 5(1) and part 1 of schedule 3 to the extent specified in the schedule to this order (repeals of certain enactments); 1/1/2002 for part 23 (sections 238-242) (transfer of shareholding in Temple Bar Properties Limited to Dublin Corporation)

### ***Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001***

**Number:** SI 473/2001

**Contents note:** Require employers, in accordance with section 25(1) of the *Organisation of Working Time Act, 1997*, to keep: a) a record of the number of hours worked by employees (excluding meals and rest breaks) on a daily and weekly

basis, b) a record of leave granted to employees in each week by way of annual leave or in respect of a public holiday and payment made in respect of that leave, c) a weekly record of the starting and finishing times of employees, and provides for related matters

**Commencement date:** 1/11/2001

### ***Safety, Health and Welfare at Work (Construction) Regulations 2001***

**Number:** SI 481/2001

**Contents note:** Amend the *Safety, Health and Welfare at Work (Construction) Regulations, 1995* (SI 138/1995) to give further effect to council directive 92/57/EEC on the minimum safety and health requirements at temporary or mobile construction sites

**Commencement date:** 1/1/2002, with certain exceptions (see regulation 1 of the regulations)

### ***Solicitors Acts, 1954 to 1994 (Euro Changeover) Regulations 2001***

**Number:** SI 504/2001

**Contents note:** Provide for the substitution of payments in euro amounts for amounts expressed in Irish pounds in regulations made under the *Solicitors Acts, 1954 to 1994*. Revoke *Solicitors Acts, 1954 to 1994 (Euro Changeover) Regulations 2001* (SI 460/2001)

**Commencement date:** 15/11/2001

### ***Supreme Court and High Court (Fees) (No. 2) Order 2001***

**Number:** SI 488/2001

**Contents note:** Sets out in euro amounts the fees to be charged, with effect from 1/1/2002, 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 Master's Office, the Accountant's Office, the Office of Wards of Court, the Probate Office and District Probate Registries; provides for the exemption from fees of certain proceedings, including family law proceedings. **G**

**Prepared by the Law Society Library**

# Practice notes

## CORRECTION

There were a number of errors in the stamp duties table published last month as part of the practice note entitled *Conveyancing in euro*, and that section of the note should not be used by practitioners. A revised stamp duties table is published below, with apologies for any inconvenience caused

### STAMP DUTIES

#### RESIDENTIAL PROPERTY:

Market value		First-time buyers	Other owner occupiers	Investors new houses/apartments*	Investors 2 <sup>nd</sup> hand houses/apartments
Up to €127,000	€127,000	Exempt	Exempt	3%	9%
€127,001	€190,500	Exempt	3%	3%	9%
€190,501	€254,000	3%	4%	4%	9%
€254,001	€317,500	3.75%	5%	5%	9%
€317,501	€381,000	4.5%	6%	6%	9%
€381,001	€635,000	7.5%	7.5%	7.5%	9%
Over €635,000		9%	9%	9%	9%

These rates are progressive, not cumulative.

\* For instruments executed on/after 27/2/01

#### NON-RESIDENTIAL PROPERTY:

Market value		
Up to €6,350	€6,350	Exempt
€6,351	€12,700	1%
€12,701	€19,050	2%
€19,051	€31,750	3%
€31,751	€63,500	4%
€63,501	€76,200	5%
Over €76,200		6%

These rates are progressive, not cumulative.

#### Note:

- Transaction certificate amounts are listed in the shaded columns.
- Amounts of stamp duty are calculated rounded down to the nearest euro.

Conveyancing Committee

## Voluntary transfers

The inherent dangers and legal complexities which arise when a solicitor acts for both parties in a voluntary transfer were spelt out with great clarity by the Supreme Court in its decision in *Carroll v Carroll*, Supreme Court, 21 July 1999. Those complexities create dangers not just for the parties but for the practitioner who acts for both parties. The Law Society has not decided to prohibit acting for both sides, but great care must be taken. There are certain cases where a solicitor may not act for both donor and donee, and it is incumbent on the practitioner to appraise him/herself of all the circumstances and then make the decision as to whether he/she can properly and professionally continue to act for both parties.

The Conveyancing Committee has prepared this practice note to assist those solicitors who may wish to act for donor and donee in a voluntary transfer and to assist them in reaching the decision as to whether they can properly do so.

The presumption of undue influence is the first hurdle that must be overcome. The Supreme Court in its decision held that where the presumption of undue

influence exists, the onus lies on the donee to establish that the gift resulted from the 'free exercise of the donor's will': as the presumption is a rebuttable one and is a rule of evidence, the donee must adduce the evidence necessary to rebut it. While the courts have declined to limit the categories of relationship in which the presumption will arise, the more obvious ones are solicitor and client, doctor and patient, religious adviser and pupil, trustee and beneficiary, as well as intra-family relationships.

It goes without saying that undue influence may actually exist in an individual case: care must be taken to ensure that this does not arise.

To assist in reaching the necessary conclusions on aspects such as undue influence, the following should be borne in mind:

- 1) Clients should be seen separately
- 2) Should either the donor or donee be independently advised? A solicitor who has previously acted for a member of a family and who is asked to act for the first time for a prospective donor would do well to have the donor separately advised. Equally, a solicitor who has previously acted for the donor should consider advising the donee, in a situation where the transfer will impose obligations on the donee, to be independently advised

Full instructions must be taken of all relevant family circumstances and family relationships

- 4) Full details of the donor's other assets must be obtained to decide whether the donor is in a financial position to carry into effect his/her desire
- 5) A decision on the donor's mental capacity must be taken. Should medical opinion be sought?
- 6) Is the proposal a free exercise of the donor's will?
- 7) Does the donor's physical situation allow the gift to be made? What are his/her future requirements? What will his/her future accommodation be? Does the proposal put in jeopardy his/her financial independence? Does he/she appreciate the situation?
- 8) Does the proposal imperil the financial independence of other members of the family? Have other members of the family been made promises or

relied on arrangements which will be affected by what is proposed? Do the proposals contradict any previously drawn wills or other documents?

- 9) Is the solicitor aware from dealings with other members of the family that this proposal will surprise other family members?
- 10) Even if independent advice is not required, care must be taken in explaining the consequences of the proposed action to both donor and donee. Professional skill and judgement is required in advising both parties. This is not fulfilled by simply following instructions without considering the appropriateness of what is being undertaken
- 11) A solicitor acting for both cannot be independent of the donee
- 12) Careful notes of all attendances on the parties must be kept. Full written advice to the parties must be given on all aspects of the transaction. Any documents requiring execution must be given to the parties in advance for perusal and must be read and explained to them.

Conveyancing Committee

## Euro changeover: Probate Office

The Probate Officer has advised the Probate, Administration and Taxation Committee of the following arrangements regarding the euro changeover. To facilitate the changeover to euro display on grants of representation, all Revenue certificates for the High Court lodged with papers on or after 19 November 2001 must show euro or dual currencies. The Revenue Commissioners have agreed to certify in dual currencies from 1 November 2001.

From 1 January 2002, all papers lodged in the Probate

Office will have to show euro currency only. However, an exception will be made in the case of Revenue affidavits in Irish punts which have been passed by the Revenue Commissioners. Practitioners should note, however, that the certificate for the High Court on these affidavits will only be accepted in euro currency.

To avoid delays, practitioners are requested to lodge any documentation which they may have prepared in Irish punts as soon as possible.

*Probate, Administration and Taxation Committee*

## Practising certificates

A practising certificate must be applied for before 1 February in each practice year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the practice year.

It is misconduct for a solicitor to practise without a practising certificate. Any solicitor found to be practising without a practising certificate will be referred to the Disciplinary Tribunal.

Assistant solicitors should note that it is the statutory obligation of every solicitor to ensure that he or she has a practising certificate in force

from the commencement of the practice year. Assistant solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates.

Practitioners should also note that practising for any period of time without a practising certificate could jeopardise their professional indemnity insurance situation. Furthermore, a break in continuity of practising certificates may disqualify a solicitor from applying for judicial appointment.

*PJ Connolly, Registrar of Solicitors*

## Entitlement to interest on costs

Practitioners should note that in a recent case stated from the Circuit Court, the Supreme Court considered the question of whether interest is payable on costs from the date of the judgment or order awarding them, or only from the date of taxation. While the plaintiff in the case argued that, from the moment of the judgment, the successful party is entitled to interest, the defendants argued that interest should run only from the date or dates upon which the successful party has discharged the costs

in respect of which he seeks interest.

The court held that costs constitute a liability of the unsuccessful party from the moment of the decree or judgment, that they are not payable until quantified, but that when quantified, the debt relates back to the date of the judgment, with interest running from that earlier date.

*Brendan Clarke and Fergus McCarthy v Commissioner of an Garda Síochána*, (Supreme Court, 31 July 2001, Fennelly J)  
*Litigation Committee*

## PPS numbers (formerly RSI numbers)

In making an application for a grant of probate or administration, there is an obligation to quote a PPS (personal public service) number for the deceased and each beneficiary. If either the deceased or any beneficiary does not have a PPS number, then before the Inland Revenue affidavit (form CA24) is submitted to the Revenue, a PPS number must be obtained.

If the person for whom a number has to be obtained is Irish resident, then the applications should be made personally at one of the local offices of the Department of Social, Community and Family Affairs. Proof of identity (long form of birth certificate, passport or full driving licence or other valid photographic ID, other supporting documentation showing address) will be required to be produced at the time of appli-

cation. A form reg 1 must be completed.

If the applicant is not Irish resident, then the PPS number will be given to the solicitor as agent and the application (form reg 1) should be sent via the solicitor to Client Identity Services, Department of Social, Community and Family Affairs, Gandon House, Amiens Street, Dublin 1 and a form of consent for the PPS number to be issued to a third party must be signed by the applicant. Solicitors must not take on this obligation in the case of Irish resident beneficiaries.

If either the deceased was or a beneficiary is in receipt of a state pension, then the pension number is the appropriate number to quote when making an enquiry for a PPS number with Client Identity Services.

*Probate, Administration and Taxation Committee*



**HENRY A CROSBIE  
BUSINESS CENTRE**

Tel: 01-8363994

Fax: 01-8363997

info@crosbiebusinesscentre.com

**Office Suites available  
in Bow Street Friary**



# DISCIPLINARY TRIBUNAL AN

This is the first annual report of the tribunal under my chairmanship and it is an opportunity I welcome to review the operation of the tribunal in the year ended 21 May 2001. For completeness, the report also covers the period from the date of the last published report of the tribunal – 31 October 1999, up to 21 May 2000. The appointments of the present members of the tribunal commenced on 22 May 2000 and these will run for a period of five years. The tribunal consists of ten solicitor members and five lay members, appointed by the president of the High Court.

The tribunal is an independent, semi-judicial body and it is wholly independent of the Law Society of Ireland, its offices being situated at 32 Manor Street, Dublin 7

The tribunal holds inquiries, as it has done for many years, regarding complaints alleging conduct tending to bring the profession into disrepute – broadly, that is to say unethical conduct, failing to reply to correspondence from the Law Society or from clients, or causing unreasonable or persistent delay in regard to some aspect of their clients' affairs. Where it has been proven that misconduct has been established, the tribu-

nal will decide on the appropriate sanction and can by order do one or more of the following:

- Advise and admonish or censure the respondent solicitor
- Direct payment of a sum, not exceeding £5,000 to be paid by the respondent solicitor to the compensation fund
- To direct that the respondent solicitor shall pay a sum, not exceeding £5,000, as restitution or part-restitution to any aggrieved party, without prejudice to any legal right of such party
- To direct that the whole or part of the costs of the society or of any person appearing before them, as taxed by a taxing master of the High Court, in default of agreement, shall be paid by the respondent solicitor.

The tribunal has no power to carry out its own investigations and consequently any application coming before it must be made by completing the appropriate application form and affidavit, in accordance with the tri-

bunal's rules. The majority of complaints which come before the tribunal are at the instance of the Law Society of Ireland, but it is open to members of the public to present a complaint. The procedure is an adversarial one and consequently it is a matter for an applicant to prosecute a case and for a respondent solicitor to respond. In this regard, the tribunal is aware that members of the public may find the process of making an application to the tribunal an onerous one, but assistance is available from the clerk to the tribunal in relation to completing the forms leading to an application. At the hearing stage, should one be directed, the tribunal, which sits in divisions of three (two solicitor members and one lay member), is cognisant of the concerns some lay applicants may have when presenting their cases, without the assistance of legal representation, and due allowance is given. Indeed, when requested, applicants have been permitted to be assisted by a 'friend', who may assist an appli-

cant but may not act as an advocate.

Ideally, complaints should never get to the stage where clients feel the need to make a complaint either to the Law Society of Ireland or direct to the tribunal. However, as has been stated on many occasions in the past by my predecessor, delay and the lack of communication form the basis of the majority of complaints received by the tribunal. It is of immense concern that solicitors accept instructions to attend to certain matters and subsequently fail to bring the particular business to a conclusion. Clients should be adequately informed of the progress of their business and should have outlined to them the main steps which need to be taken.

The tribunal would urge members of the profession, who are the subject of a complaint, to respond promptly, fully and accurately to the Law Society. Ignoring or misleading the soci-

Continued on page 48 →

## DISCIPLINARY TRIBUNAL

### Solicitor members

Thomas D Shaw (chairman)  
Ernest Cantillon  
Clare Connellan  
Carol Fawsitt  
Maeve Hayes  
Michael Hogan  
Donal Kelliher  
Geraine O'Loughlin  
Michael O'Mahony  
Ian Scott

### Lay members

Mary Conlon  
Ted Conlon  
Denis Murphy  
Paul Kingston  
Kristin Quinn

Between 22 May 2000 and 21 May 2001, the Disciplinary Tribunal met on 27 occasions. During the year 48 new applications, alleging misconduct against solicitors, were received of which 20 were direct applications to the tribunal from members of the public. The remainder emanated from the Law Society of Ireland. The following is an analysis of these applications:

### NEW APPLICATIONS 48

**Law Society**  
*Prima facie* cases found 6  
Awaiting *prima facie* decision 22  
*At hearing*  
Misconduct 1  
Awaiting inquiry 5

**Private**  
*Prima facie* cases found 4  
No *prima facie* cases found 3  
Withdrawn 1  
Awaiting *prima facie* decision 12  
*At hearing*  
No misconduct 1  
Awaiting hearing 3

### APPLICATIONS FROM PREVIOUS PERIOD 70

**Law Society**  
Awaiting *prima facie* decision 1  
*At hearing*  
Misconduct 18  
Withdrawn 2  
Struck out 1  
Adjourned 22

**Private**  
No *prima facie* cases found 10  
Awaiting *prima facie* decision 1  
*At hearing*  
Misconduct 3  
No misconduct 7  
Struck out 1  
Adjourned 4

### Orders made by the Disciplinary Tribunal pursuant to section 7(9) of the Solicitors Amendment Act, 1960 as substituted by section 17 of the Solicitors (Amendment) Act, 1994:

Censure, fine, restitution and costs 3  
Censure, fine and costs 4

Censure, restitution and costs 2  
Censure and fine 3  
Restitution and costs 1  
Fine 1  
Censure and costs 1  
Censure 2  
Admonished, restitution and costs 1  
Advised, admonished and costs 1  
Advised and costs 1  
Advised and admonished 1

Fines ranged from £500 to £5,000.

### Report of the Disciplinary Tribunal under section 7(3)(b)(ii) of the Solicitors (Amendment) Act, 1960 as substituted by section 17 of the Solicitors (Amendment) Act, 1994

**Recommendation:**  
That the respondent solicitor's practising certificate should be limited in that he should practise under the supervision of a solicitor with at least ten years' experience 1

# ANNUAL REPORT 2000/2001

## Principal grounds on which professional misconduct was found

### Civil actions

- Delaying in prosecuting a civil action of complainants
- Settlement cheque, when received, was the property of the client and should have been given to him and not lodged to the solicitor's client account
- Solicitor had authority to negotiate a settlement but there was no evidence he had authority to conclude a settlement
- Solicitor had no authority to pay client's funds without the client's consent
- Deliberately misleading clients over a sustained period of time in regard to the filing of a cross appeal in the Supreme Court and submitting false documentation in support of these assertions
- Misleading a colleague acting on behalf of a complainant
- Misleading complainants in relation to the conduct of their civil proceedings
- Using solicitor's fees as an inducement to persuade a client from a chosen course of action and was not acting in the client's interest in this regard
- Refusing to discharge costs notwithstanding a certificate by the taxing master of the High Court
- Failing to have a settlement, in which minor parties were involved, ruled in the High Court and failing to have monies in the client account lodged in court in accordance with the solicitor's obligations as an officer of the court
- Acting in a conflict of interest situation by accepting instructions when none of the exceptions as set out at paragraph 1.3 of the *Guide to the professional conduct of solicitors* in Ireland appear to apply
- In a conflict of interest situation giving assurances to a client that it should be possible to reach agreement with another party which should preclude the need for the client to seek independent legal advice and which resulted in the client not proceeding to seek such independent legal advice at that time
- In a conflict of interest situation continuing to act for one party by entering an appearance to proceedings initiated by that party
- Failing to act promptly on the advice from counsel to institute proceedings for negligence and a breach of duty against a colleague and recovery of the purchase price; a civil bill was issued more than five years

after the applicant's first consultation with the respondent solicitor. Contrary to the applicant's express instructions, the case was never brought to trial.

### Communication with clients

- Failing to communicate or to answer correspondence from clients
- Causing a complainant extreme distress and inconvenience through failing to deal with a complaint in a timely manner
- Failing to keep complainant informed of all offers and the settlement of a case

### Conveyancing

- Failing to advise the society as per its request of the date of re-lodgment of a deed of transfer of the complainant in the Land Registry together with the dealing number, the subject matter of the complaint to the society
- Delaying in completing a conveyancing transaction
- Through a delay in processing part of the transaction relating to the exchange of land put a client's interest in serious jeopardy
- Acting in the transfer of property from one party to another without advising that party, that he, the solicitor, could end up owning the property (which he subsequently did) and without advising him to obtain independent legal advice
- Unilaterally altering or causing to be altered a deed of transfer after it had been executed by the vendor of property without the knowledge, authority or consent of the vendor and his solicitor
- Subsequently in a letter to the vendor's solicitor enclosing a copy of the altered deed specifically did not draw his attention to the unilateral alterations
- Causing serious delay in completing a conveyancing transaction for a client
- Through delay in processing part of the transaction relating to the exchange of land put a client's interest in serious jeopardy
- Severely prejudicing a client by refusing to procure a bond

### Probate

- Drawing up a will for a client in which he (the solicitor) was named as residuary legatee and executor and benefited in that estate and failing to advise the testator to seek independent legal advice
- Preparing wills for a client with a spe-

cific bequest to him and wherein he was appointed as joint executor of the will;

### Practising certificate

- Failing to apply for a practising certificate and practising as a solicitor without a practising certificate in contravention of the provisions of the *Solicitors Acts, 1954 to 1994*

### Professional indemnity insurance

- Failing to file evidence that professional indemnity insurance cover had been effected pursuant to the provisions of section 4(a) of statutory instrument no 312 of 1995

### Regulatory body: Law Society of Ireland

- Failing to attend meetings of the Registrar's Committee despite being requested to do so
- Refusing to comply with a direction of the Registrar's Committee pursuant to section 8(1) of the *Solicitors (Amendment) Act, 1994* that an indemnity bond be obtained in respect of the title to a former client's property, which bond was necessitated by the inadequate services provided to the client
- Bringing the society's regulatory role in respect of the solicitors' profession into disrepute by showing a flagrant disregard for the direction of the Registrar's Committee
- Failing to comply with an undertaking given to the registrar's meeting to write to a complainant on the day following the meeting and to furnish a copy of the letter to the society
- Failing to comply with an undertaking given to the Registrar's Committee to procure a duplicate land certificate
- Misrepresenting the situation to the society in a letter where he denied he was practising as a solicitor
- Obstructing and inhibiting the society's investigation of a complaint
- Breaching an obligation to furnish a file and documents the subject matter of the complaint pursuant to a notice under section 10(1) of the *Solicitors (Amendment) Act, 1994*
- Obstructing and frustrating the society's statutory power to provide a remedy to a client arising out of the inadequate service to that client
- Failing to reply to correspondence from the society in a timely manner or at all
- By ignoring correspondence showed a serious disregard for the society's complaint handling procedure and for the society itself as a regulatory body

of the solicitors' profession

- Failing to answer correspondence from the society both in respect of the society's request for an explanation of the matter and in respect of informing the society of what progress was being made in respect of a client's transaction
- Misleading the society in the investigation of a practice by denying that he had benefited as a beneficiary in the will of any other client when this was not the case

### Solicitors' accounts regulations breaches

- Failing to file an accountant's report since commencing practice in breach of regulation 21(1) of the *Solicitors' accounts regulations 1984* in a timely manner or at all

### Section 55

- Practising as a solicitor and acting in a transaction for a purchaser in breach of section 55(1) of the *Solicitors Act, 1954* and section 56(1) of the *Solicitors (Amendment) Act, 1954*

### Undertakings

- Breaching an undertaking not to negotiate a joint deposit receipt until receipt of confirmation from a solicitor colleague, the recipient of the said undertaking, that the premises the subject matter of the transaction had been completed save for certain repairs specified in a written undertaking
- Failing to disclose to a solicitor colleague the negotiation of a joint deposit receipt despite receiving letters from a solicitor colleague which referred to the monies remaining on joint deposit pending completion of certain works as per the undertaking given
- Accusing a solicitor colleague in a letter of pursuing a personal agenda without instructions from the clients in seeking compliance with an undertaking
- Failing to make any attempt to comply with the terms of an undertaking notwithstanding the direction of the Registrar's Committee on 2 April 1998
- Failing to comply with an undertaking given to a colleague to furnish a discharge of a building society charge
- Failing to comply with an undertaking given to discharge a judgment mortgage and to furnish a discharge of same to a colleague.

→ Continued from page 46

ety is particularly damaging to the profession. The tribunal has taken a very serious view of conduct which shows a disregard for the society's complaint handling procedure and for the society itself as a regulatory body of the solicitors' profession.

A number of complaints relating to breaches of undertakings came before the tribunal. As it is the duty of solicitors to comply with professional undertakings, solicitors should ensure that they never give an undertaking in circumstances where they cannot perform it.

Some of the foregoing grounds of misconduct arose as a result of solicitors attempting to continue acting in a conflict of interest situation. Solicitors should be mindful of their position in such cases and should be guided by paragraph 1.3 of *A guide to professional conduct of solicitors in Ireland*. It is not only in conveyancing transactions that conflict of interest can arise. The

tribunal has considered matters of conflict in relation to civil proceedings where they found a solicitor guilty of misconduct in that he, in a conflict of interest situation, continued to act for one party by entering an appearance to proceedings initiated by that party.

I would also like to record my thanks to the members of the tribunal for their participation and hard work during the year.

The Disciplinary Tribunal is constituted under the provisions of the *Solicitors Acts, 1954 to 1994* and its powers are largely confined to receiving and hearing complaints of professional misconduct against solicitors. The tribunal consists of ten solicitor members and five lay members, who are appointed by the president of the High Court. Under section 16 of the *Solicitors (Amendment) Act, 1994*, the lay members are nominated by the minister for justice to represent the interests of the general public. For the purpose of hearing and determining any applica-

tion, the tribunal sits in divisions comprising two solicitor members and one lay member.

Under section 3 of the *Solicitors (Amendment) Act, 1960* as amended by the *Solicitors (Amendment) Act, 1994*, misconduct includes:

- The commission of treason or a felony or a misdemeanour
- The commission outside the state of a crime or an offence which would be a felony or a misdemeanour if committed in the state
- The contravention of a provision of the *Solicitors Acts, 1954 to 1994* or any order or regulation made thereunder
- Conduct tending to bring the profession into disrepute.

However it should be noted that the *Solicitors (Amendment) Bill, 1998* has further extended the definition of misconduct to include the following:

- 'In the course of practice as a solicitor*  
i) *Having any direct or indirect connection, association or*

*arrangement with any person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Solicitors (Amendment) Act, 1994 of the Solicitors Act, 1954 or section 2 of the Solicitors (Amendment) Act, 1998, or*  
ii) *Accepting instructions from any such person to provide legal services to any other person'.*

The procedures before the tribunal are formal and as the outcome of a hearing may affect the livelihood of a solicitor, the tribunal requires a high standard of proof. In this regard, the tribunal has available an information leaflet and other documentation to assist members of the public when making an application to the tribunal. **G**

Thomas D Shaw, chairman

## LEGAL COSTS ACCOUNTANTS LOWE REDMOND & ASSOCIATES

Carmichael House  
60 Lower Baggot Street  
Dublin 2

Phone: 01 202 4930  
Fax: 01 285 1723  
DX 109031 Fitzwilliam  
(Dublin)

Incorporating  
LOWE KILKELLY & ASSOCIATES  
Salthill, Galway

DX 4027 Galway-Kiltartan



SPECIALISING IN

## Independent Advice to Solicitors and their clients

Pensions, Investments,  
and Protection

Discount entry terms available  
on **31 Jan Pension Deadline**

**Contact Alan Morton PhD, QFA  
Moneywise**

16 Fitzwilliam Square,  
Dublin 2  
Tel. 6788011  
moneywise@indigo.ie

Moneywise  
Financial Planning  
Ltd. is regulated by  
the Central Bank  
of Ireland as an  
Authorised Adviser





# Personal injury judgments

Road traffic accident – car skidded on patch of ice on public road – water on road – absence of drain to collect water flowing onto road – whether formation of ice on road foreseeable – liability of local authority and adjoining landowner – alcohol consumption – speed – failure to wear seat belt – actuarial evidence – conflict over assessment of damages for future pecuniary loss – annual loss of earnings – method of calculation to ensure that the plaintiff was not over-compensated – medical inflation – how to provide net annual loss out of both capital and income – assumed ‘real’ rate of return – application of ‘discount rate’ to lump sum award

## CASE

***Brendan McEneaney v Monaghan County Council and Coillte Teoranta*, High Court, judgment of Mr Justice Philip O’Sullivan of 26 July 2001.**

## THE FACTS

On the evening of Sunday 13 February 1994, Brendan McEneaney, then aged 22 years of age, decided to celebrate the eve of St Valentine’s Day with his girlfriend Maeve McCaughey. He collected Ms McCaughey between 6pm and 7pm, having travelled some 12 miles to her home. They went to a hotel in Castleblayney, Co Monaghan, and later to a pub and back again to the hotel where there was a disco. Both left the disco after 1am.

It was a cold night and Mr McEneaney set off to drive Ms McCaughey to her home, travelling in the Monaghan town direction. As they were travelling, he had to slow down to pass through a line of cones which he did without difficulty and then resumed his speed travelling in a northerly direction on the newly surfaced national road between Castleblayney and Monaghan town. He approached a ‘fast’ elevated bend and his car suddenly went out of control, having skidded on a patch of ice, travelled across the centre of the road, across the oncoming car-

riageway, the hard shoulder, the soft shoulder, through a fence and eventually hit a tree. While the car was out of control, it went through a turn of approximately 180 degrees so that the impact with the tree occurred at the right-hand rear corner of the car. Mr McEneaney was found facing down some ten feet away from the car and, it appeared, had been catapulted backwards out through the rear window. His passenger, Ms McCaughey, was found hanging by her seat belt, the car having come to rest on its left-hand side. Mr McEneaney was not wearing his seat belt.

Brendan McEneaney sustained very serious injuries as a result of the accident. His spinal cord had been severed between the fifth and sixth thoracic vertebrae, resulting in complete paralysis below the level of the nipples of his chest with the inevitable tragic paraplegia, loss of all sensation and useful movement below this level, loss of control of bladder and bowel function, loss of sexual sensation and continuing vulnerability to injury, including pressure sores

to the lower part of his body. There was evidence that it would be extremely difficult for him to look after himself from a wheelchair, and he had become depressed and had manic episodes on and off since the accident. His mental health would require close management involving observation and monitoring of medication. He could, in certain circumstances, drive a car, but there was evidence that a low percentage of paraplegic patients ever returned to meaningful employment and, given Mr McEneaney’s additional psychosis, this made the prognosis worse.

### **The case against Monaghan County Council and Coillte Teorante**

Mr McEneaney sued Monaghan County Council as the body responsible for the road and Coillte Teoranta whose lands adjoined the road where the accident occurred. In relation to Monaghan County Council, it was argued that the council had been negligent and in breach of its duty in relation

to the design and maintenance of the road and, in particular, because, at the bend in question, the council had failed to provide a ‘french drain’ which would have collected water which seeped from the slope on the adjoining lands onto the road, thereby creating a localised hazard. It was argued that it was foreseeable that on a night such as that of the accident, a patch of black ice would form in circumstances which would not be predictable to the driver of a car.

The road had been realigned in 1965 but had just been resurfaced in the months prior to the accident and indeed some of the cones associated with those works were still in place on the night of the accident. In relation to Coillte Teoranta, it was argued that its lands which adjoin the road contained channels which facilitated the flow of water onto the road, and it was claimed by Monaghan County Council that Coillte had a duty under section 76(5)(b) of the *Roads Act, 1993* to take reasonable steps to prevent such water flowing onto the public highway.

# THE JUDGMENT

O'Sullivan J set out the facts. He referred to an application to the court that the case against Coillte Teoranta be dismissed and referred to evidence of Paul Womeril, a forensic engineer, who gave evidence as to the 'design speed' of the road in wet conditions. The engineer said it was basic engineering to provide a 'french drain' to protect the road and he was not surprised to discover that ice had formed, once water was permitted onto the road, given the type of weather on the night of the accident. He said that given the problem, there should have been manual and mechanical spreading of salt and a warning sign, but the fundamental defect was the lack of the drain. O'Sullivan J held that in the absence of a drain to collect the water flowing onto the road at the point of the accident, it was foreseeable that ice would form in conditions which would cause a hazard. This constituted a breach of duty owed by Monaghan County Council to Mr McEneaney which amounted to negligence. The case against Coillte Teoranta was dismissed.

## Alcohol, speed and failure to wear a seat belt

Monaghan County Council submitted that there had been contributory negligence on the part of Mr McEneaney under three headings: he had consumed too much alcohol on the night, he drove too fast and he failed to wear a seat belt. The judge dealt with each of these in turn.

Although Mr McEneaney had consumed alcohol, the judge considered that the amount of alcohol consumed did not impair Mr McEneaney's judgement or ability to drive.

The issue of speed, however, was relevant. The judge stated that the probability was that Mr McEneaney was travelling at approximately 70 miles an hour. That was in breach of the speed

limit, but was within the design capacity of the road and, therefore, but for the ice there would have been no accident. Breach of a speed limit could, of itself, amount to contributory negligence. The judge held that a driver of a car at 10 miles an hour in excess of the maximum national speed limit without appropriate excuse was guilty of a want of care for his own safety in that he thereby incurred the enhanced risk that the consequences of any unforeseeable accident would be worse by reason of this excess speed. Accordingly, by reason of the excessive speed, Mr McEneaney was guilty of contributory negligence and must accept one third of the fault for the accident, and, accordingly, damages would be reduced by that amount.

In relation to the seat belt issue, it was accepted that Mr McEneaney had been propelled backwards through the rear window, ending up face-downwards some ten feet away from his car. There was evidence that if a seat belt had been worn, it would not have prevented Mr McEneaney being thrown out of the car. Accordingly, the judge held that Mr McEneaney was not guilty of contributory negligence by his failure to wear a seat belt.

## Actuarial issues, the 'multiplier' and the 'discount rate'

I offer some general observations before returning to the judgment of O'Sullivan J. The usual issue arose about the amount of earnings that Mr McEneaney would have earned had there been no accident. The assessment of damages for future pecuniary loss is an imprecise process. The conventional approach is to assess the amount notionally required to be laid out in the purchase of an annuity which would provide the annual amount needed for the whole period of loss. To assess the amount required to

purchase this annuity, a 'multiplier' is used which is, in effect, the annual loss of earnings or the annual cost of care, as the case may be. An assumption is then made as to the number of years a plaintiff would, apart from the accident, have worked or during which he or she would need to be cared for. However, merely to multiply the one figure by the other would greatly over-compensate a plaintiff. Accordingly, to avoid over-compensation the courts apply a 'discount rate' in order to arrive at a lump sum which, taking into consideration interest and capital, would provide as close as possible the net annual loss out of both capital and income so that at the end of the relevant expected period of loss, there would be nothing left. The 'discount rate' applied is stated to represent the assumed 'real' rate of return after inflation and net of tax on the capital invested. Readers are referred to an article by Professor Niamh Brennan of UCD and John Hennessy, BL, *Forensic accounting and the calculation of personal injury damages*, in the *Bar review*, September 2001, and to Dr PM White's book *Irish law of damages for personal injuries and death* (Butterworths 1989).

In relation to the computation of damages, traditionally a 4% discount rate was used by actuaries in computing future losses or costs to allow for so-called 'real' growth. It was argued in the McEneaney case that this was excessively optimistic and resulted in the under-compensation of plaintiffs. It was contended that the figure should be closer to 2%.

O'Sullivan J considered the issue of the specific cost of future medical care and appliances. It had been submitted that the cost of these had increased historically at 3% a year in excess of the general rate of inflation and that an actuarial 'discount' figure of closer to

0% should be considered in this context. It was also argued with regard to general damages in cases of 'catastrophic' injury that the guideline figure of £150,000 established by the Supreme Court in June 1984 in *Sinnott v Quinnsworth Limited and Others* ([1984] IRLM 523) was the equivalent of a figure today of between £230,000 and £600,000. Evidence on these matters was given by Moore McDowell, senior lecturer in economics, University College Dublin, and Desmond Peelo, chartered accountant with experience as a non-executive director of a fund-managing company.

O'Sullivan J stated that on 15 March 2001 the nominal redemption yield on Irish government securities was between 4.5% and 5.2%. The judge assumed that Eurozone inflation was likely to be in the range of 2% to 3% in the medium term, and was of the opinion that the prospective 'real' rate of return on Irish government securities was in the range of 1.5% to 3.2% with a mean value of 2.4%. Reference was made to the House of Lords case of *Wells v Wells* ([1998] 1AC 345), where it was held that a plaintiff's damages should be calculated on the basis of minimum risk exposure. Accordingly, it was argued the appropriate 'real' rate should be the 'real' rate of return on long-term government debt paper in respect of which historical evidence and the generality of economic opinion indicated a 'real' rate of return of around 2%.

The judge noted it was remarkable that the only Irish case dealing with the appropriate 'multiplier' (as it is called) was the decision of Hamilton J (as he then was) delivering the High Court judgment in *Cooke v Walsh* ([1983] ILRM 429), where he concluded that the appropriate calculation should be based on a 'real' interest yield of 2.5%. O'Sullivan J con-

sidered he must approach the assessment of the sum required to produce the appropriate annuity for Mr McEneaney over the next 39 years (his expected lifespan), and he must do so on the basis that it would yield a reasonable, secure and reliable stream of annual funding (comprising income and capital) and, to that end, the investment of the award should be as risk free as reasonably possible. The judge considered that the appropriate discount rate for general calculation purposes should be 2.5%.

(This was significant, as previously a discount rate of 4% had been used by actuaries in computing the so-called 'real' rate of interest in order to determine a fair lump sum to ensure that a plaintiff would not be over-compensated.)

In the context of the decision of the Supreme Court in *Sinnott v Quinnsworth* ([1984] ILRM 523) in relation to general damages and the cap of £150,000, O'Sullivan J referred to the evidence of economist Moore McDowell, who testified in the McEneaney case that to main-

tain the level of general damages at the nominal value indicated by the Supreme Court in *Sinnott* would be to reduce it substantially in real terms having regard to inflation measured by reference to the consumer price index. The view had been expressed in that case that unless there were particular circumstances which would suggest otherwise, general damages should not exceed the sum of £150,000. O'Sullivan J stated that the equivalent of £150,000 for general damages as determined in *Sinnott v Quinnsworth Limited* in today's money would be £300,000. The judge stated that if he erred in this figure, he considered he did so on the side of 'conservatism', especially if he compared the income which £150,000 would have yielded in June 1984 (at say 10%) with that which £300,000 would yield (at 4%) some 17 years later. The judge, however, stated that he could not accept that a paraplegic, such as in the present case, was in the same category as a quadriplegic.

In the circumstances of the McEneaney case, the judge con-

sidered that having regard to the very large sums to be awarded to Mr McEneaney under the headings of ascertainable loss, he would award £75,000 for pain and suffering to the date of the trial and £125,000 for pain and suffering in the future, being amounts in both cases very considerably less than he would have assessed had he been considering them on their own.

The judge then referred to the decision of the Supreme Court in *Reddy v Bates* ([1984] ILRM 197), where it was held that in calculating future loss of earnings, account should be taken of the fact that at the time of assessment of the relevant award there had been a high rate of unemployment not only in Ireland but in Great Britain and in most member states of the EEC (as it then was). The judge stated that the numbers of redundancies and closures of firms led to the conclusion that there was no longer any safe or guaranteed employment. That was a fact of which juries (and now judges) should be required to take into account in assessing

future loss of earnings in any given case. The judge stated that he saw no basis for reducing the figure which he allowed for future loss of earnings in the McEneaney case.

O'Sullivan J referred again to the evidence of economist Moore McDowell, to the effect that the cost of future medical care would be likely to rise at a rate of 3% in excess of the general rate of inflation. In those circumstances, the judge stated that while the amount for future care was very significant indeed, he considered that he must act on the evidence. The only mitigating impact of this significant element of this aspect of an award from the point of view of Monaghan County Council arose in the context of the principles established by the Supreme Court in *Cooke v Walsh*, whereby the court would assess general damages by reference to the proposed sub-awards in relation to ascertainable loss. The judge did this by reducing the general damages which he awarded to Mr McEneaney in relation to pain and suffering in the past and in the future to a figure of £75,000 for pain and suffering in the past and a figure of £125,000 for pain and suffering in the future, which he stated was considerably less than he would have awarded had he considered these general damages on their own.

This case is under appeal to the Supreme Court. **G**

*This case has been summarised by solicitor Dr Eamonn Hall.*

## THE AWARD

Having regard to all the factors and evidence set out in the judgment, O'Sullivan J awarded Brendan McEneaney the following damages:

- Past special damages (which were agreed): £137,726
- Future costs of house modifications (which were agreed): £40,500
- Loss of earnings in the future: £400,000
- Cost of care in the future: £2,224,000
- Insurance at an agreed rate of 2%: £44,400
- Costs of medical aids and appliances, taking into account inflation of 3% over the general

rate: £527,743

- General damages for pain and suffering in the past: £75,000
- General damages for pain and suffering in the future, £125,000.

Total damages were £3,574,369. Having regard to the finding that Mr McEneaney was guilty of contributory negligence and must accept one third of the fault for the accident, Mr McEneaney's decree was reduced to the sum of £2,382,913.

# EXCELLENCE IN REPORTING SINCE 1954

- Daily transcripts
- Real-time
- Conferences
- Arbitrations
- Inquiries

# DOYLE

Est. 1954  
COURT REPORTERS LTD.

USA REGISTERED COURT REPORTING QUALIFICATIONS

Principal: Áine O'Farrell

2 Arran Quay, Dublin 7.

Tel: 872 2833 or 294 1481 (After Hours). Fax: 872 4486. E-mail: [info@doylecourtreporters.com](mailto:info@doylecourtreporters.com)  
Website: [www.doylecourtreporters.com](http://www.doylecourtreporters.com)





# Eurlegal

News from the EU and International Law Committee

Edited by TP Kennedy, director of education, Law Society of Ireland

## Public procurement: recent Irish developments

The purpose of this note is to briefly review four recent Irish developments in the field of public procurement:

- The *Whelan Group* case in the High Court, which (unsuccessfully) sought a review of a public contract award by Clare County Council (judgment of 9 March 2001)
- The commencement by the European Commission of infringement proceedings against Ireland regarding the Blanchardstown Civic Centre (March 2001)
- The establishment of an electronic tenders portal in Ireland, [www.e-tenders.gov.ie](http://www.e-tenders.gov.ie) (23 March 2001)
- The decision of the information commissioner in case 98188 *Mark Henry and the Office of Public Works* (25 June 2001).

### The *Whelan Group* case

The case of *Whelan Group (Ennis) Limited v Clare County Council* ([2001] IEHC 33, 9 March 2001) involved a challenge by the Whelan Group to the tendering procedure adopted by Clare County Council in respect of major road improvement works planned for the Newmarket-on-Fergus area of County Clare (the 'proposed works').

In February 2000, Clare County Council published a contract notice in the official journal and in an Irish newspaper in respect of proposed works whose value was estimated at £25 million. The notice made it clear that the council was adopting the restricted procedure for the award of the con-

tract. The notice provided in this regard that applicants would be required to complete a pre-qualification questionnaire, which requested information concerning the applicant's financial and economic standing and technical knowledge and ability.

The questionnaire provided, among other things, 'that the minimum relevant experience shall be judged on the contractor's record during the period 1995 to 1999 inclusive. Evidence of that record shall be furnished, with the attached pre-qualification questionnaire. The contractor shall, as a minimum, have satisfactorily completed: roadworks project, value exceeding £10 million excl VAT for any one individual project.'

The questionnaire provided that any applicant that did not comply with the specified minimum of pre-qualification criteria set out in the questionnaire would be excluded from further consideration.

The Whelan Group obtained a copy of the pre-qualification questionnaire and returned it, duly completed, to the council. In its replies it stated it had carried out road and bridge works for the county councils of Cork, Limerick and Offaly to the value of £11.9 million. The council discovered on examining the questionnaire that the Whelan Group had not in fact carried out an individual project to the value of not less than £10 million. The largest contract value of works carried out had a tender price of £3.9 million. On that basis, the council took

the view that the minimum criteria specified in the questionnaire had not been met and did not invite the Whelan Group to submit a tender.

The Whelan Group challenged that decision on the basis that it infringed principles of EU public procurement law, particularly those that prohibit discrimination, inequality of treatment, lack of transparency and lack of proportionality. The Whelan Group sought a series of declarations from the High Court (presumably, although not stated, under the *European Communities (review procedures for the award of public supply and public works contracts) regulations, 1992-1994*) to the effect that the council was in breach of its obligations and furthermore sought an order removing the requirement that a contractor should have completed one individual project to the value of £10 million.

In his judgment of 9 March 2001, Kelly J held that the Whelan Group was not entitled to the reliefs which it sought and dismissed the proceedings.

He was satisfied that the criterion in question was included on the advice of an expert standing committee, which took the view that the criterion was necessary having regard to the financial and technical complexity of the project. Furthermore, it was taken in accordance with the practice determined by the National Roads Authority.

As the criterion applied to all potential contractors, Kelly J could not see how it could be said to be discriminatory. He

also believed it was an objective criterion as it was capable of objective assessment and application. Furthermore, there was a rational basis for it. Finally, it was transparent because every potential tenderer who was notified of the requirement had to comply with it.

Kelly J noted that the EU directive in question, the *Public works directive* (93/37/EEC), did not set out the specific technical or economic criteria that were to be applied in the context of the restricted procedure. However, the directive did recognise (in article 22) the use of minimum conditions as a basis for selecting candidates using the restricted procedure. These minimum conditions could be of an 'economic and technical nature'. In his view, therefore, 'as evidence can be sought as to the value of works performed by the contractor in the preceding five years it must be the case that the value of those works can be used as a minimum condition, provided of course that there is an objective and non-discriminatory basis for choosing such a criterion. In my view there is in this case both an objective and non-discriminatory basis for choosing the criterion'.

He rejected the suggestion that the criterion did not relate to technical ability.

Finally, Kelly J was satisfied that the criterion 'did not suffocate genuine competition'. Although the Whelan Group was excluded because of its inability to comply with the criterion, Kelly J believed that

the stipulation was proportionate, had a rational basis, and was applied objectively. Therefore, it did not in his opinion offend against the requirements of community law.

The case has been appealed to the Supreme Court, but has not been heard as yet.

This case confirms that, under Irish law, it is open to contracting authorities to set minimum criteria to be met by potential tenderers at the pre-qualification stage, provided they are:

- In compliance with the relevant directive and EC law generally
- Applied in an objective manner
- Rational
- Proportionate
- Non-discriminatory
- Transparent

#### **EC proceedings against Ireland**

In March 2001, the European Commission sent a formal request (in the form of a 'reasoned opinion') to Ireland in respect of the award of contracts for the construction of a civic centre at Blanchardstown, County Dublin, in an alleged breach of the *Public works directive*. In particular, the European Commission took the view that the contracting authority, Fingal County Council, used a number of selection criteria that are not among the authorised criteria listed in the directive.

Ireland had two months after receipt of the reasoned opinion to provide a response. It is understood that Ireland did reply and the European Commission was satisfied with the response. Apparently, the infringement was not as serious as the commission had believed and, in any event, Ireland gave undertakings that the infringing practice would not be continued in future.

#### **Establishment of electronic public sector portal**

On 23 March 2001, the Department of Finance estab-

lished an electronic public sector tender portal, [www.e-tenders.gov.ie](http://www.e-tenders.gov.ie), as part of the government's action plan *Implementing the information society in Ireland*. In particular, the portal is intended to contribute to the development of e-procurement in Ireland.

The website is intended to provide (as an interim measure) a central source for all Irish public sector procurement opportunities. The site displays, on a daily basis, all public sector procurement opportunities currently being advertised in the official journal and national and local press. There is no charge to local authorities for using the website, which is also freely available for use by the public. As such, it is intended to reduce the financial and administrative burdens incurred by local authorities in tendering public sector contracts.

While the website principally displays prior indicative notices and contract notices, it also provides, where available, associated tender documents which can be downloaded by potential tenderers. There is also an archive of 'closed opportunities' and contract award notices and a database of public sector organisations. This site also provides background information on procurement rules and guidelines, including EU directives and national guidelines.

Where applicable, the obligation to publish relevant notices in the official journal continues to apply and requests for tenders must continue to be provided in a paper format if a potential tenderer insists on it, notwithstanding that an electronic copy is available to download from the site.

The establishment of this website is a welcome development and anticipates forthcoming changes in EU public procurement law, which will make provision for, among

other things, electronic means of procurement by contracting authorities.

#### ***Freedom of Information Act, 1997***

In June 2001, the information commissioner established under the *Freedom of Information Act, 1997* issued a lengthy and detailed decision on the application of the act to public procurement in Ireland.

The act establishes a general right of access to records of public bodies subject to a number of exceptions. The exceptions of most relevance to public procurement are confidential information (section 26) and commercially sensitive information (section 27). These exceptions may be waived by the public body, following consultation with affected third parties, where there is a public interest in disclosing such records. In the case of where a request for access to records made under the act is refused, the requester may appeal the decision to the information commissioner, who may uphold

the original decision or direct that access be granted to some or all of the records in question.

This particular decision of the information commissioner related to a request made under the act to the Office of Public Works (OPW) to view all information and documentation relating to a tender competition for army vehicles conducted by the OPW. For reasons of space, it is not proposed to consider the decision in detail. Instead, a summary of the current views of the information commissioner on the application of the FOI act to public procurement in Ireland is provided below:

- Public bodies are obliged to treat all tenders as confidential, at least until the time that the contract is awarded
- Tender prices may be trade secrets (for the purpose of the 'commercially sensitive information' exception) during the currency of a tender competition, but only in exceptional circumstances would historic prices remain trade secrets. Tender docu-

ments revealing detailed information about a company's current pricing strategy or about otherwise unavailable product information may also be regarded as commercially sensitive information, even following the conclusion of a tender competition

- Tender prices and private information generally qualify as commercially sensitive information
- When a contract is awarded, successful tender information loses confidentiality with respect to a) price and b) the type and quantity of the goods supplied. Moreover, the public interest also favours the release of such information, subject to certain exceptions:
  - 1) Other successful tender information which is commercially sensitive may remain confidential and disclosure in the public interest ordinarily will not be required
  - 2) Unsuccessful tender information which is commercially sensitive generally

remains confidential after the award of the contract and the public interest lies in protecting that information from disclosure

- 3) No tender-related records are subject to release or exemption as a class and each record must be examined on its own merits in light of the relevant circumstances.

In arriving at these views, the information commissioner had regard to the confidentiality provisions of the *Irish guidelines on public procurement*, the Department of Finance notice no 9 on FOI and public procurement, and the EC *Supplies directive*, as well as United States and Australian case law in this area. The decision is welcome from the point of view of providing greater clarity for both public sector bodies and potential tenders on the impact of the act on public procurement in Ireland. **G**

*John Gaffney is an associate with the Dublin law firm William Fry.*

## ROB PARSONS RETURNS TO DUBLIN

**W**e are pleased to announce that the world class speaker and best selling author, Rob Parsons will be returning to Dublin for a one off Seminar on Time and Stress Management, which will take place at The Law Society, Blackhall Place Dublin, on 1 February 2002.

The seminar has been specifically designed for Lawyers, and Rob will cover the key issues of how we can manage our time more effectively and how to cope with workplace pressure and turn it to our advantage.

Rob has spent the last 10 years speaking to over 200,000 people about management and family issues in an entertaining and thought provoking way.

To secure your place on this course, please return the booking form, which you will find in the brochure inserted into this edition of the Gazette. For further information, please telephone Ruth Browne: 0044 2920 442 035.

**altior**  
lps consulting & training  
Formerly Lawyers Planning Services



# Ratification of *Madrid protocol*

Tom Kitt, minister of state at the Department of Enterprise, Trade and Employment on 24 July 2001 signed statutory instrument 346 of 2001, thereby ratifying the protocol relating to the *Madrid agreement* concerning the international registration of trade marks. Irish trade-mark applicants and owners will from 19 October 2001 have access to an additional system of international trade-mark registration, namely the *Madrid agreement* protocol as administered by World Intellectual Property Organisation (WIPO) from Geneva.<sup>1</sup>

The text of the protocol was adopted at Madrid on 28 June 1989 and it is the latest in a series of efforts since the 1890s to set up an effective and popular system for the international registration of trade marks. The *Madrid agreement* itself was signed at the diplomatic conference convened in Madrid on 14 April 1891. However, the *Madrid agreement* failed to attract widespread membership, notably the United States, United Kingdom and Japan. Therefore in order to attract a larger membership, WIPO sought to devise a new system for the international registration of trademarks – the *Madrid protocol*. The *Madrid protocol* is a convention that parallels the *Madrid agreement* but remains independent of the agreement. It will ultimately replace the *Madrid agreement* and is expected in time to become a truly international centralised trade-mark application system.

Ireland's ratification of the *Madrid protocol* has two consequences. The first is that applicants can register trade marks in a number of countries from Ireland. Secondly, applicants in other *Madrid protocol* countries

can designate Ireland, thereby rendering the need for a separate Irish application obsolete.

It will be possible to apply for an international registration of a trade mark under the *Madrid protocol* through the Irish Patent Office. Through a single application based on either an Irish trade-mark application or a registration, it will be possible to obtain registration in the designated countries. The international trade-mark registration system is useful for registering trade-mark rights in a wide variety of countries in a simple and more cost effective manner than filing national applications.

## The main facts

- In order to file an international application, the person in whose name the basic application or registration stands must be a national of the contracting state in which such application was filed or registration was obtained, or be domiciled, or have a real and effective industrial or commercial establishment in the contracting state
- An application for international registration must designate one or more countries in which the mark may be protected. Further countries can be designated subsequently. A country may be designated only if that country and the country of origin are both party to the protocol treaty
- The international application must be presented on the form prescribed by the regulations. The office of origin must certify that the particulars appearing in the international application correspond to the particulars, at the time of the certification, in the national appli-

cation or registration

- The applicant must indicate the goods and services in respect of which protection of the mark is claimed in accordance with the *Nice classification* (7<sup>th</sup> edition)
- Priority from a national application may be claimed in accordance with the *Paris convention*
- The international bureau will notify each country in which protection has been requested (whether in the international application or subsequently). Each designated country has the right to refuse protection, within the time limits specified in the protocol. Ireland has specified an 18-month rejection period
- The registration period of an international registration is ten years. It may be renewed for further periods of ten years on payment of the prescribed fees.

## The advantages of *Madrid protocol* membership

- Simple and flexible system
- One application/registration instead of several
- Subsequent designation of status. For example, it is possible to extend the international registration to include countries as they become members of the *Madrid protocol*
- Unlike other systems of international trademark registration, such as the Community Trade Mark, refusal in a designated country will only affect that country and will not prevent registration in other territories.

Ratification of the *Madrid protocol* does however also raise a number of concerns. The first is the administrative burden to be borne by the local patents office. It is

possible that there will be greater volume of overseas trade-mark applications as more and more countries accede to the protocol, which could have an adverse effect leading to delays in the examination of domestic applications.

The second problem is the question of trade-mark searching. Searching for trade marks under this international system will be difficult because of the volume of trade marks to be searched against and because broad statements of goods and services will make it hard to analyse the results. It will be very difficult to ascertain the bona fides of an application or to otherwise ascertain the trade-mark owner's intention to use the mark.

Neither of these concerns are insurmountable. As the *Madrid protocol* will ultimately replace the *Madrid agreement* and is expected to become a truly international centralised application and registration system, not acceding it would leave Ireland isolated and out of step with international developments. Ireland's eventual ratification of the *Madrid protocol* will save Irish business enterprises time and expense by providing a more streamlined system for registration and maintaining their trade marks internationally. **G**

*Gary Rice is a partner and Yvonne Kelly is an apprentice solicitor with the Dublin law firm Beauchamps.*

## Footnote

- 1 The Community Trade Mark is administered by the Office for Harmonisation of the Internal Market from Alicante, Spain, and has been in force since 1996. It is 'unitary', which means that CTM registrations are valid for the whole European Union.

## COMPANY FORMATION

FAST • FRIENDLY • EFFICIENT • COMPETITIVE PRICES • MEMBERS OF EXPRESS SERVICE

PHONE CARMEL OR RITA ON 01 672 4914/6 (FAX: 672 4915) or e-mail: [companyformation@lawsociety.ie](mailto:companyformation@lawsociety.ie)

THE LAW SOCIETY'S COMPANY SERVICE,  
BLACKHALL PLACE, DUBLIN 7

- Private limited company – ten days, £180
- Single member company – ten days, £180
- Guarantee company – ten days, from £130
- New companies, using complete nominees – five days, £220

# Recent developments in European law

## BRUSSELS CONVENTION

### Co-defendants

Article 6(1) of the *Brussels convention* provides that co-defendants may be sued in the domicile of any one of them. Case 189/87 *Kalfelis v Schröder* ([1988] ECR 5565, affirmed in subsequent cases) established that the claims must be so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. However, matters were somewhat complicated by a judgment of the ECJ in C-51/97 *Reunion Européenne SA v Spliethoff's Bevrachtungskantoor BV and the Master of the Vessel Alblasgracht V002* ([1998] ECR I-6511). Much of the case turned on the application of article 5(3) to international transportation. However, one of the questions referred to the ECJ concerned the application of article 6(1). In its judgment, it considered the nature of the connection required for article 6(1). It held that 'two claims in one action for compensation, directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected'. This judgment is troubling as, if followed, would appear to contradict decisions of English and Irish courts applying *Kalfelis*, where these courts allowed claims in contract and tort to be heard by the one court. The matter has arisen squarely before the English courts and been referred to the ECJ for a final interpretative ruling in *Watson v First Choice Holidays and Flights Limited and Anor*, 25 June 2001, CA (unreported). An English plaintiff took an action against an English travel company, First Choice, and joined a Spanish hotel company, Aparta, as an additional defendant. Aparta applied to have the proceedings against it set aside on the basis that the English courts had not jurisdiction to hear the claim against it. The plaintiff had been on a package holiday organised by First Choice. He stayed in a hotel complex owned by Aparta. One night he visited another part of the resort at the invitation of another guest. He was denied access and was chased away by a security guard. He ran away, jumped over a low wall, not observing a drop of some 20 metres on the other side of the wall to a road. He fell and was

seriously injured. His action against First Choice was contractual. He argued that they were liable for his injuries under an express contractual term and that there was an implied term that the resort would be safe of hazards and that security staff would be properly trained and supervised. His claim against Aparta was in tort for negligence in relation to the behaviour of its staff and the lack of lighting, fencing and warning. Lloyd LJ for the English Court of Appeal was inclined to hold that there was a 'substantial connection' between the two actions, sufficient for article 6(1). Apart from the existence of the contract, the facts on which the claims were based were identical. However, given the decision in *Reunion Européenne*, the court decided to refer the matter to the ECJ. The Court of Appeal has asked the ECJ to rule on whether in a claim against one defendant in contract, a second defendant against whom there is a claim in tort can be joined to the action, where there is a connection between the two claims of such a nature that it is expedient to hear the claims together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

### Tort

Recently the question of classification of a constructive trust claim based on dishonest assistance has arisen in the context of the *Brussels convention*. Did it fall within the special jurisdictional rules for torts, delicts and quasi delicts (article 5.3)? In such a case, the courts of the place where the harmful event occurred can take jurisdiction. In *Casio Computer Co Ltd v Sayo and Ors*, 11 April 2001, CA (unreported), the English Court of Appeal considered the matter. The case was a complex one involving the fraudulent transfer of funds. Sayo was a manager of Casio, a Japanese company. With the assistance of others in Japan he got control of US\$30 million of Casio's funds, which he was to invest on company purposes. US\$25 million was lodged to an account in London, controlled by an Isle of Man company, OVM. The president of OVM was a Mr Kaiser. This money was subsequently transferred to an account in the Channel Islands in the name of another Isle of Man company of which a Ms Patel was a director. Kaiser, Patel and others appear to have been aware of

the origin of the funds and had persuaded Sayo to invest them in a project to develop a golf course in Gran Canaria. It transpired that this golf course project did not exist and that these individuals were trying to defraud Sayo and his Japanese associates. Casio argued that Sayo and his associates were constructive trustees of its money. As Kaiser, Patel and others had also been informed that the funds were Casio's, it argued that they were also constructive trustees owing Casio a fiduciary duty. Tuckey LJ held that a constructive trust claim based upon dishonest assistance is within the scope of article 5(3). He held that the harmful event took place in England. The act of dishonest assistance was the use of the account in England and it was thus the place of the event giving rise to damage. The place where damage occurred was outside the jurisdiction.

## CONTRACT

The European Commission has adopted a communication launching a broad debate on the problems facing the internal market, given the divergences between national laws of contract. The communication focuses on the need for EU action in this area. It sets out four different options for improvement and is intended as the basis for a broad consultation of business interests, legal practitioners, consumer groups and academics. The four proposed options are:

- Let market forces deal with any problems that may exist
- Identify the elements common to most national contract law rules and use them as a guideline for national legislations when drawing up legislation or for use by national courts and arbitrators in their decisions
- Review and amend all relevant legislation to simplify it and improve its quality
- Create a new legal instrument at EU level in the area of contract.

The consultation period is to last until 15 October 2001. Given the radical nature of the communication and its potential impact on national law, the consultation period may be extended. The European Council at its meeting in Laeken is expected to take a decision as to the follow up of the communication.

## LITIGATION

### Taking of evidence

In June 2001, a regulation was adopted on co-operation between national courts in the taking of evidence in civil and commercial proceedings. This will come into effect from 1 July 2004 and will apply between all the member states of the EU with the exception of Denmark. It will allow a civil court in one state to request a court in another state to take evidence in its state. Such a request is to be made in the official language of the place where the evidence is to be taken and in a prescribed form. Any appropriate means can be used for the transmission of these requests. The requested court is to acknowledge the request and is given 90 days to execute the request. Article 10 provides that a videoconference or teleconference can be requested. There are a number of grounds for refusing a request where a person claims the right to refuse to give evidence or is prohibited from doing so by the law of the requested state or where the request falls outside the scope of the regulation. Article 17 allows a court in one state to take evidence directly in another state on request to the central body in the state concerned. The parties to the proceedings may be requested to bear the fees of experts and interpreters and other specified costs. To ensure proper implementation of the regulation, the commission is required to prepare and maintain a manual setting out:

- The courts on a state by state basis which will undertake the execution of such requests
- The central body in each state responsible for supplying information, resolving difficulties and dealing with applications under article 17
- The technical means available by courts for receiving requests under the regulation
- The languages in which requests may be accepted in various states
- Any bilateral arrangements facilitating the taking of evidence which are compatible with the regulation.

As between member states, the regulation supersedes any other bilateral or multilateral agreement between these states relating to the subject matter of the regulation. **C**



## Law Society entertains the top brass



Seated (left to right) then president Ward McEllin, Tánaiste and Minister for Enterprise, Trade and Employment Mary Harney, and then senior vice-president Elma Lynch. Standing are (left to right) deputy director general Mary Keane, then junior vice-president Michael Irvine, director general Ken Murphy and special advisor to the tánaiste, John O'Hara



Seated (left to right) Taoiseach Bertie Ahern, then president Ward McEllin, and Minister for Local, Community and Family Affairs Dermot Ahern. Standing are (left to right) then senior vice-president Elma Lynch, registrar of solicitors PJ Connolly, the chairman of the delegation committee David Martin, director general Ken Murphy and deputy director general Mary Keane



### Charity case

The Galway Bar Association and the Western Bar raised £23,000 for the Burren Chernobyl Project in a charity run from Clifden to Galway on 30 June. Pictured at the presentation of the cheque are (left to right) Rosemary Finlay, the organiser of the event, Theresa Flynn of the Burren Chernobyl Project, Mike Ryan, president of the Galway Bar Association, Brother Liam O'Meara with Sergi from Belarus, Judge Moran, Geraldine Costello and Judge Harvey Kenny



### Lots of competition

Pictured at the recent launch of *Competition law and practice* are the author Vincent Power, partner and director of A&L Goodbody's EU and competition law unit, Tánaiste Mary Harney and Frank Riordan, senior partner at A&L Goodbody

## SOLICITORS' HELPLINE

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

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

If you require advice for any reason, phone: 01 284 8484

# 01 284 8484







#### Roscommon purpose

Pictured at the AGM of the Roscommon Bar Association in September are (seated, left to right) Peter Jones, president of the association, Law Society Director General Ken Murphy, then president of the society Ward McEllin, Padraig Kelly and Marie Connellan. Standing are (left to right) Harry Wynne, John V Kelly, Con Harlow, Rebecca Finnerty, Alan Gannon, Terry O'Keefe, Jonathan Wynne and Gerard Gannon



#### Nasty or Nice?

Pictured at the recent *Hibernian law journal* lecture entitled 'Post Nice or anti-Nice' are (left to right) former attorney general John Rogers, Vincent Power, partner in A&L Goodbody, and Gráinne de Burca, professor of European law at the European University Institute, Florence



#### 50 years in practice

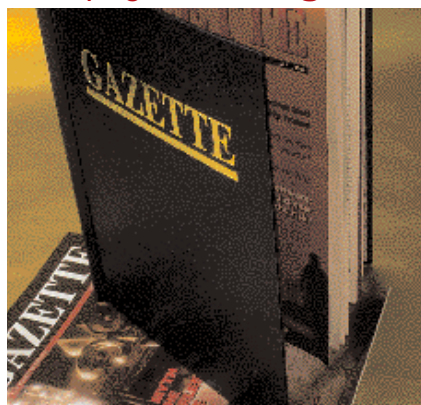
At a dinner hosted recently by the Mayo Bar Association for a number of solicitors who have been in practice in the county for 50 years were (seated) Mayo bar president James Cahill and then president of the Law Society Ward McEllin, and (standing, left to right) Rosemary Loftus, Don Shiels, Patrick U Murphy, Mary King, John Gordon, Kevin Loftus, Judge Carroll Moran, and county registrar Fintan Murphy



#### Rights here, right now

Pictured at the recent conference organised by the Law Society's Employment and Equality Law Committee in association with the National Disability Authority, entitled *Legal and social rights of the disabled: implications of the equality legislation*, are (left to right) Brian Miller of the National Disability Authority, Minister of State Mary Wallace, Judge Declan Budd, president of the Law Reform Commission, and Brian Sheridan of the society's Employment and Equality Law Committee

Keep your magazines safe with a



# GAZETTE BINDER

EACH BINDER COSTS  
£7.95 PLUS £1.20 POST  
AND PACKAGE (FOR  
ORDERS OF BETWEEN FIVE  
AND TEN BINDERS, A SPE-  
CIAL ALL-IN POSTAGE RATE  
OF £5.50 APPLIES)

Solve your storage problems with a new-style **Gazette** magazine binder. Each easy-to-use binder takes a year's worth of issues and is finished in blue leatherette with the **Gazette** logo in gold on the front and spine.

To order your magazine binder, please fill in the form below.

Please send me \_\_\_\_\_ magazine binders at £7.95 plus £1.20 p&p (special p&p rate of £5.50 for orders of between five and ten binders)

I enclose my cheque for £ \_\_\_\_\_

Please charge my Access ☐ Visa ☐ Mastercard ☐ Eurocard ☐

Credit card number

Expiry date:    
MONTH/YEAR

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Please return to Law Society Gazette, Blackhall Place, Dublin 7.

# JUSTICE MEDIA AWARDS 2001



Joe Little



Carol Coulter



Roisin Boyd and Ryan Tubridy



Jerome Reilly

Pictured with Law Society Director General Ken Murphy and immediate past president Ward McEllin at the *Justice Media Awards* ceremony in Blackhall Place in November were: RTE's Joe Little, who won the overall award and also the television category; Carol Coulter of the *Irish Times* who won the daily newspaper category; Roisin Boyd and Ryan Tubridy of RTE's *Five-Seven Live* who won the radio category; and Jerome Reilly of the *Sunday Independent* who took the honours in the non-daily newspaper category



## Cyclical trends

Vincent Crowley of the Dublin law firm Collins Crowley & Co, Ercus Stewart SC, and Justin McKenna of Dublin firm Partners at Law pictured at a charity cycling event for Goal



## Every day I write the book:

*Gazette* advertising manager Seán Ó hOisín presents the all-new *Gazette* yearbook and diary to Law Society President Elma Lynch



## Southern comfort

The Law Society's then president Ward McEllin and director general Ken Murphy flank Patrick Casey, president of the Southern Law Association, at the association's AGM in Cork last month



SADSI

Solicitors Apprentices Debating  
Society of Ireland

# It's the end of an era

Subject to the agreement of the minister for justice, the terms 'master' and 'apprentice' are to become labels of the past. A submission by SADSI

to bring an end to this medieval terminology has finally been ratified by the Education Committee of the Law Society and by Law Society Council.

One of the proposed amendments to the *Solicitors Acts* provides for former 'masters' to be known as 'training solicitors' and 'apprentices' to be known as

'trainee solicitors'. It is hoped that the new classification will reflect a more egalitarian and 21st century working environment.

## Code of conduct

As recommended by SADSI, a code of conduct for training and trainee solicitors can now be introduced. The Education Committee of the Law Society, following an amendment to regulation 4 of the 1997 *Solicitors Acts regulations*, now has the power to prescribe this. This is mirrored in the indentures of apprenticeship, where both the training and trainee solicitors covenant to abide by the terms of the code of conduct.

## John Edmund Doyle Memorial Debate

Commiserations to SADSI's Ronan Fehily and Willy Fogarty, who were beaten by the King's Inns team in arguing the motion 'That this house would elect its judges'. We look forward to a less formal rematch in the near future! Anyone without prior experience who is interested in participating in a maiden speakers debate should contact SADSI's debating co-ordinator, Louise Rouse, tel: 01 618 0000.



Pictured at the training session in employment and equality law in the Labour Court on 8 October are Ann Brady, Joe Power, Paul Lamon, Michael Considine and Colm McKeown. Kieran O'Mara of O'Mara Geraghty McCourt, Madeline Reid of the Office of the Director of Equality Investigations, and Hugh O'Neill, registrar of the Labour Court, presided over the event, and we are very grateful for their assistance. Many thanks also to Terence McCrann of McCann Fitzgerald

## Three month credit

The Education Committee of the Law Society has extended the allowance on the two-year apprenticeship period to four months (a change from three months) in respect of the periods apprentices may have spent in a solicitor's office before the commencement of the PPC1.

## Indentures of apprenticeship

Trainee solicitors wishing to change apprenticeships should be aware that a specific form of assignment, form 5, has been introduced in the 2002 *Solicitors Acts regulations*, which includes a provision for any conditions preceding the change that may be directed by the Education Committee.

## Bowing out

This is the final *Gazette* page of the SADSI committee for 2001. I would like to take this opportunity, as auditor, to thank all the committee for their hard work and relentless good humour during the year. I would also like to thank the Law Society staff and, particularly, TP Kennedy and Michael Peart for their courtesy and generosity.



### On a high note

The February 2000 PPC2 ball was held on 6 September in the Shelbourne Hotel. Fine wining and dining were the order of the night, followed by a spot prize bonanza, and dancing 'til the wee hours. The night was a resounding success and rounded the course off on a high note. The organising committee (pictured, left to right) were Alison Hodge, Madeleine Loughrey-Grant, Shane Bourke, and Mary Kelleher, all of McCann Fitzgerald. They would like to thank the Law Society, Ulster Bank and Rochford Brady for their generous support



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 December 2001)

Regd owner: John Brady; Folio: 5047F; Lands: Aghnadaragan; Area: 0.908 acres; **Co Cavan**

Regd owner: Patrick Kilkelly; Folio: 1496; Lands: Townland of Rossalia and Corranroo and Barony of Burren; Area: 7.6105 hectares and 8.4377 hectares; **Co Clare**

Regd owner: Edmond Lyons; Folio: 768F; Lands: Known as the Townland of Monfieldstown situate in the Barony of Cork; **Co Cork**

Regd owner: Denis Calnan (deceased) and Veronica Calnan; Folio: 45899; Lands: Known as the Townland of Grilagh situate in the Barony of Carbery East (east division) and the County Cork; **Co Cork**

Regd owner: Neil Durning, Peter Durning, Patricia Kilgour and Anne Coates; Folio: 29825; Lands: Aghavannen Near; Area: 0.3096 hectares; **Co Donegal**. As tenants in common of a one quarter share each

Regd owner: William Nicholl; Folio: 9954, 9963; Lands: Ballynahone (part); Area: 81.315 acres; **Co Donegal**

Regd owner: The County Council of the County of Dublin; Folio: DN912; Lands: Property situate in the Townlands of Clondalkin and Yellowmeadows and Barony of Uppercross; **Co Dublin**

Regd owner: Shinko Microelectronics Ireland Limited; Folio: DN38806F; Lands: Property situate to the east side of Blessington road in the parish and town of Tallaght, property situate in the Townland of Killinarden and Barony of Uppercross and property situate to the south of the Tallaght bypass in the town of Tallaght; **Co Dublin**

Regd owner: The County Council of the County of Dublin; Folio: DN8763; Lands: a plot of ground

situate in the Townland of Darcystown and Barony of Balrothery East; **Co Dublin**

Regd owner: Kathleen Russell; Folio: DN99989F; Lands: Property in the Townland of Coolatrath East and Barony of Nethercross area; **Co Dublin**

Regd owner: Dorothy Keys; Folio: DN74236L; Lands: Property known as no 7 Orchard Terrace, upper Grangegorman, situate in the parish of Grangegorman and north-central district; **Co Dublin**

Regd owner: Niall Glynn and Breda Glynn, 26 Arnold Park, Glenageary, Folio: 97026F; **Co Dublin**

Regd owner: Gregory Geoghegan; Folio: DN77595L; Lands: Property being Unit 21, First Floor, Palmerstown Centre; **Co Dublin**

Regd owner: Francis and Mary Melia; Folio: DN31117F; Lands: Property situate in the Townland of Clonsilla and Barony of Castleknock; **Co Dublin**

Regd owner: Sean Keeley; Folio: DN43201F; Lands: Property situate in the Townland of Taylorsgrange and Barony of Rathdown; **Co Dublin**

Regd owner: Mary Bonnie Cummins; Folio: DN125328F; Lands: Property known as 17 Balkill Park, Howth, situate to the west of Barglass Road; **Co Dublin**

Regd owner: Kevin Peak; Folio: DN1048L; Lands: Property known as 52 Mount Prospect Avenue situate on the north side of the said avenue in the parish and district of Clontarf; **Co Dublin**

Regd owner: Hibernian Trustee Company Limited; Folio: DN4182; Lands: Property situate on the north and south sides of Crumlin Road, north and south sides of Raphoe Road, west side of Windmill Road in the parish and district of Crumlin; **Co Dublin**

Regd owner: James McDermott; Folio: DN938; Lands: Property situate in the Townland of Borranstown and Barony of Balrothery West; **Co Dublin**

Regd owner: Enzo Farinello; Folio: DN5666F; Lands: Property situate in the Townland of Knocklyon and Barony of Uppercross; **Co Dublin**

Regd owner: Enzo (Orse Vincenzo) Farinella; Folio: DN36763L; Lands: Property situate in the Townland of Knocklyon and Barony of Uppercross; **Co Dublin**

Regd owner: John William Burke; Folio: 10221; Lands: Townland of Rinville East and Barony of Dunkellin; Area: 33 acres, 3 roods

LawSociety  
Gazette

## ADVERTISING RATES

Advertising rates in the Professional information section are as follows:

- Lost land certificates – £30 plus 20% VAT (£36)
- Wills – £50 plus 20% VAT (£60)
- Lost title deeds – £50 plus 20% VAT (£60)
- Employment miscellaneous – £30 plus 20% VAT (£36)

HIGHLIGHT YOUR ADVERTISEMENT BY PUTTING A BOX AROUND IT – £25 EXTRA

All advertisements must be paid for prior to publication. Deadline for January/February Gazette: 18 January 2002. For further information, contact Catherine Kearney or Nicola Crampton on 01 672 4828 (fax 01 672 4877)

and 16 perches; **Co Galway**

Regd owner: Francis and Mary Dorgan; Folio: 11779; Lands: Townland of Kinard West and Do and Barony of Corkaguiny and Do; **Co Kerry**

Regd owner: David Joy (deceased); Folio: 13866; Lands: Townland of Gortnaskarry (part) and Barony of Dunkerron North; Area: 53.38 acres; **Co Kerry**

Regd owner: Thomas B Fitzgerald; Folio: 29448; Lands: Townland of Banna Mountain in Barony of Banna Mountain; **Co Kerry**

Regd owner: Leaf Ireland Limited; Folio: 7559; Lands: Townland of Kilcock and Barony of Ikeathy and Oughterany; **Co Kildare**

Regd owner: Liam Butler; Folio: 11990; Lands: Carmagh (parts); Area: 7.343 acres; **Co Leitrim**

Regd owner: Thomas Nethercott and Teresa Nethercott (deceased); Folio: 14145; Lands: Townland of Ballybrown and Barony of Pubblebrien; **Co Limerick**

Regd owner: John P Ryan (deceased); Folio: 2135; Lands: Townland of Crehaun and Barony of Coonagh; **Co Limerick**

Regd owner: Kathleen McNamara; Folio: 2744L; Lands: Townland of Shannabooly and Barony of North Liberties; **Co Limerick**

Regd owner: Marie Copues; Folio: 4427F; Lands: Townland of Askeaton and Barony of Connello Lower; Area: 1.3 acres; **Co Limerick**

Regd owner: Thomas Croghan; Folio: 8502; Lands: Cloondara;

NORTHERN  
IRELAND  
SOLICITORS

We will engage in, and advise on, all Northern Ireland-related matters, particularly personal injury litigation. Consultations where convenient. Fee sharing envisaged.

OLIVER M LOUGHRAN  
& COMPANY

9 HOLMVIEW TERRACE,  
OMAGH, CO TYRONE  
Phone (004428) 8224 1530  
Fax: (004428) 8224 9865  
e-mail:  
o.loughran@dial.pipex.com

DUBLIN SOLICITORS'  
PRACTICE OFFERS  
AGENCY WORK  
IN NORTHERN  
IRELAND

- \* All legal work undertaken on an agency basis
- \* All communications to clients through instructing solicitors
- \* Consultations in Dublin if required  
Contact: Séamus Connolly  
Moran & Ryan, Solicitors,  
Arran House,  
35/36 Arran Quay, Dublin 7.

Tel: (01) 872 5622  
Fax: (01) 872 5404

e-mail: moranryan@securemail.ie  
or Bank Building, Hill Street  
Newry, County Down.  
Tel: (0801693) 65311  
Fax: (0801693) 62096  
E-mail: seconn@iol.ie





# MISSING HEIRS TRACED

*Title Research*

**+44 (0)20 7549 0900**

Fax: +44 (0)20 7549 0949 • DX: 53347 Clerkenwell  
Email: [info@title-research.co.uk](mailto:info@title-research.co.uk) • [www.title-research.com](http://www.title-research.com)

Area: 19.1937; **Co Longford**  
Regd owner: Patricia Faughey; Folio: 6906; Lands: Edenagrena; Area: 0.475 hectares; **Co Louth**  
Regd owner: Thomas Grimes; Folio: 17903; Lands: Townland of Drumneen and Barony of Mayo; Area: 20.902 hectares; **Co Mayo**  
Regd owner: Margaret Bye; Folio: 3047, 17963; Lands: Donore and Lionsden; Area: 78.9 acres and 9.2625 acres; **Co Meath**  
Regd owner: John Murray; Folio: 20551; Lands: Clonycavan; **Co Meath**  
Regd owner: Bridget McBennett; Folio: 19096; Lands: Aghakista; **Co Monaghan**  
Regd owners: Patrick Joseph Bell and Florence Bell; Folio: 6468F; Lands: Srah and Barony of Ballycorran; **Co Offaly**  
Regd owner: Patrick Joseph Moore (deceased); Folio: 7248; Lands: Moyclare and Barony of Garrycastle; **Co Offaly**  
Regd owner: Comhlucht Siuicre Eireann Teoranta; Folio: 18952 and 3782F; Lands: Commons and Ballycarrane and Barony of Eliogarty; **Co Tipperary**  
Regd owner: Liam Dwyer (deceased); Folio: 2689; Lands: Farranmacbrien and Barony of Ormond Lower; **Co Tipperary**  
Regd owner: Michael Moylan; Folio: 16600; Lands: Dary and Barony of Ormond Lower; **Co Tipperary**  
Regd owner: Maja Hein; Folio: 8314; Lands: Roughan and Barony of Ormond Lower; **Co Tipperary**  
Regd owner: Helena Kane; Folio: 12926, 12927; Lands: Ranaghan; Area: 65.9125 acres; **Co Westmeath**  
Regd owner: Reverend Martin Clancy, Patrick Sullivan, John Kilbride, James Ryan, James Brennan and Liam Collins; Folio: 6024; Lands: Carnew and Barony of Shillelagh; **Co Wicklow**

## WILLS

**Boylan, Maureen**, 19 Lawnswood Park, Stillorgan, Co Dublin. Would any person having knowledge of a will being made by the above named, please contact Bergin, Burke & Ryan, Solicitors, 63 Mary Street, Dublin 1, tel: 01 878 0320, fax: 01 878 0233

**Carmody, Patrick** (deceased), late of Cloughkeating, Patrickswell, Co Limerick. Would any person having knowledge of a will executed by the above-named deceased who died on 8 February 2001, please contact Culhane, Judge & Co Solicitors, The Square, Newcastle West, Co Limerick, tel: 069 62969, fax: 069 62396

**Daly, Bill** (otherwise known as William), late of 32 Homefarm Road, Drumcondra, Dublin 9. Would any person having knowledge of a will executed by the above-named deceased who died on 12 March 1992, please contact Doyle Hanlon, Solicitors, 6 Richmond Road, Drumcondra, Dublin 3, tel: 01 836 9300, fax: 01 836 7474, e-mail: [jere-my@doylehanlon.com](mailto:jere-my@doylehanlon.com)

**Doogan, Sheila** (deceased), late of Meenderrynasloe, Annagry, County Donegal. Would any person having any knowledge of a will executed by the above-named deceased who died on 5 October 1980, please contact Patrick J Sweeney & Co, Solicitors, Dungloe, Co Donegal

**Fitzpatrick, Margorie** (otherwise Margaret M Fitzpatrick) late of 8 Castlecourt, Killiney Hill Road, Killiney, County Dublin and formerly of 4 The Maples, Monkstown Valley, Monkstown, County Dublin. Would any person having knowledge of a will made by the above-named deceased who died 24 July 2001, please contact

Michael Sheil & Associates, Solicitors, Temple Court, Temple Road, Blackrock, County Dublin

**Kelly, Hugh F** (deceased), late of 28 Oliver Plunkett Avenue, Dun Laoghaire, Co Dublin. Would any person having knowledge of a will made by the above-named deceased who died on 31 July 2001, please contact Maguire McNeice & Co, Solicitors, 2 Main Street, Bray, Co Wicklow, tel: 01 286 2399, fax: 01 282 9428

**Kelly, William**, 32 Hazelwood Avenue Bay Estate, Dundalk, Co Louth, and formerly of Clondra, Co Longford. Would any person having notice of a will being made by the above named, please contact Connellan Solicitors, 3 Church Street, Longford tel: 043 46440, fax: 043 46020

**Martin, John** (deceased), late of 6 Bloomfield Avenue, South Circular Road, Dublin 8. Would any person having knowledge of a will made by the above-named deceased please contact Barry Healy & Company, Solicitors, 'Laurel Lodge', Hillside, Monaghan, tel: 047 71556, fax: 047 71557

**Mescal, Jane**, of The Weirs, Tuam, Co Galway and formerly of Killernan, Dunsallagh, Ennis, Co Clare. Would any person having knowledge of a will made by the above-named deceased who died on 18 May 1999, please contact TA O'Donoghue & Son, Solicitors, Tuam, Co Galway, tel: 093 24414

**Reynolds, Thomas** (deceased), late of Northbrook Hotel, Northbrook Road, Ranelagh, Dublin 6 and 187 Clonliffe Road, Drumcondra, Dublin 3. Would any person having knowledge of a will executed by the above-named deceased who died on 15 April 2001, please contact Anne Greene, Solicitor, 58 The Palms, Roebuck Road, Dublin 14, tel & fax: 01 283 1484

**Seery, Francis Joseph (Frank)** (deceased), late of Newforest, Kilbeggan, Co Westmeath, formerly of 7 Riverview Cottages, Julianstown, Drogheda, Co Meath, and 3 Hampton Place, Balbriggan, Co Dublin. Would any person having knowledge of a will made by the above-named deceased who died on 7 September 2001, please contact NJ Downes & Co, Solicitors, Mullingar, Co Westmeath, tel: 044 48646, fax: 044 43447

## SOLICITOR URGENTLY REQUIRED Overseas Contract

Established general practice in the Turks & Caicos Islands seeks solicitor for immediate position. Minimum requirement – 5 years PQE. Details of salary, etc. available on request. Please reply in strictest confidence to [ffdlawco@tcway.tc](mailto:ffdlawco@tcway.tc) or to:

**FINBAR F DEMPSEY & COMPANY**  
PO Box 70  
Grand Turk  
Turks & Caicos Islands  
Ph: 649-946-2245. Fax: 649-946-2758

## HIRE EXPERIENCE

I am retiring from private practice to act as a freelance consultant solicitor. I am looking for challenging, short-term and/or part-time assignments in general practice, practice administration, or other wise, as required. I am totally flexible, mobile and computer literate.

**Esmond Reilly**  
Solicitor, 4 Orchard Rise, Stamullen, County Meath.  
Telephone: 01 841 6022. Fax: 01 841 6024  
Mobile: 087 256 1925. E-mail: [esmond@securemail.ie](mailto:esmond@securemail.ie)

**Twohig, Timothy** (deceased), late of 14 Ashe Street (formerly Mill Street), Clonakilty, County Cork. Would any person having knowledge of a will executed by the above-named deceased who died on 21 January 1961, please contact McCarthy & Co, Solicitors, 10 Ashe Street, Clonakilty, Co Cork, tel: 023 33348, fax: 023 33105

**Walsh, Edmond P** (Ned), late of Lower Kilmona, Grenagh, Co Cork. Would any person having knowledge of the whereabouts of the original will dated 20 April 1994 or any subsequent will of the above-named deceased who died on 23 April 2001, please contact McCarthy and McCarthy, Solicitors, Premier House, Main Street, Ballincollig, Co Cork, tel: 021 487 0550

## EMPLOYMENT

**General practice: solicitor required**, Dublin 7. Mainly for civil litigation (plaintiff work), also some probate work: Newly qualified. Woods & Company, 41 Arran Quay, Dublin 7, contact: Godfrey Hogan, tel: 01 872 2022, e-mail: godfrey@woodssolicitors.com

**Solicitor required** – PQE desirable. Salary commensurate with experience. Please reply with CV to Jim Houlihan, Desmond A Houlihan & Son, Solicitors, Birr, Co Offaly

**Part-time locum solicitor required** for approximately 12 weeks, early to mid January on 2/3 day week (must include Wednesdays). Experience in District Court, litigation and conveyancing essential. Reply in writing to Patricia Holohan & Co, 5 The Steeples, Timmons Hill, Dublin Road, Navan, Co Meath

**Locum solicitor required** for office in Naas, Co Kildare, to cover maternity leave. Must be experienced in conveyancing and litigation. Mid January 2002. Reply in writing to Hanahoe & Hanahoe, Solicitors, 16 North Main Street, Naas, Co Kildare

**Solicitor with PQE practising certificate** and savvy available for locum position. Divorce and personal injury work in Dublin area preferred, tel: 01 660 5893, mobile: 087 671 3671

**Galway solicitor** is interested in undertaking District Court agency work in the city and surrounding areas for out-of-town solicitors. Please reply in strictest confidence to **Box no 100**

**Dublin-based solicitor** available for part-time position. PQE in conveyancing, family, probate, and litigation. Reply to **Box no 101**

**Solicitor** – very reliable. Would like to hear from another solicitor with a view to partnership, Cork city or county. Reply to **Box no 102**

**Experienced locum solicitor** with experience in all areas of law seeks locum work. South Western region preferred. Reply to **Box no 103**

## 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

## EYE INJURIES AND OPHTHALMOLOGICAL NEGLIGENCE

Mr Louis Clearkin ChM, FRCS, FRCOphth, DO, MAI, MEWI  
Consultant Ophthalmic Surgeon

Experienced expert witness in ophthalmological personal injury, medical negligence and civil litigation

Renuntiabo, 8 Rose Mount,  
Oxton, Wirral, Merseyside,  
L43 5SW  
secretary: +44 (0) 151 6047047  
fax: +44 (0) 151 6047152  
e-mail: L.Clearkin@Liv.ac.uk

**Publican's ordinary seven-day licence for sale.** Reply to Cornelius Sheehan & Co, Solicitors, 2 Alma Place, Monkstown, Co Dublin, tel: 01 230 3570, fax: 01 230 3573

## TITLE DEEDS

**James Boothman** (deceased). Would any person knowing the whereabouts of deeds to the property of the late James Boothman at 39 Whitebarn Road, Churchtown, Dublin 14, please contact Hinkson, Solicitors, Field's Corner, Churchtown, Dublin 14, tel: 01 296 3211, fax: 01 296 3213

**In the matter of the Landlord and Tenant (Ground Rents) Acts, 1967 - 1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by Maureen McElhinney, formerly of 17 Moncks Place but now of 45 Woodview Grove, Blanchardstown, Dublin 15**

Take notice that any person having any interest in the freehold estate of the following property: All that and those the yard adjoining Number 10 Leslie Buildings, formerly Leslie Place, rear of Avondale Road, Phibsborough, in the parish of Grangegorman and City of Dublin, presently in the occupation of the lessee as tenant from the lessors and more particularly delineated and described in the map thereof thereunto annexed and thereon coloured red.

Take notice that Maureen McElhinney intends to submit an application to the country 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, Maureen McElhinney 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 are unknown or unascertained.

Date: 22 October 2001

Signed: John P Redmond & Company (solicitors for the applicant), Marshalsea Court, 22/23 Merchant's Quay, Dublin 8

**In the matter of the Landlord and Tenant (Ground Rents) Acts, 1967 - 1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978 and in the matter of 149 D, E, and F North Strand, Dublin: an application by David and Rita Harris**

Take notice that any person having any interest in the freehold estate of the following property: 149 D, E, and F, North Strand in the City of Dublin.

Take notice that David Harris and Rita Harris intend to submit an application to the country registrar

# J. DAVID O'BRIEN

## ATTORNEY AT LAW

20 Vesey St, Suite 700  
New York, NY, 10007

**Tel: 001212-571-6111**

**Fax: 001212-571-6166**

**Email: obrienlawusa@aol.com**

PERSONAL INJURY ACCIDENT  
CASES

CONSTRUCTION  
RAILROAD  
MARITIME  
AVIATION  
CAR/BUS/TRUCK

MEMBER AMERICAN AND NEW  
YORK STATE TRIAL LAWYERS  
ASSOCIATIONS

*Enrolled as Solicitor  
in Rep of Ireland, England  
& Wales*



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 aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, David Harris and Rita Harris intend 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, are unknown or unascertained.

*Date: 24 October 2001*

*Signed: Kevin Gaffney of Gaffney Halligan & Co (solicitors for the applicant), Artane Roundabout, Malabide Road, Artane, Dublin 5*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 - 1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the**

**matter of the *Landlord and Tenant (Ground Rent) Acts 1967-1984: notice of intention to acquire the fee simple***

To any such person or persons for the time being entitled to the interest in the freehold estate of the following property: The premises known as 25 Leeson Park, Dublin 4 in the County of the City of Dublin.

Take notice that the executors of the estate of Miss Maeve Molloy, deceased, being persons entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* intend to submit an application to the county registrar for the County/City of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the executors of the estate of Miss Maeve Molloy, deceased, intend to proceed with the application before the county registrar at the end of 21 days from the date of

this notice and will apply to the county registrar for the County/City of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion in the property, are unknown or unascertained.

*Date: 6 November 2001*

*Signed: A&L Goodbody (solicitors for the applicant), International Financial Services Centre, North Wall Quay, Dublin 1*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 - 1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1978* and in the matter of purchase of freehold estate of property situate at 4 Fairview, Clontarf, Dublin 3: an application by Cathal McHugh, Eamonn McHugh and Martin Kinsella trading as McHugh Kinsella & Co, Accountants, Garadice House, 3-4 Fairview, Clontarf, Dublin 3**

Take notice that any person having an interest in the freehold estate of the property known as 4 Fairview, Clontarf, Dublin 3, held under an indenture of lease dated 15 July 1839 and made between Jane Mooney, Philip Mooney, Elizabeth Mooney

and James Mooney of the one part and Richard Moore of the other part were demised unto the said Richard Moore for a term of 200 years from 16 January 1840 subject to the yearly rent of seven pounds and ten shillings sterling and subject to the covenants and conditions on the part of the lessee therein contained.

Take notice that Cathal McHugh, Eamonn McHugh and Martin Kinsella intend to submit an application to the county registrar for the County/City of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Cathal McHugh, Eamonn McHugh and Martin Kinsella intend 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, are unknown or unascertained.

*Date: 9 November 2001*

*Signed: Sean Meaney & Company, Solicitors, Riversdale House, 139 Lower Drumcondra Road, Dublin 9*

**In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 - 1989: notice of intention to acquire the fee simple***

All that and those the dwellinghouse and garden situate at Upper Main Street, Borrisoleigh and County of Tipperary in the possession of Maeve Bane and Patrick Bane, held under a yearly tenancy at a yearly rent of £2.50.

Take notice that we, Maeve Bane and Patrick Bane, both of Upper Main Street, Borrisoleigh, Thurles, Co Tipperary, being persons whom we believe to be entitled under section 3 of the *Landlord and Tenant (Ground Rents) Act, 1967*, propose to purchase the fee simple in the land and premises described in paragraph one.

And further take notice that such application shall be made before the county registrar on 21 January 2002 at Clonmel Courthouse, Clonmel, Co Tipperary.

*Date: 21 November 2001*

*Signed: James J Kelly & Son (solicitors for the applicants), Patrick Street, Templemore, Co Tipperary*

## LAND REGISTRY

Cork Road, Waterford

### TO WHOM IT MAY CONCERN

**Re: Estate of Patrick Daly, deceased  
and Re. Lands of Curraghverera, County Limerick.  
Application for first registration by John Reardon  
Reference No. P4242/98**

**TAKE NOTICE** that John Reardon of Baskethill, Pallasgreen, County Limerick has applied to be registered as owner in fee simple of part of the Townland of Curraghverera in the Barony of Clanwilliam County of Limerick containing 3.84 hectares more particularly shown on the map lodged with the application and which may be inspected in this office.

Any objection to such registration must be filed in writing in this office and duly verified within one calendar month of the date of publication of this notice.

In the absence of a valid objection being received within that time registration will proceed.

Dated the 30<sup>th</sup> day of November, 2001.

Brian Kelly  
Examiner of Titles  
Land Registry  
Cork Road  
Waterford.



[www.benasso.com](http://www.benasso.com)

**Benson & Associates**  
is a niche consultancy,  
specialising in the  
recruitment of high  
calibre lawyers for  
private practice,  
commerce and  
industry.

For information on the  
services we provide as well  
as current vacancies, please  
visit our website or contact  
Michael Benson (BCL) or  
Annaleen Sharkey (LLB) in  
strictest confidence, at:

Carmichael House,  
60 Lower Baggot Street,  
Dublin 2, Ireland  
T +353 (0) 1 670 3997  
F +353 (0) 1 670 3998  
E [jobs@benasso.com](mailto:jobs@benasso.com)