#### azette

#### Regulars

News	2
Viewpoint	9
Book reviews	33
Tech trends	36
Stockwatch	38
Briefing	41
Council report	41
Legislation update	43
Personal injury judgments	44
Practice notes	46
FirstLaw update	47
Eurlegal	55
People and places	60
Apprentices' page	63
Professional information	69

COVER PHOTO: roslyn@indigo.ie





#### **Cover Story**

2 Waiting in the wings?

After the next general election, solicitor Alan Shatter could well be minister for justice. Here, he talks to Conal O'Boyle about how condoms furthered his political career and how elephants could end it

Trouble down the line Has the government's push to promote

e-commerce blinded it to the dangers contained in the Electronic Commerce Act, 2000? Gabriel Brennan argues that the failure to exclude land contracts could lead to trouble down the line

The French connection Monaco played host to this year's annual conference. Conal

O'Boyle reports on the business session, where the theme was Money and people: getting it right



Editor: Conal O'Boyle MA. Assistant Editor: Maria Behan. Designer: Nuala Redmond. Editorial Secretaries: Catherine Kearney, Louise Rose. Advertising: Seán Ó hOisín, 10 Arran Road, Dublin 9, tel/fax: 837 5018, mobile: 086 8117116, e-mail: seanos@iol.ie. Printing: Turners Printing Company Ltd, Longford. Editorial Board: Pat Igoe (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@lawsocietv.ie Law Society website: www.lawsocietv.ie

Volume 95, number 5 Subscriptions: £45

#### SOLICITORS AND THE MINIMUM WAGE

The Law Society's Education Committee wishes to remind solicitors and apprentices, or solicitors and people who intend in the future to enter into indentures of apprenticeship, that the National Minimum Wage Act, 2000 applies to the relationship between them, as does the National Minimum Wage Act (Prescribed Courses of Study and Training) Regulations 2000 (SI 99/2000).

#### INTERNATIONAL CRIME-BUSTER

Maureen Harding Clark SC has been nominated on behalf of Ireland to stand in elections as an *ad litem* judge of the International Criminal Tribunal for the former Yugoslavia.

#### COMPENSATION FUND PAYOUTS

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in April: Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £300,000; John K Brennan, Mayfield, Enniscorthy, Co Wexford – £2,450; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £387.20.

# Comedy of errors marks production of PIAB report

An indication of the tensions within the Personal Injuries Assessment Board working group can be gleaned from a faxed exchange between Anne Troy, principal of the insurance market division within the Department of Enterprise, Trade and Employment, and Tom O'Malley, law lecturer at NUI Galway.

In her letter, dated 29 February 2000, Ms Troy notes that Mr O'Malley had been 'considering entering a reservation about the proposals of the working group'. She then goes on to say that since 'we have not heard from you', the working group held a meeting in his absence. And she adds: 'The minister is concerned that an appointed



Personal injuries: tragedy turning into farce

member of the group may not be involved in the final stages of the committee's work. As you have been informed, the final meeting of the group will take place tomorrow, to sign off on the report in its final form. Perhaps you would be good enough to confirm your attendance'.

In a reply that would do HG

Welles proud, O'Malley writes back (on 28 February), saying: 'I have just received from you today a letter, dated tomorrow and addressed to me at the University of Limerick, an institution with which I have no connection. You refer to a meeting on an unspecified date which I did not attend. This was the most recent meeting of the working group at which the final version of the report was to be approved. However, as I did not, despite promises to the contrary, receive any copy of the report before the meeting, there was little point in attending. I could not, in conscience, come in and sign a report which I had not seen ... Incidentally, I have had no indication or record that you have been trying to contact me in the meantime, but that may be because you were trying to find me at the University of Limerick rather than Galway'.

And he adds, somewhat ominously: 'I shall be communicating with the minister or the minister for state to explain the circumstances surrounding my absence from the last meeting'.

#### MEMBERS OF THE SPECIAL WORKING GROUP ON A PERSONAL INJURIES ASSESSMENT TRIBUNAL

Dan McAuley, Irish Business and Employers' Confederation (IBEC)

Tony Briscoe, IBEC
Fergus Whelan, Industrial
Officer, Irish Congress of Trade

Unions (ICTU)
Tom O'Malley, law lecturer, NUI
Galway
Fionan Cronin, Department of
Enterprise, Trade and
Employment

#### ONE TO WATCH: NEW LEGISLATION

The Bail Act, 1997: one year on The Bail Act, 1997 was the result of a constitutional amendment (the 16th adopted in 1996) which permitted bail to be denied for serious offences if there was a likelihood that further serious offences would be committed by an accused while on bail. It was anticipated that its implementation would be delayed by the need for an increase in accommodation for remand prisoners. It came into full effect a year ago on 15 May 2000 (SI 118/2000). Before that, it had some application to Special Criminal Court cases and in sentencing (SI 140/98 and SI 315/98). Since September 1998, it has been possible for bail applications to be opposed in the Special Criminal Court on the basis of section 2 of the act, and this has resulted in contested bail hearings with appeals to the High Court. Bail

applications are therefore liable to take much longer than before.

According to practitioners, this aspect of the act did not make a big difference in the lower courts at first. Of more importance was the effect of section 5, which requires applicants for bail from the court (not from the gardaí) to lodge one-third of the bail money, which was not the position before. Alternatively, the court may accept proof of the existence of money, for example in a bank account, and may order the appropriate sum to be frozen pending the duration of the proceedings.

The background to this was the apparently small amounts of bail money which were estreated when an accused failed to turn up for trial or further remand, because the process was regarded as too cumbersome and lengthy to justify the resources

required to collect the money. However, the new arrangement has reportedly caused great difficulty for people of small means, and in some cases has resulted in people being remanded for weeks while their families try to scrape the money together.

Many people brought before the courts are charged with minor public order offences, and it is not the wish of the prosecution to remand them in prison. It is as often in the interests of the prosecution as of the defence that bail should be granted. In extreme cases, it has resulted in people present in the court during a bail application putting their hands in their pockets to come up with some money, and bail being set at very low levels (a few pounds) to enable funds raised in this way to be sufficient. This practice arises not only where children are

concerned, but adults also.

A further concern is the security of court staff who receive payment of bail money. They have to keep it secure and, if working in outlying areas, have to travel with it. In short, the one-third pre-payment rule is an aspect of the act that is proving difficult and inconvenient to administer.

There is another way in which the act falls short of the ideal. A contested bail application is usually decided by the same judge who later proceeds to hear the substantive case. During a bail application, the judge is given information about a propensity to offend which may influence his attitude later. Even if it does not, it can give the appearance of doing so. It is hard to see how to avoid this, without having alternative judges. This problem exists already,

# PIAB working group torn by internal divisions

Deep divisions within the working group that recommended setting up a new Personal Injures Assessment Board (see last issue, page 2) have been revealed in papers obtained by the Law Society under the *Freedom of Information Act*. The documents show one member of the working group describing another as 'providing the legal lobby with lethal ammunition to attack the group's proposals'.

The row centres on strong reservations expressed by law lecturer Tom O'Malley about the group's terms of reference. In a letter to his colleagues explaining the basics of the law of tort, O'Malley wrote: 'It is important to stress the limited nature of those terms of reference ... At no point was the group asked to undertake a critical examination of the present system or to compare the merits of that system with those of any alternative structures that might be introduced'.

In reply, Fionan Cronin of the Department of Enterprise, Trade and Employment says: 'In my view, T O'Malley's lengthy "observations" appended to the report will provide the legal lobby with fairly lethal ammunition to attack the group's proposals for the establishment of a Personal Injures Assessment Board and will make it extremely difficult for the department and minister to progress the recommendation'. According to Cronin, O'Malley views the group's terms of reference as 'fundamentally inadequate and based on a political view of the need for changes to the existing personal injury compensation system'.

O'Malley had remarked that

he was not condemning the idea of a PIAB but only suggesting 'a thorough examination of the present system', saying: 'It is only when such an examination has taken place that we will be in a position to make an informed judgement about its capacity to respond to present social and economic needs. It goes without saying that other empirical investigations in relation to both occupational injuries and injuries attributed to the negligence of local authorities must also be undertaken. It may well transpire that the physical environment is in greater need of reform than the legal environment'.

**E-COMMERCE SEMINAR** An evening seminar entitled The legal implications of electronic trading and communication in Ireland will be held on Thursday 28 June at the Conrad Hotel, Dublin 2. It aims to highlight the legal risks associated with offering goods or services on-line, and will focus on the civil and criminal issues relating to employee use of e-mail, infringement of intellectual property rights, cybersquatting, data protection, security and the E-commerce Act, 2000. The seminar will be presented by Rob Corbet of Arthur Cox in association with WebIntellect Ltd. For more information, e-mail admin@webintellect.ie or tel: 01 608 0874.

**GOAL CHARITY CYCLE** 

The GOAL leisure cycle for members of the legal profession will take place on Saturday 21 July, starting off from St Anne's GAA club, Bohernabreena, Tallaght at 10am. The charity cycle will take participants through Wicklow, the Sally Gap and the Wicklow Gap, returning via Blessington to the starting point. Each participant on the cycle is expected to raise £250 in sponsorship and all are welcome to attend. For further information, call 01 676 7192/7193 or 087 235 7553.

#### Shurely shome mishtake?

The documents obtained under the FOI act also reveal a startling lack of understanding about legal costs and legal terminology. In one document estimating the potential savings to be made by the PIAB, civil servant Fionan Cronin defines solicitors' instruction fees as the 'fees charged by solicitors for instructing counsel on the claimant's behalf'. No-one appears to have explained to him that an 'instruction fee' is the central element in the bill presented to a client by a solicitor at the conclusion of the work for which the solicitor was instructed. It has nothing to do with instructing barristers. An instruction fee will be charged even in cases where no barrister is involved.

insofar as judges must try offenders whom they recognise from previous trials. It seems to be accepted as an inherent shortcoming which it is impractical to eliminate. The theory is that legal training and judicial standards may be relied on to avoid this kind of prejudice.

#### Main provisions of the act

- Section 2(1) sets out the basic principle of the act: 'Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person'
- Serious offences are set out in the schedule, and include:
  - Common law offences, including

- murder, manslaughter, assault occasioning actual bodily harm, kidnapping, false imprisonment and rape
- Certain offences against the person
- Certain sexual offences
- Certain explosives offences
- Certain firearms offences
- Certain robbery and burglary offences
- Dangerous driving causing death or serious bodily harm and taking a vehicle without authority
- Certain offences in relation to aircraft and vehicles
- Certain offences in relation to forgery
- Treason and any offence under the Offences Against the State Act, 1939
- Certain drug trafficking offences
- Certain public order offences
- Section 2(2) sets out criteria to assist a judge in deciding if an offence qualifies as a serious offence. These criteria would enable a judge to exclude an offence as serious if it was a relatively minor instance of what is normally classified as a serious offence, for example, if the value of goods stolen was small, or if a burglary caused only minor loss or damage. Drug addiction, because it is often a factor in re-offending may also be taken into account if one or more of the other criteria are met, but it cannot be a ground on
- Section 2(3) provides that a specific offence need not be anticipated in order to refuse bail
- Section 3 provides that if a trial has not started within four months of a bail refusal, the accused can

- reapply and 'the court shall, if satisfied that the interests of justice so require, release the person on bail'. The court is not bound to order release, but the onus is on the defence to show that the delay is reasonable
- The act provides for precautions to be taken so that any criminal record which is relevant for a bail application does not prejudice the accused's right to a fair trial, and, specifically, that it is not published. Any person or company publishing information is guilty of an offence and can be fined and imprisoned
- Section 5 introduces the new regime whereby a minimum of onethird of a bail surety has to be paid up front and deposited in the court. As an alternative, the court may accept 'such instrument which is evidence of the title of person to

# With *eircom* hi-speed you're always open for business













With an *eircom* **hi-speed** line you're far more accessible, because your phone lines are twice as efficient. *eircom* **hi-speed** enables you to use your email, fax or Internet at the same time as making a phone call - so you're more available to your customers and suppliers and you'll never miss that all-important call. Plus you can send files, video or graphic images in seconds. So get connected with *eircom* **hi-speed** today. Call 1800 630 230, and keep your doors open.



#### Law firms line out for website ratings

aw firms thinking about embracing the 21st century and establishing a presence on the worldwide web could do worse than checking out the top Irish law sites as judged by international website expert Delia Venables. The Internet guru has surveyed all Irish solicitors' firms with websites and selected the best ones as the latest of her 'Mystery Tours'. The winners can be seen on her site at http://www.venables.co. uk/mystery.htm.

Around 90 Irish law firms have a website. Of these, 40 are small firms (defined as one to four lawyers), 21 are mediumsized firms (five to 14 lawyers), 21 are large firms (15 to 74 lawyers), while five fall into the category of 'very large firms' (those with over 75 lawyers).

The results of the very large firms survey have yet to appear, but the rest of them are as follows:

Large firms: Beauchamps, LK Shields, Mason Hayes & Curran and O'Donnell Sweeney (all Dublin-based) and Ronan Daly Jermyn in Cork

#### **Medium-sized firms:**

Duncan Grehan & Partners and Kilroys (both in Dublin), Pierse & Fitzgibbon (Listowel), and two firms of patent attorneys



The Ronan Daly Jermyn website: one of those singled out by Internet guru Delia Venables

(Tomkins and FR Kelly)

Small firms: Cafferky, Dermot P Coyne and Tyrrell (all in Dublin), John A Sinnott & Co (Enniscorthy), and Patrick McMahon (County Limerick).

The winners in each category were the ones with good information about the firm and its partners, a pleasing design, a fast-loading site and 'something extra' to make the site especially interesting. The something extra could include the provision of useful free legal information on the site, the provision of documents on the site for users to download, sections in foreign languages to

attract overseas viewers or the provision of property details for the sale of houses.

'Many of the sites for the smaller Irish firms were quite simple, often designed in-house by a web enthusiast. There is no problem about this', says Venables. 'In my opinion, a "live" site with imperfections is much more interesting than a perfect, but "dead" one'.

The Delia Venables site, at http://www.venables.co.uk/irela nd.htm, is one of the key sites for the Irish legal world, providing access to key legal resources, solicitors, barristers, publishers, legal software and jobs in Ireland.

CRIME AND PUNISHMENT Superstar lawyer Barry Scheck will be one of the guest speakers at a Bar Council conference on Crime and punishment: retribution or rehabilitation? The conference takes place on Saturday 16 June at the Law Library Distillery Building, 145-151 Church Street, Dublin 7 and costs £20 per person. Other speakers at the event include former Tory Home Secretary Michael Howard QC, Labour justice spokesman Brendan Howlin TD and Ivana Bacik, Reid Professor of Criminology at Trinity College, Dublin. For further information and booking details, please contact Jeanne McDonagh on 01 804 5014 or 087 246.9855 or by e-mail on jmcdonagh@lawlibrary.ie.

#### DATA PROTECTION: A REMINDER

The Council of the Law Society wishes to advise members that they should not register under the *Data Protection Act, 1988*, unless they hold data on computer relating to:

- · Political opinions
- Religious or other philosophical beliefs
- Physical/mental health
- Criminal convictions
- Sexual life
- Racial origin, or
- Trade union membership.

property (other than land or any estate, right or interest in or over land)' as it considers adequate. A deposit book is mentioned as an example of this. The court is required to notify the financial institution holding the money to freeze the appropriate amount pending the proceedings' conclusion

- As well as the usual requirement for the accused to present himself before the court at the end of the remand period, section 6 makes both non-commission of any offence and good behaviour mandatory conditions of bail
- Section 6(5) provides that on the application of a surety or a member of the gardaí grounded on a sworn statement in writing that the accused is about to contravene any conditions of the bail, the court

- may issue a warrant for the accused's arrest
- The court which issues a warrant for arrest may direct that the accused be released on the terms set out in the warrant, including the amount of surety. Section 8 stipulates that the gardaí must require payment of at least one third of the recognisance
- Section 9 is unequivocal: if someone on bail does not appear before the court in accordance with the terms of the bail, when the court issues a warrant for his or her arrest, it must also order the estreatment of the recognisance and the forfeiture of monies paid into court. Further, on sworn written information being given to the court by the gardaí that a condition of the bail has been contravened, the court may issue an arrest warrant.

The arrest of the accused does not release any sureties until the conclusion of any proceedings. If the court finds that there has been a breach of any bail conditions, the court is required to order estreatment and forfeiture. The onus then shifts to the person putting up the bail (including the accused), who has 21 days to apply to have the order varied or discharged, and this the court may do 'if satisfied that the interests of justice so require'

 Section 10, which has been the law now for three years (it was brought into effect by SI 140/98 on 2 June 1998), provides that where a court is imposing a sentence for an offence committed while on bail, and is required to impose two or more consecutive sentences (by section 11 of the Criminal Justice Act, 1984), then the fact that the offence was committed while on bail is to be regarded as an aggravating factor and the court is required, as a general rule, to impose a greater sentence.

So the *Bail Act*, 1997 not only implemented the constitutional amendment but also tightened up the bail law in various ways. The previous problem was that the estreatment of bail rarely happened, for reasons of expense and leniency by the judiciary. The present problem is that bail frequently has to be set at very low, even derisory, levels, because of the reality that the people concerned cannot raise the cash.

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

# Earn up to 35% gross

- Maximum return 35% gross over 3<sup>1</sup>/<sub>2</sub> years (8.95% CAR) (Returns subject to DIRT where applicable)
- 100% capital protection
- World Stockmarket Investment

# For full details phone $(01) 608 4577^*$

# Closing Date: 20 July 2001 or earlier if fully subscribed



World Deposit Tracker is a 3 <sup>1</sup>/2 Year fixed term equity linked deposit. Early withdrawals are not permitted. Returns subject to DIRT where applicable. Minimum investment £5,000. Closing date 20 July 2001 or earlier if fully subscribed. \*Please note that in order to maintain the highest level of service, we may record and monitor telephone calls. Please note that past performance is no guarantee of future investment returns, which are dependent on future investment conditions. Ulster Bank Limited. Registered in Northern Ireland No. R733. Registered Office 11-16 Donegal Square East, Belfast BT1 5UB. Registered as a branch in Dublin, Ireland No 900050. Principal Office: 33 College Green, Dublin 2





# Easier route for solicitors who want to transfer

Solicitors who want to switch from one branch of the profession to the other should find it easier thanks to a rule change by the King's Inns, the barristers' training body.

In a letter to the Law Society, the Inns say that solicitors who want to be called to the bar only have to practise for three years instead of five, as before. The letter goes on to say: 'It is important to note that the three years' practice requires to be in place at the time of the application to the King's Inns, and, thus, it may in practice be necessary to have acquired the appropriate level of practice some little time before Call to the Bar can occur'. It adds that it has begun preliminary discussions with the Law Society to 'consider whether further measures need to be taken on a

reciprocal basis to ease the passage from one branch of the profession to the other'.

Commenting on the rule change, Law Society Director General Ken Murphy said: 'We welcome anything that makes it easier to transfer between the two branches of the legal profession. This initiative from the King's Inns is to be welcomed as part of a genuinely progressive and healthy dialogue'.

#### Murder in mind

The Law Reform Commission will be holding a seminar on Homicide: the mental element in murder, in the Italian Room, Department of the Taoiseach, Government Buildings, Upper Merrion St, on Wednesday 11 July at 5pm. The seminar is part of the consultative process in the light of the LRC's recent consultation paper on the topic. The submissions made prior to the event (submissions must be

made by 30 June), as well as the feedback received at the seminar, will be considered in the preparation of the commission's report on the subject later in the year. Copies of the LRC consultation paper are available on the Internet at www.lawreform.ie<a href="http://www.lawreform.ie">http://www.lawreform.ie</a> or from the LRC itself. For further information about the seminar, contact Denis McKenna on tel: 01 637 7600.

## Mightier in Swords?

The Citizens' Information Centre in Swords is looking for more volunteers to help with its Legal Aid Service, which advises members of the public on their rights and entitlements. The service currently operates every Thursday evening from 7-8.15pm, with lawyers volunteering their time once a month. If you can help out, phone Deirdre on 01 840 6877 or 01 840 9714.

#### SOLICITORS' HELPLINE The Solicitors' Helpline is

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

# 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.

ou need sation.

law searching • summons serving • town agents • company formation

• title investigations • enquiry specialists





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

tel: 1850 529 732 fax: 1850 752 436

e-mail: rochford@lawsearch.ie website: www.lawsearch.ie/rochford





Make your money stretch further with Meteor Minutes.

Do you use your mobile phone a lot? If so, you could pay less to talk more by choosing the option that suits you from Meteor Minutes. It allows you a set number of minutes talktime per month, with a monthly bill. For example, you can get an astonishing 750 minutes for £100 or 250 minutes for £45 (VAT inclusive). And remember, unlike other networks, with Meteor Minutes all these options include calls to the UK.

What's more, there is no rental, so every penny you spend goes towards making calls. If you'd like to switch, the minimum commitment is just six months and if you are a post paid customer with another network, you can change to 085 and keep your number. Meteor Minutes - available at any Meteor store and Carphone Warehouse.

Meteor Minutes - It's the smarter way to use your mobile phone.

Monthly Commitment				
Monthly Commitment	£20	£30	£45	£100
Minutes call time	60	120 No carry over	250 of minutes	750

Note: Your monthly minutes allocation includes calls listed in the table below excluding SMS. All other calls are charged at the standard rates. For more information see instore call sheets. If your calls in any month exceed the minutes included in your Meteor Minutes package, your subsequent calls will be charged at the following low rates:

Other Charges				Meteor 750
085 to Landline (ROI & UK)	23p	22p	15p	10p
085 to 085	23p	22p	15p	10p
Voicemail/WAP	23p	22p	15p	10p
085 to other mobiles (ROI & UK)	33p	30p	23p	18p
Text Message (SMS)	10p	10p	10p	10p

6 month minimum commitment. Per second billing applies (VAT inclusive).

#### Pressing concerns

The recent Cooper-Flynn case highlights the fact that taking a libel action can be a very expensive proposition indeed. Michael Foley questions the current system for curbing media excess and calls for a fresh approach

Beverley Cooper-Flynn would hardly agree, but the result of her recent libel trial brought with it a number of benefits. For the media, there was a rare instance of one of their own winning a major case. There was, however, a less obvious benefit, the chance that such a victory might widen the debate about defamation and libel so that it is seen as something of interest to more than just journalists.

Ms Cooper-Flynn might even become an ally of the journalists and proprietors who have been seeking reform of the libel laws for years. She does, of course, come from a different direction, but surely she must now have strong views about access to the courts and the cost of taking a case.

#### A price tag on justice?

Ms Cooper-Flynn has lodged an appeal, so we should not comment in too much detail about the case. What is inescapable, however, is that whatever the merits of her case, the level of costs must raise a question about access to the courts. Who would have the nerve to take a case to protect their good name, however confident they felt, with the risk that a jury might find that in all probability the case rested with the defendant and award enormous costs such as those facing Ms Cooper-Flynn? It would be hard to find a better example to illustrate the argument that only the rich dare enter the libel court.

A few points concerning libel should be reiterated, even though the arguments for reform have been put forth often since the Law Reform Commission first recommended



Beverly Cooper-Flynn after her recent High Court libel action

reform in 1991. To begin with, our defamation laws are outdated. The law can be traced back to the 17<sup>th</sup>-century English star chamber, which developed defamation as an alternative to challenging a person to a duel.

'Libel is perceived not as a way of protecting a person's good name, but of regulating the press – and in that, it fails'

When that court was abolished after the English civil war, the common-law courts took over its jurisprudence in the field of libel.

Lawyers can point to several features in Irish law which have come down to us virtually unreformed since the 17<sup>th</sup> century. The plaintiff, of course,

does not have to prove negligence or that the defendant failed to exercise reasonable care. Second, action can be taken against material that was already in the public domain, even when no action was taken before, so that at no time does information become safe. The third factor is that the plaintiff does not have to show that he or she suffered any loss or damage: the law presumes that to be so. In other words, there is no presumption of innocence.

So what does this mean for journalists? In a small media market, libel is a real and daily threat, especially as Irish juries tend to give very high awards without any regard to the level of sales or number of listeners or viewers.

Libel in Ireland is applied in a way that does not take account of the nature of the offence. Small errors are treated as if they were major and done in malice. The expense means that it is often easier to simply settle out of court, which encourages more people to seek compensation in the knowledge that the case probably won't go to court.

The biggest categories of those who take actions against the media are business people and professionals. Within that group, lawyers are the largest single group. Politicians, who used to represent about 10%-11%, now constitute over 20%. There are also a large number of repeat plaintiffs. Journalists themselves account for around 10% of those taking action against the media.

So will the laws ever be reformed, as recommended by the Law Reform Commission back in the early 1990s? It would appear unlikely. Even the attorney general, Michael McDowell, who is known to favour reforming media law, is pessimistic and told a student gathering at the Dublin Institute of Technology a few years ago that he doubted if libel would be reformed.

#### The problem with libel

Politicians deny that selfinterest is the reason successive governments have never considered reforming libel. Sorry, that is not quite correct: it has always been on governments' 'must do' lists, but is never reached. What they do say is that there will be no reform until the media learns to behave and addresses declining standards. Libel is therefore perceived not as a way of protecting a person's good name, but of regulating the press – and in that, it fails.

If the politicians refuse to reform libel, then we are faced with two major problems. First, there will never be a press council, ombudsman, complaints body or even readers' representatives of any real power and influence, simply because to admit to mistakes and apologise is to admit liability. The second is that standards will continue to decline and newspapers will concentrate increasingly on uncritical celebrity coverage because it is cheap and safe. Good journalism is risky, and, currently, newspaper managers find the risk too great and too expensive.

We need an informed debate about the media and what we want of our media in a modern democracy. The European Court of Human Rights has developed an impressive body of jurisprudence relating to the media and its role in society, which will become increasingly influential here.

We must also look to our own solutions to problems that are properly defined. Before anyone again suggests a press council on the British model, listen to the eminent British QC, Geoffrey Robertson, in his book *Freedom*,

the individual and the law (Penguin, 1993, p111): 'The British newspaper industry not only deploys its editorial space to campaigning against a privacy law, it has established a sophisticated public relations

'We need an informed debate about the media and what we want of our media in a modern democracy'

exercise called the Press Complaints Commission, with an annual budget of £1 million, to convince Parliament that its ethics are susceptible to what it optimistically describes as "selfregulation". But the PCC is a confidence trick which has failed to inspire confidence, and 40 years of experience of "press self-regulation" demonstrates only that the very concept is an oxymoron'.

Some of the issues that should be addressed include the ownership of the media, the right of journalists to protect sources of confidential information, a form of self-regulation for the press, accountability, libel reform, contempt of court and privacy.

That last proposal is controversial, but privacy is something the media might as well concede, because as an unenumerated right in the constitution and included in the European convention on human rights, someone might well seek a ruling from the courts to protect their right to privacy. A ruling on privacy could have dire consequences for the media and freedom of expression. The Oireachtas, on the other hand, would have to take into account both the rather weak protection of freedom of expression in the constitution and more robust protection in the European convention on human rights. Robertson writes of a 'legal

right to privacy, enforceable in courts required to pay attention to the public interest, but empowered to award damages to victims for the distress they have suffered in cases where that interest cannot justify the violation of their privacy' (p115).

So any debate about falling standards that seeks to find a solution has to examine a range of issues. It must look to the law and convince government of the importance of journalism to a democracy. It must seek to put in place meaningful, accessible remedies for those looking for redress. It must ensure that journalists are educated in what it means to be ethical and maintain a vibrant press. And, finally, it must confront those who actually own the media and employ journalists. It is they, through their wealth and power, who determine the style of journalism we get. G

Michael Foley is a lecturer in journalism at the DIT and a media commentator.

# Knowing me, knowing you

From traffic cameras to Internet snooping, modern technology is cutting into our right to privacy. Pat Igoe looks at how the situation stands in Ireland today – and how it's likely to change with new developments such as the imminent incorporation of the *European convention on human rights* 

s there any space left for us to be let alone or has Orwell's nightmare state of affairs crept up on us while we were all too busy watching television?

Dublin now has 46 highquality zoom-lens cameras monitoring traffic flows or, indeed, traffic standstills. They are perched on buildings and flagpoles from the top of Liberty Hall spreading out across the city. They are in the public interest.

New personal public service or PPS numbers for citizens

were announced last June to replace the former RSI numbers. Their use ranges across an individual's dealings with all government and state authorities and includes social welfare, tax, the drugs payment scheme and the medical card scheme. The change is progress and in the public interest. Similarly with the voluntary identification cards issued by the Department of Justice for young people to establish their identity and age as necessary in public houses.

A computer 'buff' examining your credit card spending over the past six months could build a fairly accurate profile of your lifestyle, and even your personality, from your regular restaurant to where you buy your groceries, how often you buy new shoes and whether you buy your suits from Louis Copeland or Quin and Donnelly or perhaps from Freddy's Bargain Suits during the sales.

And, finally, if some 'eye in the sky' is properly focused,

somebody at a monitor in Virginia can tell whether you've bought a new car ...

Invasion of our individual private lives is not new, but it is getting more intrusive, even if for individually good reasons. From helping traffic flow to fighting international terrorism, from assisting in the struggle against crime to giving tribunals teeth, the right to our privacy has taken a buffeting.

Here in Ireland, we have a singularly underdeveloped law of privacy. So also in England. As the English tabloid newspapers continually prove, gross and offensive invasions of privacy sell newspapers and are legal. If the scandal is true, it's OK to publish it.

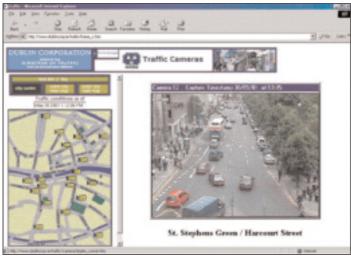
But the vast, sometimes chastening, leaps in technology and electronics lend a new and sharper edge to the need to protect the individual. This is the era of the Internet, with its huge potential for changing lives for better or worse, and for destroying reputations within minutes on the new 'bush telegraph'.

We do not have a Privacy Act. Well-known, if reluctant, tribunal stars have already crossed the Liffey from the Dublin Castle tribunals seeking the court's affirmation of a right of privacy, without conspicuous success. The Supreme Court held two years ago that former Dublin city and county assistant manager, James Redmond, did not have a right to absolute privacy before the Flood Tribunal. The requirements of the common good could outweigh the unenumerated constitutional right to privacy.

#### The trouble with tribunals

Other trips to the courts from the tribunals have met with similar decisions. This is because the limited right to privacy available in Ireland is even more limited when appearing before a tribunal established under the Tribunals of Inquiry (Evidence) Act of 1921, as amended. In 1998, in the case of Charles Haughey v Mr Justice Moriarty and Others, the Supreme Court acknowledged that tribunals of inquiry had the potential for intruding into a citizen's private life.

The court quoted with approval the *Salmon report* in Britain in 1966. The report noted 'the exceptional inquisitorial powers' which were conferred by the act of 1921 on tribunals of inquiry. The report suggested that



Big brother is watching you - or the traffic, at any rate

they necessarily exposed citizens to the risk of having aspects of their private life uncovered which would otherwise remain private and to the risk of being the victim of baseless allegations. Such tribunals must be confined to matters of 'vital public importance'.

'In the public interest' is a core consideration in our constitution, which differs fundamentally from the ethos of the US constitution in this respect. In the United States, the right to privacy is qualified where it encroaches on the rights of other citizens. It is generally regarded as enshrined in the first, fourth and fifth amendments. In Ireland, the right is qualified where it encroaches on the rights of other citizens and also where it offends the public interest. American scholar Cynthia Millen suggested in her 1999 book, The right to privacy in the United States and Ireland, that our constitution clearly adopted the view that the individual should be limited by the natural law notion of the common good, as championed by St Thomas Aquinas.

The modern intellectual underpinning of the right to privacy for individuals is regarded as emanating from US jurists Brandeis and Warren, who wrote that 'solitude and privacy have

become more essential to the individual' with the intensity and complexity of life. They added that 'modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress far greater than could be inflicted by mere bodily injury'. Garbo put it more simply.

'This is the era of the Internet, with its huge potential for changing lives for better or worse, and for destroying reputations within minutes on the new "bush telegraph"

The four leading Irish cases of McGee v Attorney General (1974) (the right to contraceptives), Norris v Attorney General (1984) (the right to practice homosexuality), Kennedy and Arnold v Ireland (1987) (telephone tapping), and In the Matter of a Ward of Court (1995) (the right to die) gave meaning to an individual's right to privacy as an unenumerated right under article 40.3 of our constitution.

David Norris took his High

Court and Supreme Court rebuffs to the European Court of Human Rights. The Strasbourg court held for him in 1991 and the offending laws were repealed by the Criminal Law (Sexual Offences) Act of 1993. In his appeal, he invoked the European convention on *human rights* – more correctly called the Convention for the protection of human rights and fundamental freedoms - the same convention which is finally due to be incorporated into Irish law over the coming months. We will be the last of the Council of Europe's 41 states to do so – a slight irony given that Ireland was one of the ten founding member states of the Council of Europe on 5 May 1949 and one of the first signatories to the convention the following year.

#### Change is in the wind

It is unlikely to make as significant a change here as it did in Britain with the enactment of the Human Rights Act of 1998. In Ireland, the right to privacy, albeit circumscribed, has clearly been acknowledged by the courts since the McGee case. The right under article 40.3 of the constitution was clarified on a broader canvas by the Supreme Court in the Geraldine Kennedy and Bruce Arnold action against the state for tapping their telephones.

The Oireachtas has not legislated a general right to privacy. It would probably be used by the 'wrong' people and thus be harmful to the common good. Apart from very precise instances, the courts have stepped back. But with the *European convention on human rights* about to become pleadable in our courts, things may be about to change.

There could be interesting times ahead. G

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

# Waiting in



Anything can happen in this funny old world. After the next election, Fine Gael could be returned to government and, if so, solicitor Alan Shatter could well be the next minister for justice. Here, he talks to Conal O'Boyle about how condoms furthered his political career and how elephants could end it

Alan Shatter may well become the next minister for justice if Fine Gael win office after the next general election, but he is adamant that his political ambitions go no further than that.

'I genuinely, absolutely, have no aspirations to lead the Fine Gael party. I think it's an extraordinarily onerous, time-consuming and difficult job which means you're involved in politics 24 hours a day, seven days a week, 52 weeks a year'.

Shatter has, of course, a thriving family law practice in his firm Gallagher Shatter but – and this might be a little worrying both for his colleagues there and for his political comrades – he is decidedly non-committal about where his future lies.

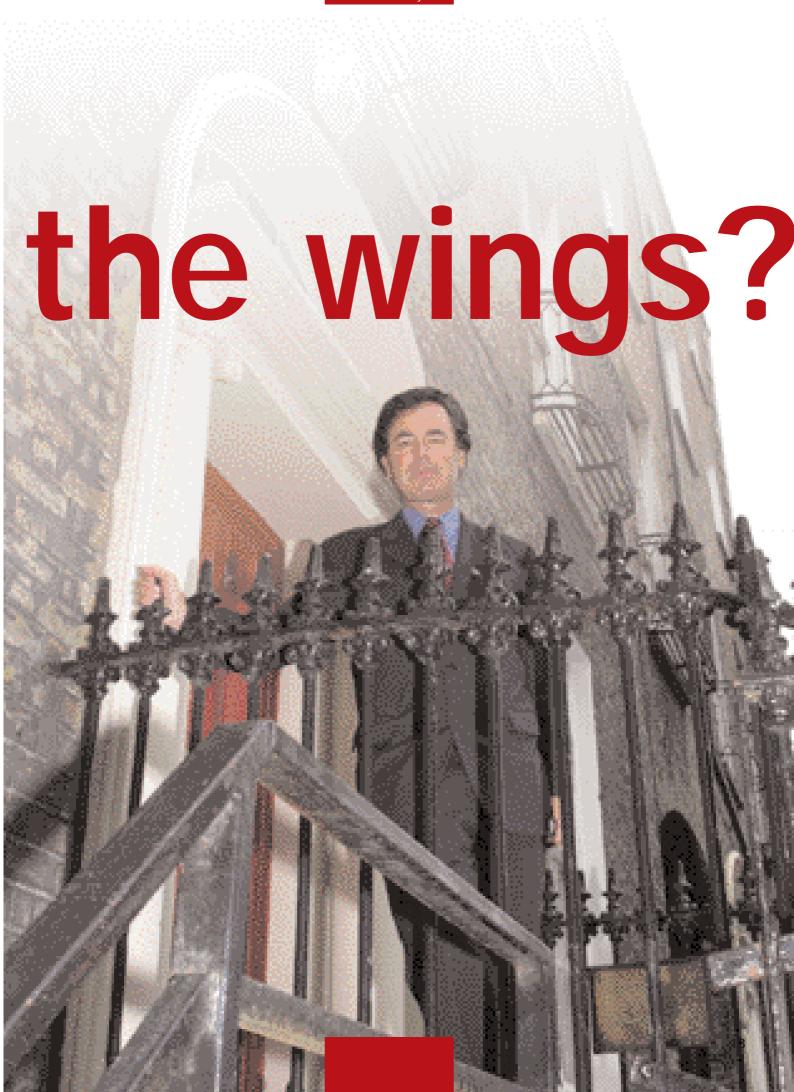
'I enjoy the fact that I can still practise as a lawyer', he says. 'I enjoy being a member of the Oireachtas and being able to influence legislation. But there are other things in life that I enjoy doing and I don't envisage that if we were to have this conversation in ten years' time I'd be doing either of the things I'm currently doing. I enjoy writing, for which I get very little time; I enjoy other things in life'.

As he tells it, Shatter's two careers just kind of blundered into each other. As a law student at Trinity College in 1970, he joined the fledgling Free Legal Advice Centres. Within a few weeks of joining, he took over the directorship of the Crumlin Law Centre from Bill Early, who's now a district judge.

'In the early seventies', recalls Shatter, '95% of the work that FLAC was doing was family law. At that time, there was no university course in family law, it wasn't lectured or even recognised as a topic. Although we were attended on by solicitors who were of assistance to us as students, we rapidly discovered that they did not have an awful lot of knowledge of family law either, so it led me to do a lot of my own research. I found myself regularly down in the District Court with deserted wives looking for maintenance, and things just developed from there'.

In 1972, Shatter, Brian Gallagher (now his partner in the law firm) and FLAC chairman David Moloney prepared a report on the state of family law in Ireland. It doesn't take much imagination to realise that it didn't make for comfortable reading.

By 1975, Shatter was chairman of FLAC and campaigning vigorously for a proper civil legal aid



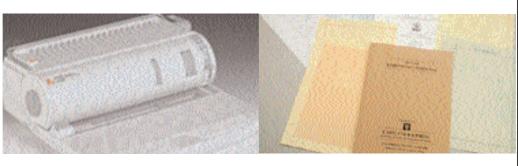


#### CASTLETOWN PRESS



#### www.castletownpress.com

- **→** Legal Stationery and Printing
- Office Furniture and Equipment
- Computer Supplies
  - Court forms
  - Memorials
- Legal Seals
- Binding Tape
- Contracts for Sale
- Deed Paper
- Company Seals
- Attendance Dockets
- Requisitions on Title
- Judicature Paper Tenancy Agreements
- Barristers Notebooks



On orders of over 5,000 letterheads,

we will print two colours for the price

of one, and will design your new letterheading FREE OF CHARGE

Offer lasts June, July and August

#### FREE DELIVERY **NATIONWIDE**

Castletown Press Limited, Law Printers and Manufacturing Stationers, Cellbridge, Co Kildare. Tel: 01 627 1170. Fax: 01 627 2345. E-mail: sales@castletownpress.com

system and for reform of family law. Those campaigns, he says, led to the enactment of Family Home Protection Act, 1976 and the Family Law (Maintenance of Spouses and Children) Act, 1976. They also brought him into contact with those creatures of the night, politicians.

'The first visit I made to Leinster House was as chairman of FLAC. We decided that on the basis the mountain wouldn't come to Mohammed, Mohammed would go to the mountain. When I look back on it, we were extraordinarily self-assured and self-righteous – but time has proved we were also right. We were extremely fed up that we had been campaigning for three years and the politicians really did not seem to be taking much notice'.

All that was about to change. After hectoring a large Dáil deputation about the way the law was discriminating against women and ignoring marital breakdown, Shatter came to the notice of Garrett Fitzgerald, then minister for foreign affairs.

When Fitzgerald took over leadership of the Fine Gael party some months later, Shatter offered to do research for the party and to draft a few awkward Dáil questions. By 1979 he was running for the party in the local elections, and was elected to the Dáil in Dublin South in 1981.

His poll-topping achievement was probably helped in no small way, he admits, by his long association with the Gay Byrne radio and television shows, which began after the publication of his book *Family law in Ireland* in 1977. Shatter became a regular guest on both programmes, advising on the legal aspects of marital breakdown, a subject that was only just beginning to obsess the country.

#### One for everyone in the audience

He also benefited greatly from an association with condoms. During the local elections, he appeared on the *Late Late Show* dealing with the subject of contraception. It was the first time condoms had been shown on RTÉ.

'They were on a big table in the studio', he recalls, 'and Gay had someone on from the Family Planning Association or the Well Woman Centre talking about the different brands of condoms, their various strengths and so on. I was supposed to be on the programme as the po-faced family lawyer, discussing the legalities of all of this. Some of the more conservative members of Fine Gael thought it was awful that I had been on this notorious Gay Byrne show talking about condoms, but I only had substantial voice recognition from the radio show so the programme gave me TV recognition when I was knocking on doors, particularly from women'.

As the man who literally wrote the book on family law, Shatter naturally has a lot to say on the subject. 'I've been critical of the way our courts operate for a long time', he says. 'I mean, the first edition of my book in 1977 called for the provision of family courts. I think it took until 1995 – and the fourth edition – to produce a report which talked

### FAC T F F

Born: Dublin, 1951.

Educated: High School, Dublin, Trinity College Dublin, University of Amsterdam,

Law Society of Ireland

1976: Qualified as a solicitor

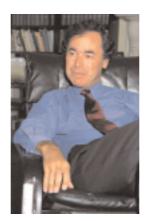
1977: Published Family law in Ireland (Butterworths), now in its fourth edition

**1979:** Elected to Dublin County Council **1981:** Elected TD for Dublin South

2001: Front bench spokesman on justice, law reform and security

He was Fine Gael spokesman on health and children (1997-2000), law reform (1982, 1987-88 and 1993-94), the environment (1989-91), labour (1991), justice (1992-93) and equality and law reform (1993-94). Between 1996 and 1997, he was chairman of the Joint Oireachtas Committee on Foreign Affairs, and is currently a member of the Joint Oireachtas Committee on Foreign Affairs and of the Joint Oireachtas Health and Children Committee.

His bills on Judicial Separation and Family Law Reform (1989), Adoption (1991), the Landlord and Tenant (Amendment) Bill, 1993 and the Protection for Persons Reporting Child Abuse Act, 1998 were the only private member's bills enacted into law in the past 35 years.



about the need to completely revamp our courts system. I do believe we will never adequately deal with family law issues until we have a specialist system of family courts. I think there is a need to radically reform the courts structure and to provide within that structure the back-up services which are badly lacking at the moment'.

'There is a need to ensure that judges who work in the area of family law are adequately trained to deal with family cases and that they have the degree of common sense, insight and sensitivity that is necessary. In each division, we have many judges who deal extremely well with family cases with a great deal of insight and sensitivity, but we also have some who should not be let within ten miles of hearing a family case'.

Unsurprisingly, perhaps, Shatter says that a Fine Gael minister for justice 'would radically reform our courts structure'. Judges can probably sleep easy in their beds for a while yet. Unless, of course, they know that Alan Shatter will be standing up in their court the next day, for he is one of the few solicitors who uses the profession's rights of audience to the full.

#### Roll it there, Collette

Not so long ago, a rumour swept through the legal community that he had applied to become a senior counsel. This is a story he is keen to dispel. 'I never applied to become a senior counsel', he says, 'but I do enjoy being advocate. I spend a lot of my time trying to keep clients out of court and trying to facilitate the resolution of family disputes over money and property and children when separation is inevitable. But inevitably there are cases where agreement can't be reached and you end up in a court hearing'.

All he did, he explains, is write a letter to the Bar Council asking about the protocol of having a junior counsel assist him in certain cases while he acted as advocate. 'It took a year to get a substantial response from the Bar Council to that query. After sending a series of reminder letters, I finally got one from Rory Brady, who told me that my application to be made a senior counsel had been discussed, but refused. I expressed some surprise that they thought I'd been applying to be made a senior counsel and asked whether there was any possibility that the Bar could actually reply to the query I raised. But it seems that some members of the bar have been spreading rumours.

'I thought the letter I got was a nasty letter, an extraordinary discourtesy, but that's all I will say about the matter. I think it was a stark illustration of the need to clear the cobwebs out of the legal profession. I see no reason why a confident solicitor who has an expertise in any particular area of the law, who believes he or she can represent their client well as an advocate in court, shouldn't be able to present their cases in court, jointly with members of the bar'.

Shatter has similarly strong views on the government's recent proposals to introduce a Personal Injuries Assessment Board. 'It simply hasn't been teased out', he says. 'It's a piecemeal approach to tackling an area that requires a far more comprehensive overview and there's a need to ensure that the rights of individuals are properly protected.

'I think on occasions it suits the insurance industry to use lawyers to kick around the place. This whole issue is dealt with far too simplistically in the popular media, but I do think there is a need to introduce very substantial reforms in the personal injuries area, and the type of awards that courts can make'.

He'd especially like to see the introduction of pre-trial procedures to reduce the number of cases that actually come to court and awards that are paid out over a number of years. 'The state's approach is particularly poor in facing up to its responsibility to individuals who have been wronged and far too frequently has denied negligence where negligence is clear, resisting entering into a settlement at an early stage when it's inevitable that a settlement would be made outside the door of the court'.

#### Is that your final answer?

That's about as close as you're going to get to a statement of intent from the Fine Gael spokesman on justice. On his party's detailed plans if they ever get back into power, Shatter pleads the fifth. In fact, he's so conscious of giving nothing away before the next election, he'd probably plead the sixth, seventh and eighth as well. But he does at least promise 'very substantial reforms' and says that a lot of work has been done 'behind the scenes'.

#### SHATTER ON ...



#### HIS POLITICAL AMBITIONS

'I genuinely, absolutely, have no aspirations to lead the Fine Gael party. I think it's an extraordinarily onerous, time-consuming and difficult job'.

#### **FUTURE CAREER PLANS**

'There are other things in life that I enjoy doing and I don't envisage that if we were to have this conversation in ten years' time I'd be doing either of the things I'm currently doing'.

#### SOMETHING FOR THE WEEKEND

'Some of the more conservative members of Fine Gael thought it was awful that I had been on this notorious Gay Byrne show talking about condoms'.

#### **FAMILY LAW COURTS**

'In each division, we have many judges who deal extremely well with family cases with a great deal of insight and sensitivity, but we also have some who should not be let within ten miles of hearing a family case'.

#### THE 'COMPENSATION CULTURE'

'I think on occasions it suits the insurance industry to use lawyers to kick around the place. This whole issue is dealt with far too simplistically in the popular media'.

He'd certainly like to see the department of justice, equality and law reform split into two separate ministries again. 'I think, in fairness to John O'Donoghue, he's certainly brought before the Oireachtas a substantial body of criminal law during his career as minister for justice', he says, 'but the emphasis in his department has been almost entirely on the criminal area. I think John O'Donoghue can be criticised for not dealing with the civil law area. It's not politically sexy; not areas that the general public would be familiar with'.

And as a long-time critic of the Land Registry, he hints that this might be one area where change could be expected under a Fine Gael regime. 'We certainly need a system that simplifies conveyancing and that can be used efficiently by the legal profession. It's one of the areas that need to be worked on. I'll say no more'.

Shatter is much more forthcoming on the question of judicial reform. While acknowledging that the judiciary has served the state well over the years, he adds: 'There is not a practising lawyer in the country who wouldn't be aware of at least one member of the judiciary that they feel is not suited to be a judge. It is a real difficulty'.

That being the case, why did Fine Gael reject the government's proposed referendum bill on judicial misconduct? 'It was a very poorly thought-out proposal which posed dangers to judicial independence', he says, 'and it failed to address the

real issues that needed to be addressed. It also failed to clarify in a constitutional context how this body to investigate allegations of judicial misconduct and incapacity was to interact with the capacity of the Oireachtas to impeach members of the judiciary'.

In particular, he cites the vagueness surrounding the membership of the new judicial watchdog, the proposal that two-thirds of the Oireachtas would have to vote for an impeachment investigation, and the speed at which the government was pushing the bill through the Dáil. 'That is not an acceptable way to deal with a sensitive and vitally important constitutional issue that impacts directly on the separation of powers and independence of the judiciary', he says.

So he and Fine Gael weren't just using the issue as a political football, then? 'No. I have very serious views about this'. So serious, in fact, that his party threatened to march off the pitch and campaign for a no vote unless the government backed down. The judiciary must be wondering whether they turned up to the right game at all.

The referendum bill can be can be scored as a small victory for the opposition. They'd do well to savour it because if opinion polls are right, it could be quite some time before they have anything bigger to celebrate.

'In the political world, the only thing that will be discussed is who will take the seat after you'

Despite the recent change in leadership of Fine Gael, in which Shatter played his part, there is no indication in the opinion polls that the party is making up lost ground on the government. But if he feels any disappointment about this, don't expect him to voice it publicly.

'I have absolutely no doubt that this will all change', he proclaims. 'Michael Noonan is doing a huge amount of work with extraordinary competence, good sense and good humour. He's been hit by two different issues, of which he had no knowledge when he became leader and for which he had no responsibility and which have upset many of us. But I don't doubt that we are going to get through those and that the party is going to prosper. I expect Fine Gael will be the largest party forming the next government after the next election, with Michael Noonan as taoiseach'.

When Fine Gael next comes to power is anybody's guess. But for his own part, Shatter is completely sanguine about his political future. 'At the end of the day', he says, 'when the elephant falls out of the sky, and you drop dead, having been hit by it, as a politician it's a good thing to always remember the few brief words of sorrow from those who are closest to you. In the political world, the only thing that will be discussed is who will take the seat after you'.

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



#### **HANNAY**®

Document, Data and Product Destruction

01 838 5200



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

# AIN POINTS

- The
   Electronic
   Commerce
   Act should
   have
   excluded land
   contracts
- Dangers for consumers agreeing contracts on-line
- What is an 'electronic signature'?



# Trouble do



Has the government's push to promote e-commerce blinded it to the dangers contained in the *Electronic Commerce Act, 2000*? Gabriel Brennan argues that the failure to exclude land contracts from the scope of the act could lead to trouble down the line for unwary house-buyers

he *Electronic Commerce Act*, 2000 and the relevant EU directives have far-reaching implications for contracts relating to land sales. But a close examination of the drafting of the act and the directives reveals that the Irish government failed to follow the tenor of the directives by not excluding contracts relating to land from the scope of the act.

The act implements (ahead of time) the *Electronic signatures directive* (1999/93/EC OJ L13), which was adopted on 13 December 1999 and came into force on 19 January 2000. This directive did not have to be implemented until 19 July 2001. It provides that electronic signatures cannot be treated differently from written signatures solely on the grounds that they are in electronic form. The directive broadly defines an electronic signature as electronic data that serves as a method of authentication.

The act also implements some articles of the *Directive on electronic commerce* (2000/31/EC OJ L178), which was adopted on 8 June 2000 and entered into force on 17 July 2000. EU member states have until 17 January 2002 to implement it into domestic law. Among other things, this directive deals with on-line professional services such as those provided by lawyers. It gives legal recognition to electronic contracts and obliges member states to remove any restrictions on their use. Put simply, these two directives aim to allow most contracts to be made electronically.

Initially, the draft *Electronic commerce directive* (COM [1999] 427 final) did not allow the exclusion of contracts relating to interests in immovable property. The only contracts in relation to land which could be excluded from its scope were contracts which had to be registered with a public authority for their validity (article 9(2)(b)). Few, if any, Irish contracts would fall within this exclusion. However, the wording in the directive subsequently changed.

Article 9(2)(a) of a subsequent draft of the directive (28 February 2000) allowed an exemption for 'contracts that create or transfer rights in real estate, except for rental rights'. This is the version adopted by the European Parliament and Council on 8 June 2000. There is no definition of 'real' in the directive. Because of the distinction between realty and personalty in this jurisdiction, this raised the question as to whether the derogation would apply to all interests in land in Ireland. It appeared that it would apply only to freehold title (realty) and not leasehold title (personalty). However, a leasehold interest may be more valuable than a freehold interest in the same property and much of the land in Ireland is held under lease. The wording of this derogation also excludes 'rental rights'. Again, there was no definition of this term, so it was unclear whether it was intended to exclude short-term letting agreements and/or short- or long-term commercial leases.

#### The Law Society's position

The Law Society's submission to the government argued that to avoid uncertainty in the law our domestic legislation should include a derogation for all contracts and instruments creating or transferring any interest in land. The society also recommended that the *Electronic commerce directive* should include a derogation for all such contracts and instruments, so that if a direct conflict arose between the domestic legislation and the directive, then the directive would take precedence.

The society's Conveyancing Committee strongly recommended that the derogation in article 9 should refer not just to real property but to all immovable property and that the words 'except for rental rights' should be removed. The recommended wording of the derogation was 'contracts and instruments creating or transferring any interest in land'.

The translation of the *Electronic commerce directive* may in fact have been incorrect, as 'real estate' in

# own the line

#### BOI Asset Management AD

page 20

Spanish is bienes immuebles or 'immovable goods'. The Italian beni immobili is similar, as is the German immobilien. Was the derogation supposed to read 'contracts that create or transfer rights in immovable property, except for rental rights'? A letter on behalf of the European Commission to the chairman of the Law Society's Conveyancing Committee, dated 6 January 2000, appears to support this view. The letter states that 'the term "real estate" should be understood in the broad sense: the exemption covers both freehold and leasehold, which both create property rights and concern real estate consisting of buildings or land. On the other hand, the exemption rightly does not cover simple rent contracts, which it must be possible to carry out electronically'.

The intention, it appears, was to allow only short-term letting agreements to be concluded electronically. All other transactions relating to land were to be exempted.

The Law Society had made detailed submissions to the government about the draft outline legislative proposals published in August 1999. In meetings with the department, the Conveyancing Committee strongly argued that these issues should be clarified and that contracts and instruments creating or transferring any interest in land should be excluded from the provisions of the act. It was felt that it would be contrary to the interests of consumers, particularly

#### GENESIS OF THE ELECTRONIC COMMERCE ACT, 2000

At its most basic, e-commerce is the use of the Internet for consumer and business transactions. In February 1998, the government mandated an inter-departmental implementation group to examine and make a proposal on e-commerce in Ireland. In its November 1998 report, the Advisory Committee on Telecommunications advised that to sustain economic growth 'Ireland must become a global leader in the development of electronic commerce'.

A consultation paper on e-commerce from the Department of Public Enterprise in August 1999 identified 'the development of this area as being critically important for Ireland's future strategic and economic competitiveness'. In that paper and its draft outline legislative proposals, the government recognised that 'a first step ... is to ensure electronic signatures and contracts are not discriminated against in Irish law simply because they are electronic'. Electronic communications and contracts were not to be denied legal effect or be discriminated against solely on the basis that they are in electronic form.

Section 9 of the outline legislative proposals dealt with electronic

contracts:

- Section 9(1) provided that a person may use a contract in electronic form for any purpose for which a contract in writing is required or permitted by law
- Section 9(2) provided that an electronic contract shall not be denied legal effect, validity, enforceability or admissibility solely on the grounds that it is in the form of an electronic communication
- Section 9(5) said that for the time being these provisions do not apply to the law governing the way in which an interest in real property may be created, acquired or disposed of
- However, section 9(6) said that the minister may use regulations to extend the provisions to the areas covered by section 9(5).

As a result of these deliberations, the *Electronic Commerce Act, 2000* was enacted on 10 July 2000 and came into effect on 20 September 2000. Its primary purpose is to make Ireland an international centre for e-commerce, and it positioned Ireland as one of the first jurisdictions in the world to enact specific electronic commerce legislation.

first-time buyers, if they could be contractually bound to unfair terms in electronic building contracts.

When the draft heads of bill were published, they showed that the department had responded positively to the Law Society's recommendations. Head 16 of the draft heads of bill said that the provisions relating to ecommerce would not apply for the time being to the law governing the creation, acquisition or disposal of interests in immovable property.

This exclusion appears to be allowed under article 1 of the *Electronic signature directive*, which states that this directive does not cover the conclusion and validity of contracts. The exclusion also appeared to be permitted under article 9(2)(a) of the *Electronic commerce directive*, except that (as outlined above) the intention appeared to be that short-term letting agreements could be concluded electronically. Article 9(2)(a) allowed member states to exclude these contracts but did not require them to be excluded from the domestic legislation.

#### Electronic Commerce Act, 2000

Unfortunately, when the *Electronic Commerce Bill 2000* and the *Electronic Commerce Act*, 2000 were published, they departed from the heads of bill on this point. The explanatory memorandum of the bill states: 'Section 10 provides for those laws in respect of which the electronic commerce enabling provisions of the bill will not initially apply. Documentation such as wills, trusts and enduring powers of attorney are excluded. In the case of land law, the law relating to the transfer of land is excluded. However, the contracts are not excluded'.

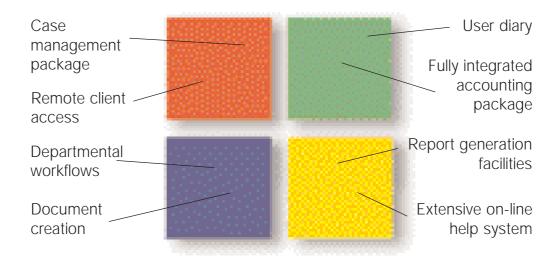
So the execution of wills, trusts, enduring powers of attorney or deeds relating to land but not contracts must be evidenced in writing. The minister can reduce the list of exclusions, after consultation, by statutory instrument.

In a recent article in *Commercial law practitioner* (7 CLP 139, 140), Claire Coleman says: 'To eliminate the uncertainty of applying traditional legal principles in an electronic age, the Irish bill takes the bold step of repealing all existing legislation to give the same legal effect to electronic forms of communication as their paper-based counterparts. It lists only a few exceptions to which this will not initially apply, including laws relating to wills and trusts and deeds giving effect to transfers of land ... The intention is to extend the enabling provisions to cover these areas as soon as is feasible'.

The exact wording of the act in section 10(1)(b) provides that 'the law governing the manner in which an interest in real property (including a leasehold interest in such property) may be created, acquired, disposed of or registered, other than contracts (whether or not under seal) for the creation, acquisition or disposal of such interests' would be excluded from the provisions on legal recognition of electronic communications. Electronic contracts relating to land have been afforded full legal recognition. This was a complete u-turn by the government, despite strenuous objections from the Law Society's Conveyancing Committee. So contracts themselves fell within the

# Do you want a Practice Management System for FREE?

Then Ulysses is the system of choice for you



lysses is the latest phenomenon in the advancement of legal software. It is the final stage of an extensive development process by TITAN Software. Ulysses, being Internet based, has facilities for a firm's users and clients to access their files at any time from any location worldwide. TITAN Software is a company supplying firms in both the UK and the RoI. For an online demo and presentation of Ulysses, go to the TITAN Software website.

TITAN Software, 25 Mary Street, Newry, County Down, BT34 2AA. Tel: (028) 3026 5531. Fax: (028) 3026 0747. From Rol replace (028) with (048)

www.titansoftware.ie



provisions, while deeds did not, and contracts for the sale of land can be made electronically.

#### **Anti-consumer effect**

The end result is that buyers and sellers of property are able to enter into contracts electronically without professional advice and without any cooling-off period. This will have an anti-consumer effect for first-time purchasers buying new houses, as they are frequently faced with unfair terms in contracts. There is now nothing to stop a builder setting up a website to advertise a housing development, the terms and conditions of which allow intending purchasers to buy a property by e-mail with one click of the mouse. They wouldn't have the chance to survey the property or to obtain legal advice as to whether the title is in order. The society's Conveyancing Committee believes that it would be disastrous for consumers to commit themselves to the purchase of any interest in property without having first obtained legal advice.

John Gaffney examined the issue of the accidental formation of contracts in his paper at a Continuing Legal Education seminar last November, citing the recent dilemma experienced by the retailer Argos as an example. Argos mistakenly advertised televisions on its website for £2.99. Customers placed orders for the televisions and received standard automatic messages confirming the order. Argos declined to fulfil the orders and, although proceedings were issued, they were subsequently withdrawn. According to Gaffney: 'The e-merchant should state in its site that it will not be bound by any communication from a potential customer ... The site should be structured in such a way that it is legally construed that any display of their products/services for sale on the site is an "invitation to treat" only and not an offer of the product or services for sale'.

This would clearly have protected Argos in the above case, but what about the e-merchant who *does* want an unsuspecting consumer to be bound? One example might be a builder with 500 houses to sell in a buoyant market whose website allows potential buyers to secure the 'house of their dreams' for an exorbitant sum simply by clicking on the mouse – in effect, an electronic signature.

#### **Information society services**

The *Electronic commerce directive* might have offered some protection in that information service providers – called information society services (ISSs) – are obliged to provide certain information in clear and comprehensible language. ISSs are defined as any services offered at a distance by way of electronic equipment for the processing and storage of data at the request of the recipient of the service. This includes selling goods and services on-line, such as professional services offered on-line by solicitors. The information to be provided must include the steps necessary to conclude the contract. Unfortunately, this protection does not apply to contracts concluded exclusively by the exchange of e-mails.

Member states may not restrict ISSs supplied from

#### **ELECTRONIC** SIGNATURES

Section 13(1) of the *Electronic Commerce Act, 2000* states: 'If by law or otherwise the signature of a person or public body is required (whether the requirement is in the form of an obligation or consequences flow from there being no signature) or permitted, then, subject to sub-section (2), an electronic signature may be used'.

Section 2 defines electronic signature as meaning 'data in electronic form attached to, incorporated in or logically associated with other electronic data and which serves as a method of authenticating the purported originator, and includes an advanced electronic signature'.

It is arguable that this definition includes merely typing your name or initials at

the end of an e-mail, though it is possible that even without this act the courts might have interpreted the word 'signed' in the *Statute of Frauds* to include electronic signatures, as this word has been interpreted widely in the past. It has been held to include the impression of a stamp (*Hudson v O'Connor* [1947] Ir Jur Rep 21) or a printed heading on notepaper (*Casey v Irish Intercontinental Bank Ltd* [1979] IR

364).
As Karen Murray noted in a recent article in the *Irish law times* (18 ILT, 174), 'contract law has always adapted to new forms of technology, such as the fax, and there is no reason to believe that the courts would treat a contract made using the Internet any differently'.

t 174), new and e courts e Internet any

another member state except in certain cases (see article 3). In the case of the 'formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the member state where the real estate is situated', member states may restrict ISSs from another member state. In the case of contracts relating to real estate, the Irish government may restrict foreign ISSs to the extent that they do not comply with the formal requirements applicable to Irish ISSs. Again, we run into the term 'real estate'. So the government can restrict the freedom of foreign ISSs dealing with contracts of 'real estate', but will it? This part of the *Electronic commerce directive* has yet to be implemented.

If the government was absolutely determined to permit electronic contracts in relation to land, it could have required that the signature used be 'an advanced electronic signature, based on a qualified certificate', a requirement that the act adopts in respect of other transactions, such as signatures required to be witnessed and documents under seal (sections 14 and 16). This special type of signature means that the sender is more likely to register the legal importance of the communication.

The government could have implemented a cooling-off period, as provided for borrowers in section 50 of the *Consumer Credit Act*, 1995. It is particularly interesting to note that section 11 of the act provides that nothing in the act will prejudice the operation of the *Consumer Credit Act*, 1995. So while the act maintains the status of the ten-day cooling-off period for consumers entering into credit agreements, the government did not see fit to introduce a similar

#### blackstone AD

page 24

#### WHEN IS AN ELECTRONIC CONTRACT FORMED?

The question arises as to when an electronic contract comes into existence. Is it when the e-mail is sent, when it is received, when it is read, when it leaves the sender's server or arrives at the recipient's server?

The *Electronic Commerce Act, 2000* says that the e-mail is received when the recipient could have accessed the communication, not when he actually does so. Sections 20 and 21 of the act on receipt of e-mails are difficult to read but are detailed and should achieve certainty as to the time and place at which an electronic contract is formed.

As Jonathan Newman observed in an article in the *Gazette* last year (August/September issue, page 14): 'where a person, business or state agency has previously made an e-mail address available to another, then an e-mail to that address is deemed to have been received by the addressee at the moment when it becomes possible for the addressee to access the e-mail by logging on to the server. It does not matter whether the addressee has in fact logged on and seen it'.

The effect is that a person may be bound by an e-mail that has not actually been read.

cooling-off period for electronic contracts.

Unfortunately, the position is unlikely to change when the *Distance selling directive* (OJ L144), which was adopted on 20 May 1997, is implemented into Irish law. This directive applies to all consumer contracts negotiated where the supplier and consumer are not face-to-face, for example, mailorder or Internet sales. It was due to be implemented into Irish law by 4 June 2000, but this hasn't happened yet. It allows consumers a seven-day 'cooling-off period' during which they can cancel the contract.

This directive is designed to protect consumers against some of the risks of distance selling or, in other words, transactions where consumers are unable to see the product or determine the nature of the service before concluding the contract. Unfortunately, contracts for the sale of lands are excluded entirely from the ambit of this directive. It will not provide any protection to purchasers/vendors of land unless the government decides to include such contracts in the domestic legislation.

#### The effects of the act

Section 2 of the *Statute of Frauds (Ireland)* 1695, provides that any contract for the sale of lands must be witnessed by a note or memorandum in writing signed by the party to be bound or some other person lawfully authorised. This has not changed. What has changed is how these provisions are to be interpreted. 'Note or memorandum in writing' now includes e-mail communications. 'Signed' includes an electronic signature, for example, the sender's name at the end of an e-mail.

So, in a bizarre and confusing twist, while the contract for the sale of land can be concluded electronically, the deed cannot. It must still be in writing. The Conveyancing Committee had urged the Minister for Public Enterprise, Mary O'Rourke, to exclude land contracts from the scope of the act.

In a Dáil debate on 29 June 2000, the minister was

'In a bizarre and confusing twist, while the contract for the sale of land can be concluded electronically, the deed cannot'

asked by an opposition deputy to amend the bill to exclude contracts relating to land on the basis that if this amendment was not made 'buyers and sellers of property will be permitted to enter into contracts over the Internet without professional advice or any cooling-off period. This will produce an anti-consumer effect for purchasers of new houses who are frequently faced with unfair terms in purchase contracts which they may not, as lay people, be able to unravel'.

The minister responded by stating: 'I also have every right to stand up for consumers and their rights in this regard. We are of the opinion that the concerns, although coming from a legitimate background, the Conveyancing Committee of the Law Society of Ireland, are misplaced. It is with regret, therefore, that I cannot accept the amendment'.

It is significant that the EU did not agree with the government on this point, as the *Electronic commerce directive* specifically allows member states to exclude land contracts relating to real property from the scope of domestic legislation. In addition, the directive does not deal with the conclusion and validity of contracts. It is likely, however, that if the government had followed the tenor of these directives by excluding land contracts from the act, it would at some future date have removed this exclusion by regulation.

Practitioners are now faced with the possibility of their clients being bound by contracts to sell/purchase/lease property purely on the basis of exchanging e-mail with a potential purchaser/vendor. Contracts for the sale of property could take place electronically, even though the actual conveyance itself must take place in the physical paper format.

Solicitors must be wary of using e-mail to correspond during property transactions. The tried-and-tested formula 'subject to contract/contract denied' from *Boyle v Lee* ([1992] ILRM 65) should be included on all such communications, so as not to bind the client.

Just as practitioners currently advise their clients not to enter into informal written conveyancing agreements and remind them of the importance of the phrase 'subject to contract/contract denied', solicitors must now advise their clients to exercise the same care with electronic communications so as to avoid them having the force of law.

But it is not just clients who must be wary. Solicitors themselves must be cautious about establishing websites to offer legal services over the Internet. It would be wise to include a disclaimer at the end of all e-mails to the effect that they do not bind the firm or client unless it includes a digital signature in the form of an advanced electronic signature.

As Claire Coleman puts it (in 7 CLP, 139): 'The focus of the bill, unlike the directive, is on ensuring confidence and certainty for businesses rather than consumers ... The Irish government has made its choice – promotion of e-commerce above all else'.

Gabriel Brennan is a co-ordinating solicitor in the Law Society's Law School.





Monaco played host to this year's annual conference. Conal O'Boyle reports on the business session, where the theme was *Money and people: getting it right*. So where did the kung fu fighting come in?

t was a case of mind over mattress for many of those attending the Saturday morning business session at the Law Society's annual conference in Monaco last month. The keynote speaker, Alex McPhail from Speakers International, promised that by the end of the session one of the delegates would be able to punch their way through a block of wood without doing themselves any permanent injury. A quick glance at the tired faces around the hall suggested that a wet paper bag might have been an insurmountable challenge for most of them. Nevertheless, the prospect of some Bruce Lee action and a consequent personal injury claim was enough to focus even the most jaded delegates.

Money and people: getting it right was the conference theme, and McPhail was emphasising the 'people' part of the equation. His message was simple: any of us can perform at the highest level if we really want to.

International research had shown, he said, that the top performers in business believed that their success was based 80% on attitude and only 20% on skills. He contrasted this with the common business approach of devoting 80% of training resources to improving staff skills and only 20% to improving attitude. 'If you want to change results quickly', he advised, 'you have to change behaviours, ergo you have to change attitude'.

Everyone has days when they forget to take their abilities into work with them. And while he provided no pat answers to the problem, McPhail raised enough questions to leave delegates thinking

laterally about how they might improve their own performances and get the most out of their staff.

And, yes, at the end of this motivational *tour de force* one brave soul did step up from the audience and succeeded in smashing through that block of wood with a well-delivered punch.

But this wasn't just a gratuitous act of violence, explained McPhail. Smashing the board was a metaphor for any obstacle or challenge that a business might face. The hardest part of smashing the board, he pointed out, was making the decision to get up out of the audience in the first place. 'If you apply this to the business world, the difficult bit is often not doing something but making the internal decision to do it. If you want to become a peakperforming firm, you need everybody in that firm at the same time to make the decision to do things differently. And from your perspective, that requires leadership from the top'.

Earlier in the business session, Lode Beckers of Eurostrategies had explained the consequences of European monetary union for business and the legal profession. 'When the single currency is introduced', he said, 'there will be many issues – and for your profession, issues are opportunities'. Suitably reassured, the audience took on the dreamy look of people planning their next house extension.

Beckers listed the opportunities that would pay for these dream homes: increased trade and commerce meant more wealth creation, more communication between companies and consequently more legal advice. Company structures would need to change or

PHOTOGRAPHS: FRANK DALY AND JAMES CAHILL

# chconnection

Conference speakers Lode Beckers and Melanie Holmes with Ward McEllin



Law Society President Ward McEllin greets delegates at the annual conference

adapt to accommodate the new economic realities and share capital would need to be converted from national currencies to the Euro. A new form of European company was likely to develop over time, as corporate structures harmonised throughout the EU. And if the single market worked as predicted, asset management would become an important consideration for the new cash-rich businesses.

By this stage, delegates were mentally sunning themselves on the balconies of their imaginary holiday homes in Monaco.

Beckers declared that the introduction of the Euro and a true single market meant 'there will be an enormous need for competent legal advice. This is momentous!' 'Yes', nodded the delegates in unison, 'an Olympic-sized swimming pool'.

Unfortunately, Melanie Holmes of Osborne Recruitment then brought everyone back to earth with a discussion of staff recruitment and retention. 'People are our most valuable commodity', she said. Maybe so, we thought, but can you trade them in for a gazebo?

According to ESRI figures, unemployment will average 3.3% this year, while wage growth is forecast at 10.2%. 'Against this backdrop', said Holmes, 'recruitment is arguably the single biggest challenge facing human resource specialists today'.

There were a number of ways to maximise the pool of potential job applicants, including attractive publicity material, good salaries, fringe benefits and working conditions. But she also stressed the value of a firm's reputation for treating staff well. 'Ireland is small', she said, 'and once a firm gets a bad name in the marketplace, it is very difficult to reverse it'.

Other speakers included Pierre Joannan, the honorary consul of Ireland, who delivered an erudite and witty paper on Franco-Irish relations down the years, and Cyril Forbes of insurers Jardine Lloyd





Alex McPhail (left) scares the daylights out of a piece of wood



Conference delegates in a state of motivation



Ward McEllin (centre) with speakers Pierre Joannan (left) and Alex McPhail

Thompson Ireland, who discussed what he termed the 'annual hijack' of professional indemnity insurance for solicitors. This had led to the creation in 1987 of a mutual insurance fund for solicitors, leading to an open competitive insurance market for the first time and to the consequent lowering of previously punitive PII premiums.

Risk management, he said, was the key to lower claims. 'If you don't have claims, you won't have to pay out', was his sound advice.

Mine is to avoid punching your way through a block of wood, if at all possible. You may need it for your house extension.

# ALL THINGS

The country's two main equality bodies may occupy buildings next door to each other but they have radically different roles. Madeleine Reid outlines the main responsibilities of the Office of the Director of Equality Investigations and the Equality Authority, and gives a brief overview of recent developments in equality case law

SINIOG NI

- Different roles played by the new equality bodies
- Where to go for advice and information
- Recent case law from equality officers

here has been a sharp increase in the number of cases referred under equality legislation, with the recent enactment of the Employment Equality Act, 1998 and the Equal Status Act, 20001. In fact, 163 cases were referred to the director of equality investigations in the first quarter of 2001 alone, easily outstripping the 147 referrals made during the whole of last year. Although claims of gender discrimination in employment still account for a substantial proportion, the cases are also becoming much more diverse. In the employment area, there have been a growing number of claims based on age- or disability-based discrimination, while claims of discrimination brought by members of the travelling community in relation to goods and services are also on the rise. A substantial proportion of these cases involve representation by solicitors of one or both parties.

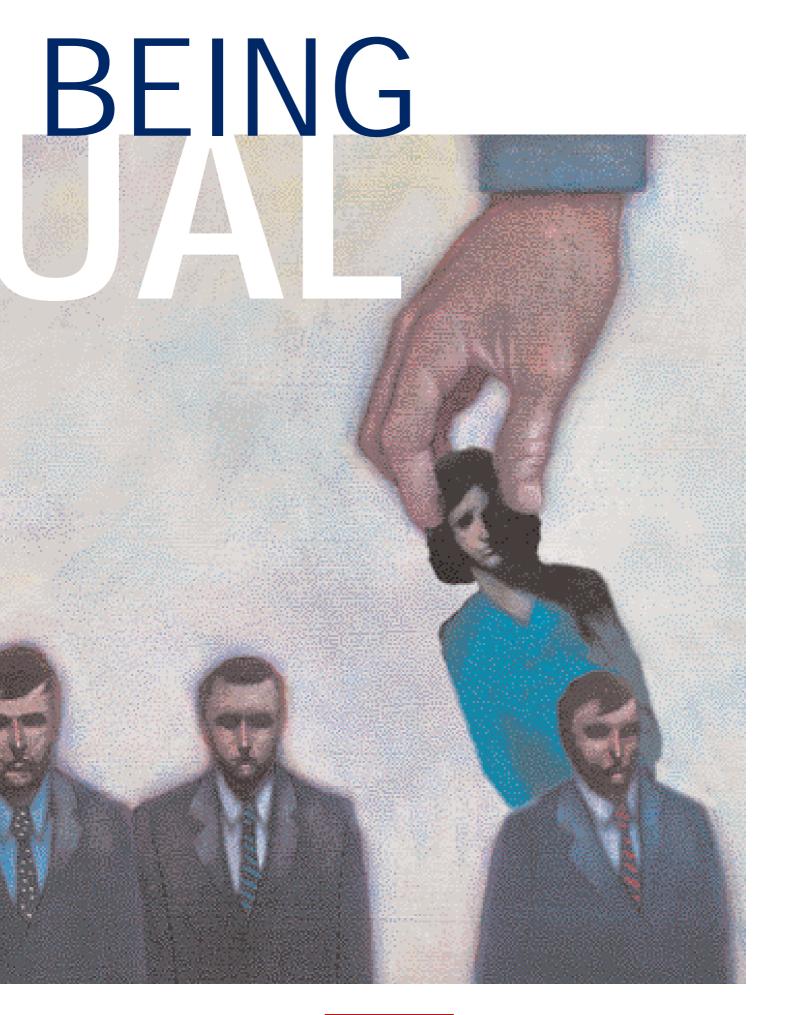
There have been considerable changes recently in the overall architecture for dealing with equality claims. It would appear, from the queries and correspondence we receive at the Office of the Director of Equality Investigations, that many people are unsure about the names and roles of the new equality bodies. This is particularly important for claimants' solicitors, since there are fixed deadlines under both acts for referring claims and these could be missed if a claim is addressed to the wrong body.

This article aims to clarify the basic structures, explain where interested parties can find useful information, and give a brief overview of recent developments in case law.

#### The Office of the Director of Equality Investigations

The office is a quasi-judicial body, established under the 1998 act, and is now the main forum of first





instance for deciding claims under both the new equality acts. The legislation lists nine main grounds of discrimination: gender; marital status; family status; race, nationality or ethnic or national origins; religion; age; disability; sexual orientation; and membership of the travelling community. So the office takes over, in an expanded form, the functions previously exercised by equality officers attached to the Labour Court, with an added jurisdiction under the 2000 act. It also provides mediation services for claims brought under either act, where both parties agree to it.

Director of Equality Investigations Melanie Pine presides over a number of equality officers who are trained and experienced in discrimination law. All equality officers are statutorily independent in the performance of their duties. A case referred to the director will be delegated by her to an equality officer for investigation and decision. The equality officer will seek the views of both parties, initially by written exchange. He or she may ask for further information which is relevant to the investigation and has extensive statutory powers to obtain it – though it is rarely necessary to invoke them. A hearing is then held, and the equality officer subsequently issues a detailed written decision which is legally binding.

There are three exceptions to the general rule that the Office of the Director of Equality Investigations is the forum of first instance. They are all prescribed under the 1998 and 2000 acts.

**Gender discrimination in employment.** The claimant can choose whether to refer a complaint to the director or to the Circuit Court

**Discriminatory dismissals.** These may not be referred to the director of equality, but jurisdiction over these claims remains with the Labour Court. If the claim is of gender-based discriminatory dismissal, the claimant can choose whether to refer



a claim to the Labour Court or the Circuit Court

#### Discrimination by private associations.

Where the claim concerns a private association (such as a golf club or social club), the main redress under the 2000 act is a suspension of its liquor licence, rather than compensation. For this reason, complaints in this area are not made to the director but to the District Court.

There is a statutory right of appeal from a decision by an equality officer. Under the *Employment Equality Act*, the appeal lies to the Labour Court. Under the *Equal Status Act*, the appeal lies to the Circuit Court. The Circuit Court also has an enforcement role under both acts if an equality officer's decision is not implemented. It can also make an award for costs (note that equality officers do not have this power).

#### The Equality Authority

The Equality Authority was also established under the 1998 act, which confers on it a wide range of statutory functions. (These include the functions of the earlier Employment Equality Agency, which it subsumes.) Generally, the authority works with all those interested to develop equality policies and best practice. It uses equality reviews and action plans to develop a proactive approach to equal opportunities in the workplace. It also provides legal advice, assistance and legal representation to those who may have a grievance under the legislation. In specified situations (see, for example, section 85 of the 1998 act), the Equality Authority can itself refer a complaint of discrimination to the Office of the Director of Equality Investigations.

The Equality Authority may assist or represent a person referring a complaint of discrimination, and may even in some circumstances refer a complaint itself, but it does not hear or decide complaints. Conversely, the Office of the Director of Equality

#### RECENT CASE LAW

The Office of the Director of Equality Investigations has issued some 70 rulings since it began operations on 18 October 1999. Many of these are recommendations in cases brought under the previous legislation (the 1974 and 1977 acts), but they remain relevant for interpreting the new legislation, as the old and new acts have many common features. There have been interesting rulings, for example, on dress codes in vocational training and employment, discriminatory questioning and interview procedures, and when a hypothetical comparator may be used (the full text is available on the office's website).

Of particular significance are the cases decided under the more novel provisions of the new legislation. A small number of decisions have already issued. Many more claims are now at a relatively advanced stage of investigation, so this number is likely to increase rapidly.

#### ■ AGE DISCRIMINATION Equality Authority v Ryanair

The office's first decision under the Employment Equality Act, 1998 was also its first decision on age-based discrimination (DEC E2000 14). The case concerned a job advertisement which sought 'young, dynamic' applicants, and the Equality Authority referred a complaint against the advertising employer to the director, in exercise of its power to do so under section 85 of the act. The equality officer rejected the employer's argument that 'young' referred to a state of mind rather than a chronological age, finding that it would be normally understood, and had in fact been understood, as debarring older prospective applicants from consideration, stating: 'It is my view that the use of the word "young" as a requirement in this employment advertisement constituted clear discrimination'. He awarded £8,000 in compensation under section 82.

Using the new powers under the 1998 act to direct a specific course of action, he also ordered the company to publish a statement clearly committing itself to equal opportunities policies, and to equality-proof its recruitment, selection and promotion guidelines.

#### ■ MEMBERSHIP OF TRAVELLING COMMUNITY

#### Ward and another v Quigley

This case (DEC S2001 00) was the first case decided under the *Equal Status Act, 2000*. It concerned an allegation of discrimination against a publican who refused two travellers full service. The equality officer found that the complainants had established a *prima facie* case. The respondent maintained that he restricted service to the first complainant because he believed that a threat of disorderly conduct existed on the night in question under section 15(1) of the act. The equality officer

Investigations *hears and decides complaints*, but it does not provide assistance or advice in discrimination cases. This would be incompatible with its obligation of impartiality. It is clear from a number of letters and queries received by the office that some solicitors are unsure about the difference between the two bodies (perhaps partly because they occupy adjacent premises and have similar phone numbers). Their representational and quasijudicial roles are in fact quite distinct.

#### Available advice and information

While we do not advise on specific complaints, the Office of the Director of Equality Investigations does provide a range of general aids which are intended to help and inform all parties to complaints. These are available on the office's website at <code>www.odei.ie</code>, or by post from the office, and many are provided in a variety of formats for those with disabilities.

They include:

- Guides to procedures under the 1998 and 2000 acts
- Forms for referring and replying to complaints. Complaints under the 1998 act must be referred within six months. Complaints under the 2000 act must be notified in writing to the alleged discriminator within two months, and the complaint referred within six months of the discrimination. Both acts generally permit an extension of these limits only for a maximum period and where exceptional circumstances prevented the limit being satisfied
- A guide to mediation. The 1998 and 2000 acts are unusual in providing mediation as an alternative option for all claims, where both parties agree. The office provides trained mediators. There is no charge for the service
- · Annual reports. These are published in June

#### CONTACT DETAILS

Office of the Director of Equality Investigations 3 Clonmel St, Dublin 2, tel: 01 417 3300, fax: 01 417 3399, e-mail: info@odei.ie.

Equality Authority 2 Clonmel St, Dublin 2, tel: 01 417 3333, fax: 01 417 3366, e-mail: info@equality.ie.

- each year and contain a statistical breakdown of cases and summaries of all cases during that year. The 2000 report, available this month, will also contain a thematic legal review of the year's case law
- The text of the 1998 and 2000 acts is also available on the office's website
- An on-line database of equality case law (at www.odei.ie). Since the end of last month, this database includes the full text of all rulings of equality officers from 1996 to date, with a string of summaries for each year. As the office is statutorily obliged to publish its decisions, the database is intended to make the equality case law generally accessible in a more convenient format for parties, lawyers, other representatives and researchers. There is no charge. We hope in future to add equality case law from the Labour Court, High and Supreme courts, and the European Court of Justice, either through links or in full-text form. The Equality Authority also provides relevant information on its website at www.equality.ie. G

Madeleine Reid is a solicitor, legal adviser to the director of equality investigations, and a member of the Law Society's Employment and Equality Law Committee. This article gives general information and is not intended to provide a legal interpretation on behalf of the office.

#### Footnote

1 The 1998 act, covering discrimination in employment and vocational training, came into force on 18 October 1999. The 2000 act, covering discrimination in goods, services and facilities, came into force on 25 October 2000. The 1998 act repeals the earlier *Anti-Discrimination (Pay) Act*, 1974 and *Employment Equality Act*, 1977.

found that there was insufficient evidence to substantiate this claim, and concluded that the restriction of service constituted discrimination on the ground of membership of the travelling community. The second complainant was unknown to the respondent but was also restricted service. The equality officer concluded that this action constituted discrimination by association, under s3(1)(b) of the act. He ordered that the respondent pay each complainant the sum of £300 as compensation for humiliation and embarrassment.

#### ■ RACE

#### Martinez v Network Catering

This case (DEC E2001 00) involved a complaint of discrimination in employment based on nationality (which forms part of the 1998 act's definition of race). The claimant alleged that she had been less favourably

treated than Irish employees in relation to allocation of work, that her co-workers mimicked her accent and pretended not to understand her, and that one colleague made abusive comment referring to her nationality. However, the equality officer, after examining the incidents in detail, found that the complainant had not established a *prima facie* case of discrimination in respect of the period of her employment which was covered by the 1998 act.

#### ■ VICTIMISATION

#### McCarthy v Dublin Corporation

In this case (DEC E 2001/01), the claimant had not been appointed to a promotional post by her employer some years earlier. An equality officer, and subsequently the Labour Court on appeal, had upheld her earlier complaint that this was attributable to discrimination based on sex. She now referred

a complaint of victimisation arising from that case. The equality officer found that she had in fact been victimised by the employer, contrary to the 1977 act and to section 74(2)(a) of the 1998 act. The incidents included being ignored and marginalised by her manager during three years, publication in the in-house magazine of a report that the employer rather than the claimant had won her case (which was never corrected despite the claimant's request), and the threat of disciplinary measures, following an internal investigation which the equality officer judged to have been unfair and inconsistent with natural justice. Commenting that 'the victimisation of a person for in good faith having taken a claim under the equality legislation is very serious, as it could have the impact of undermining the effectiveness of the legislation', the equality officer awarded her compensation totalling £40,000. G



The only book to cover the new Copyright Act

By Robert Clark BA, LLM, PhD, BL, Professor of Law, University College, Dublin.

#### Offering YOU the most current text on Irish copyright law

Irish Copyright and Design Law is completely up to date with the latest law and commentary, on the new Act and forthcoming design legislation. It provides a detailed analysis of the new Act, exploring case law and the international environment that has shaped the new Act. The looseleaf format ensures the work will be kept fully up-to-date, as it will be updated at least every six months.

- First and only Irish text on the new Copyright Act A unique reference source on this subject
- Written by the acknowledged expert in this area Providing YOU with THE authoritative commentary
- Will explore the new Act in detail Supplying YOU with the most comprehensive material
- Bi-annual updating looseleaf service keeping YOU completely up to date
- Appendices will include the 2000 Act, the Berne, Rome, TRIPS and both Geneva Treaties and the relevant Statutory Instruments. The Design legislation will be included in Issue 2

	£0.
PRIORITY ORDER FORM: Clark: Irish Copyright & Des	
□ Looseleaf ISBN: 1 85475 280 4 Product code ICDMW Pre-public Pay As You Go (PAYG) I understand that I will continue to receive, until countermanded, future updating connection with this work and will be invoiced for these issues when I receive the	cation price £135  **The court (A-bar) I delta to the Carlotte Andrew Court (A-bar) I delta to the Carlotte And
Name:	To reserve your 21 day TRIAL copy simply call (01) 873 1555 of fax your order to James Farmer on +44 (0) 20 7400 2570.

Post

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

Orders are subject to a charge £2.50 p&p in the UK and £3.50 p&p for Irish and overseas

www.butterworthsireland.com

Editorial Enquiries

If you are interested in writing for Butterworths Ireland, please call Ciara Fitzpatrick on (01) 873 1268 [law] or David Hession (01) 8731266 [tax]

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

James Farmer Butterworths
Dept AA570 PO Box 4214 Freepost Dublin 2



#### Book reviews

# Post-traumatic stress disorder and the law

**Gillian Kelly.** Round Hall Sweet & Maxwell (2000), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-210-9. Price: £45.

illian Kelly is a barrister Gractising in the personal injuries area, specialising in post-traumatic stress disorder (PTSD). In the preface to her book, she writes that her purpose is to set out the law as it stands at present with regard to PTSD - and the means by which it arrived there. That aim has certainly been achieved. It is an invaluable reference point for any litigation practitioner and a 'one-stop shop', so to speak, on the subject of psychiatric injury.

Chapter 1 traces the development of the law from the initial recognition by common-law courts of psychiatric injury without a physical aspect (Byrne v Great Southern & Western Railway Company of Ireland [1884]) through the case some 41 years later which recognised psychiatric injury triggered by

fear of injury or death to others, Hambrook v Stokes Brothers. The author uses case law to illustrate the divergent approaches of the Irish and Australian courts, which have largely followed the approach taken by Lord Bridge in McLoughlin v O'Brian (1983), using reasonable foreseeability as the sole test of liability in the area of shock-induced psychiatric injury, and that of the English courts, which have, by contrast, favoured Lord Wilberforce's three limiting pre-conditions to the criterion of reasonable foreseeability: proximity of relationship to the victim, proximity in time and place to the accident, and means of communication of the accident.

There is a useful discussion of the English case *Alcock v Chief Constable of South Yorkshire Police* (1991) in which Lord Wilberforce's pre-

conditions were adopted, becoming known as 'the Alcock mechanisms' and constituting the current law in England in relation to the liability of a defendant for shock-induced psychiatric injury to the secondary victim of an accident. The first chapter also covers the distinction, set out by the House of Lords in Page v Smith (1995), between a primary and a secondary victim as well as discussing the usefulness of the 'told' rule.

Chapter 2 explores the issue of PTSD and the employer/ employee relationship in some depth. 'Rescuer' cases are discussed in chapter 3, which also touches on how courts deal with unrelated bystanders and, as Lord Hoffman put it, the 'ghoulishly curious spectator' as well as those with 'eggshell personalities'.

This book does not simply

deal with case law. The emphasis is also on the practical, as in chapter 4, which offers sensible advice in relation to dealing with plaintiffs suffering from PTSD, the drafting of pleadings and the role of discovery. It also sets out the relevant statutory provisions.

The final chapter covers a number of topics of interest, including the diagnostic criteria and treatment for PTSD, the relevant terminology, PTSD in children and the neurological aspect of PTSD.

In summary, this is a comprehensive yet compact, coherent and eminently readable text. It is a welcome and essential addition to the library of any practitioner in the area of personal injury law.

Muireann Coveney is a solicitor with the Dublin law firm McCann FitzGerald.

#### Teach me to solo: the nuts and bolts of law practice

Hal Davis. Anchovy Press (2000), 2828 W Parker Rd Ste B106d, Plano, Texas, USA. ISBN: 0-9701869-0-8. Price: \$29 (available on Amazon.com).

This book is written for those thinking of starting a sole law practice. Its stated objective is to educate and entertain, its tone is cheery and cheeky and its cover is like *The Hotspur* of times past. Yet, do not judge a book by ... well, you know.

It does contain some useful tips and information on setting up a new law practice. Certain matters are universal, whether it is a new law firm in Plano, Texas (home of the self-publishing author) or in Portarlington. Chapter headings include *Advertising*, *The Internet*,

Referrals, Staff, Office location, Computers, and The firm's image.

Cheery and cheeky does not mean frivolous, and basic points are addressed with clarity. Here's an example: 'Remember two points about your trust [client] account: never mingle your money with the client's money, and keep track of how much money you have that belongs to each client. If you disregard either of these principles, you'll likely lose your law licence'. That's clear. And true.

Emphasis is put on the importance of keeping track of

billable time and of keeping the client informed. Also, the author discusses at length the image of a law practice and notes the importance of not confusing people by having a business card different in style from the firm's letterhead. Advice on computers, hardware and software, is tangible and worth a read.

Another of the pieces of practical advice is not to run for political office. The author ran for the elected position of justice of the peace. He lost and was down a few thousand dollars after the experience. And he got no new clients.

It is easy to be dismissive of a small American book, written by an American lawyer, probably with a largely American audience in mind. But setting up in law practice is a serious step and anyone in that position can benefit from information and tips from various sources. To Irish solicitors, this is probably not the Holy Grail, but it is a useful publication.

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

# THE SCOTTISH PROVIDENT INSTITUTION

Petition has been presented to the Court of Session in Scotland by The Scottish Provident Institution of 7-11 Melville Street, Edinburgh EH3 7YZ (the "Institution") applying for an Order of the Court under the UK Insurance Companies Act 1982 sanctioning a scheme (the "Scheme") under which the long term business carried on by the Institution is to be transferred to Scottish Provident Limited (a member of the Abbey National Group).

An explanatory circular (the "Circular"), giving details of the Scheme and containing copies of Notices of two Extraordinary General Meetings of the Institution to be held at The Edinburgh International Conference Centre, The Exchange, 150 Morrison Street, Edinburgh EH3 8EE at 2.30 p.m. on 14 and 29 June 2001, has been despatched to those policyholders and members of the Institution of whose addresses the Institution has an up to date computer record.

Any person who is, or thinks that he may be, a member or policyholder of the Institution, or who is or may be interested in a policy with the Institution which is in the name of another person (for example, as an executor or personal representative of a deceased policyholder, a trustee or a curator) and who does not receive a copy of the Circular can obtain a copy by calling the Scottish Provident Information Line on 0845 270 0444 if calling from the UK, Channel Islands or the Isle of Man (1890 923057 if calling from the Republic of Ireland and +44 131 348 2979 if calling from elsewhere) on any weekday (excluding bank holidays) between 8.00 a.m. and 6.00 p.m., and on Saturdays between 9.00 a.m. and 12.00 p.m.



#### Company law (third edition)

Ronan Keane. Butterworths (2000), 26 Upper Ormond Quay, Dublin 7. ISBN: 1-85474-8756. Price: stg£90.

n his foreword to the first edition of this book in 1985, Mr Justice Keane stated his intention of providing 'practitioners and students with a readable and, it is hoped, reliable guide to the essential features of Irish company law'. Readers of this third edition will agree that he has maintained the high standards of previous editions while updating the structure and content in light of developments since his last edition in 1991.

The changes introduced by the *Companies (Amendment)* (No 2) Act, 1999, which came into force on 18 April 2000, and its effects for directors are well laid out, particularly in relation to the restriction on the number of directorships held by one person (25) and the necessity for one director to be resident in Ireland (except in specified circumstances). The powers and duties of directors are examined in light of the

Supreme Court's decision in *Re: Frederick Inns Ltd.* In that case, involving an insolvent company, the duty owed by the directors to the company was effectively transposed into

'This book is significant in that it represents the end of Chief Justice Keane's distinguished career as an author of legal textbooks'

a duty to act in the interests of the company's creditors. It is interesting to note the difference in the chief justice's approach to this case and that of Michael Forde, who lambastes it, believing it to be wrongly decided. Forde contends that the directors' duty on insolvency should still be to the company (and not to act in the interests of the company's creditors). Although the chief justice generously refers to this argument, he is not convinced by it.

Other areas of recent development examined here include the increased powers of the High Court to appoint an inspector under the Companies Act, 1990 and the subsequent interpretation by the courts of this legislation in relation to the conduct of inspectors and their powers as regards 'related companies'. The changes in the law on the appointment of an examiner (who can be appointed if the company has a reasonable prospect of survival) under the Companies (Amendment) (No 2) Act, 1999 and the powers and duties of an examiner are clearly and comprehensively set out.

This book is also significant in that it represents the end of Chief Justice Keane's

distinguished career as an author of legal textbooks. As he notes himself, when he started writing, 'the number of Irish textbooks was so pitifully small that the collection represented Major Petkoff's "library" in Shaw's Arms and the man, a single shelf containing a few wellthumbed volumes'. That this is no longer the case is thanks to the efforts of the chief justice and the others who blazed a trail in Irish legal publishing, which is the poorer for the loss of this author to his judicial duties. It must be acknowledged that he has contributed handsomely to legal publishing in recent years, particularly with this, his final text, an accessible and essential guide to company law for practitioners and students. G

Keith Walsh is a student on the second professional practice course and is apprenticed to the Dublin law firm Anthony Harris & Co.

#### The separation of powers in the Irish constitution

David Gwynn Morgan. Round Hall Sweet & Maxwell (1997), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-899738-21-5. Price: £70.

Professor David Gwynn
Morgan, professor of law
at University College Cork and
director of research at the Law
Reform Commission, wrote an
important work on the
doctrine of separation of
powers which was published in
1997. Due to an oversight, no
review of the book was carried
in this magazine; accordingly,
it is apt, if somewhat belated,
to offer a brief review in this
issue.

Civil government, comprising three organs of power – a legislature, an executive and a judicial organ – with each separate, yet respecting the other, with each balancing the one against the other two, is one of the great achievements of human civilisation. Undoubtedly, the application of the separation of powers doctrine has acted against abuses of excessive power. Professor Morgan illustrates in his book how, in effect, we have been saved from despotic government through the operation of this doctrine.

Of course, we all know that the legislature makes laws, the executive executes and the judges interpret; but we all also know that it is at the various boundaries of each departmental power that difficulties arise and it is the analysis of those boundaries that makes this book so interesting.

The author argues that Irish judges have offered scant discussion of the underlying character and objective of the doctrine of separation of powers. The theoretical aspect of the doctrine is examined in the first three chapters and in chapter 13.

A dominant theme is the consideration of the judicial function and the need, as perceived, to maintain the independence and integrity of the courts. There is an excellent consideration of tribunals and the separation of the judicial power and article 37 of the constitution – the

exercise of certain limited functions and powers of a judicial nature by persons who are not judges.

The practice of law rests heavily on the doctrine of separation of powers. This book is the most complete legal source published to date on this important aspect of our law.

Professor Morgan has written a book of great intellectual elegance and power on an aspect of law that affects the daily lives of citizens. It is a valuable source of reference for judges, legal scholars, lawyers and law students.

Dr Eamonn Hall is company solicitor of Eircom plc.

#### Tech trends

By Maria Behan



#### Adding it all up

ex Solicitor Accounting
Software from Legal &
General has been specifically
designed with lawyers in mind:
ease of use is paramount, along
with comprehensive reporting
facilities. It complies with
Revenue Commission and Law
Society regulations, and it's also
up to speed on the euro, which
should be reassuring as the

clock ticks closer to 2002. And to help you get a head start, the company offers training on the use of its Windows-based software, a process it claims helps to sort out accounting problems before they have a chance to accumulate. Available for £950 from Legal & General Software on 01 872 5522 or e-mail: Legal@iol.ie.

#### **Snappy tunes**



Ready to dive into the latest cyber pastimes – MP3 music and digital photography? Then you might want to investigate the Fujifilm FinePix 40i, which combines those two cutting-edge capabilities in a teeny package that weighs a mere 210 grams (including the

two rechargeable AA batteries that power the unit), making it easy to capture images or listen to music whenever and wherever strikes your fancy. When you're back at base, the USB port makes for faster file transfers with your computer, which will come in handy when you're downloading tunes or uploading pictures to post on the web or send to far-flung relations via email. The supplied 4 MB SmartMedia card holds just four images if you opt for the camera's highest resolution of 4.3 megapixels (2,400 x 1,800), so perfectionists who don't want to use lower-resolution settings (which are fine for many purposes) might want to shell out for an optional SmartMedia card. Available from electronics and camera suppliers for about £600, plus approximately £180 for a 64MB SmartMedia card.

#### A Scaleo of your own-e-o?

The new Fujitsu Siemens Scaleo M1000 package, which includes a colour ink-jet printer, makes for a pretty impressive home computing system. Movie buffs will appreciate the 12x DVD, which can connect to your TV for maximum viewing pleasure. And those of you who are into numbers will appreciate the fact that this baby packs a 1.0

GHz Pentium III processor, 128 MB of SDRAM and a 40 GB hard drive. It also comes preloaded with an array of software, including Windows Millennium Edition, Microsoft Works Suite 2000 and an Internet-access package from Unison.ie. Available for £1,300 from ESB shops, Eircom stores, Tesco's or by ordering on-line from www.mypc.ie.

#### A Bloomsday software scenario

The tag line for Titan Software's Ulysses software suite is 'practice management made simple', a concept that might sound a siren call to many solicitors. Like Joyce's masterwork, it's an epic encompassing many parts but, in this case, those parts include a diary and messaging system, document production and storage, case management and reporting, a contact database,

and modules for accounts and workflow management. The twist is that it's all Internet-based. That means software updates are automatic and free (and best of all, handled by somebody else) and the system can be accessed all over the world, either from a dedicated line in your office or



via the Internet. Firms pay £2,000 for the server, £400 for installation, £1,200 for three-days' training and £2,000 for yearly support, but access to the Ulysses system itself – and all subsequent revisions – is free. For more information, including a demonstration, visit the website, http://www.titansoftware.ie or contact Titan Software on (048) 3026 5531 or enquiries@titansoftware.ie.

# A noteworthy PC?

any of us are frustrated by the fact that when it comes to using a computer, we have to conform to the way it works, rather than the other way around. The Thinkpad TransNote, which IBM has dubbed the 'world's first portfolio notebook computer', tries to address this problem by mimicking the old-fashioned pen-and-paper interface. Use the

supplied pen to jot notes on an ordinary pad of paper (backed by a digital notepad that reads the pen's electronic 'ink') and before you can say 'what you see is what you get', your notes — be they words or a sketch — are captured by the attached notebook computer. You can then use the digitised versions of your hand-written notes for to-do lists or add them to word-

processed documents or e-mail. The downside is that the material captured by the pad is stored as graphics files, which limits its usefulness, as the computer can't really 'read' your notes; it just stores them. On the other hand, if you're one of those die-hards who will never relinquish the pen for the keyboard, you might just take a

fancy to the TransNote, which comes in both right- and left-handed versions and features a 600 MHz Pentium III processor, 64 MB of memory and a 10 GB hard disk drive. Available for about £2,500 from electronics outlets.

# Sites to see



**Connolly Lowe** (www.legalcosts.net). This legal costs accountants' home page offers the low-down on recent developments affecting legal costs, as well as a fee-based Instant Web Service, an on-line vehicle for getting a professional bill of costs.



**Licensing Executives Society of Britain and Ireland** (http://www.les-europe.org/gb-ireland). If you're involved in the licensing of intellectual property rights, this site is the place to be, with news, updates on coming events and links to other licensing-related sites.

**MakeoverStudio.com** (http://www.makeoverstudio.com). Offers information on the latest in cosmetics and hairstyles, an on-line column from a style consultant, and a feature that lets you scan in your photo and experiment with a variety of hair-dos and colours.



**AIB Guide to Golf in Ireland** (http://www.golfireland.org). Lists golf courses all around the island, as well as handy information on weather forecasts, restaurants and local accommodation.



**Speech-writers.com** (http://www.speech-writers.com). The wedding season is in full swing, and if you're on the spot as a best man or father of the bride, you might find some relief at this site, which – for a fee – will help you out with canned or even tailor-made words of wit and wisdom.

# Davy

Jack O'Keeffe: a welldiversified portfolio is the best way to achieve a balance between risk and reward

# Building your inv

# In this month's *Stockwatch*, Jack O'Keeffe explains how to select your investments and construct your portfolio

pproaches to investing are Approaches to a position haphazard. People invest on the basis of tips, hunches, fashion or even casual comments from acquaintances. That may work at the racecourse, but it's not the best way to build a portfolio. For long-term growth, you need a portfolio approach to stock selection and trading that takes account of your individual circumstances and your attitude to risk. Such an approach may not make you a millionaire overnight, but you'll sleep better knowing you're on the right track to growing and managing your wealth.

So, where do you start? At this stage, you should already have worked out your investment goals, your net worth, the amount you have to invest, your investment timeframe and, importantly, your risk profile (see last issue, page 30).

#### Why portfolio management?

The reason for adopting a portfolio approach is to spread risk, and a well-diversified portfolio is the best way to achieve a balance between risk and reward. The benefit of a properly-diversified portfolio is that returns will be based on the sum of the returns of the individual stocks in the portfolio. Fortunately, however, the same

does not apply to the risk or volatility to which the portfolio is exposed. This risk is not the sum of the volatility of the individual stocks – it is less. This is because shares in different sectors react differently to economic and other news.

For instance, an increase in interest rates will have little impact on the pharmaceutical sector but may have a negative impact on the manufacturing sector, as many companies in this sector would have high borrowings. Demand for their products – such as cars – would also be affected by high interest rates.

#### Your investment philosophy

Before you start thinking about which shares to put into your portfolio, it may be worthwhile to consider how the professionals approach the task of building and managing a portfolio. Portfolio management is the discipline of:

- Agreeing the appropriate investment objectives with the client. This could be income or capital generation, or a combination of both
- Formulating an investment policy and strategy to achieve these objectives. An investment strategy can be either active or passive. A passive strategy will attempt to match the performance of the

- market, for example, through index tracking. Active portfolio management uses skills and analysis to construct a portfolio designed to produce returns in excess of the market
- Selecting and managing shares within the portfolio. A good portfolio manager should be able to trade in and out of shares at appropriate times to re-balance the portfolio and take advantage of individual share price movements
- Reviewing performance against independent benchmarks on a regular basis and, if necessary, reviewing the agreed investment strategy. This also serves to evaluate the performance of the portfolio manager.

Two of the most common styles of active portfolio management are:

• The top-down approach, in which the portfolio manager considers economic circumstances and trends to decide on the asset allocation and, within that, the geographic basis for the portfolio. Weightings between the major markets will be influenced by such factors as inflation, interest rate trends and currency impacts

#### TO ENSURE A MARGIN OF SAFETY WHEN INVESTING IN SHARES:

- Buy shares in businesses with good prospects and solid previous performance
- Buy shares in businesses with demonstrated good management
- · Buy at the right price in other
- words, at less than the company's intrinsic value
- Never be a forced seller. Have a good enough cash flow that you never have to sell into a bad market
- View shares as a long-term
- investment, so plan to hold them for a minimum of three years but preferably at least five years
- Don't buy shares unless you can tolerate a considerable personal 'paper loss' in a market slump.

# estment portfolio

• The bottom-up approach, where the portfolio manager focuses on individual companies and builds incrementally from there. Often, he will invest on a sectoral basis, identifying global trends that will influence the selected stocks. For instance, a portfolio manager may believe that financials will be the next growth sector and may start accumulating a mixture of Irish and global bank shares.

Because it is important to control the overall risk profile of the portfolio, the portfolio manager will usually place upper limits on exposure to a particular sector and, within that sector, to particular shares. An ideal portfolio mix will depend on the individual's requirements for income, capital and security. In general, the allocation of assets will range between the extremes shown in charts 1 and 2.

#### Choosing your shares

Many of us now, perhaps for the first time, are cash rich and time poor. And selecting shares can appear a daunting task, given the almost unlimited choice available. However, the steps that you have already gone through in devising an investment strategy will naturally limit the range of shares you will need to analyse. The shares you choose to invest in should reflect your attitude to risk. For instance, if you are averse to risk, you may not want to invest in a volatile sector such as technology. Once you've decided your investment criteria, you should stick with them. This will not only simplify your investment decisions but also ensure that

you are not led astray by short-term market sentiment.

But how do you select the individual shares? This is where research and experience comes in. Before deciding to invest in a particular stock, you need to evaluate its investment potential. This means finding out as much as you can about:

- The company
- Its performance relative to its competitors, and
- The industry or sector in which it operates.

Armed with this knowledge, you can decide whether the company (and therefore the share) is a good proposition, or whether you'd be better off investing elsewhere.

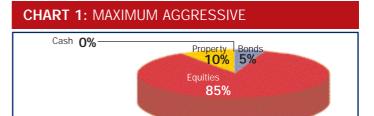
You'll also be better able to distinguish between the price of a share and its value. Share prices are determined by market supply and demand. By contrast, share value is a subjective estimate of future earnings based on such variables as the company's financial strength, management quality, historical performance, and position within its market or sector.

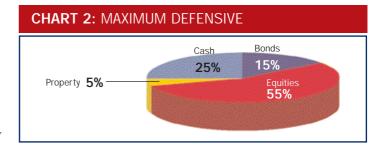
#### What should you look for?

Although there are many ways to analyse the value of a share, the most common method is the price/earnings or p/e ratio.

The p/e ratio is the share price divided by the earnings per share and is a useful way of comparing the value of different shares (companies). The key issue, however, is earnings and *future* earnings. When trying to gauge future earnings, there are many factors to consider, such as:

• Operating margin. Is it expanding or eroding from year to year? If it is expanding, the earnings per





share are likely to increase

- Market position. Is the company a market leader or a small player in a fragmented industry?
- **Financial position.** Has the company sufficient cash to satisfy its long-term plans for expansion or acquisitions?
- Return on equity (ROE).

This shows the rate of return on shareholders' funds that a company has achieved in the past. A high ROE indicates a company has performed well in terms of the return achieved on shareholders' funds – and may be expected to do so again in the future

- Company management. A company's performance and future earnings potential ultimately depends on the quality of its management
- **Competitors.** No research is complete without comparing a company's performance with that of its competitors.

One other issue of importance to investors is the yield. This is the annual rate of return on an investment as paid in dividends and is an important measure for investors who want a steady income from their investments.

Assessing a company's financial health can be a laborious and time-consuming task, but is essential before committing what may be a substantial sum of money. An experienced portfolio manager can sift through the data and give you an informed, rational set of options. But you can also do your own research by reading the financial pages of the newspapers, checking company websites and studying annual company reports and brokers' reports.

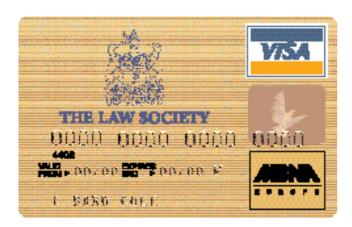
Whichever route you take, the key points to remember are to devise a game plan that suits your investment objectives and to do the necessary research.

In the next article, we will look at alternative investments and other ways of maximising the return on your portfolio.

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

# The Law Society Credit Card designed exclusively for you

# 3.9% APR for Cash and Balance Transfers fixed for six months from the date your account is opened





For a Priority Request Form or to apply online call FreeFone

1800 409 510

Quoting Reference ACW9 0538 I (lines are open 9.00am to 9.00pm seven days a week)

# 14.9% APR

(variable) on retail purchases

We've teamed up with leading credit card issuer MBNA Europe Bank Limited to bring you The Law Society Credit Card. Use it, and you'll enjoy a wide range of outstanding benefits including one of the lowest interest rates in Ireland today!

#### Just look at some of the superb benefits:

- No Annual Fee, regardless of how often you use your card
- Up to 57 days interest free on retail purchases, when you settle your balance in full and on time each month
- Up to £100,000 FREE Travel Accident Insurance\* (up to £250,000 for Gold Cards)
- FREE 24 hour Customer Satisfaction Helpline from anywhere in the world
- FREE Purchase Protection Insurance\*

#### Exclusive extra benefits for Cardholders

You'll also have a credit card cheque book for extra convenience and low cost Payment Protection Cover. Also, if your MBNA card is lost or stolen you will not be liable for its fraudulent use, provided you let us know as soon as you notice it is missing.

\*Terms and conditions apply to all free insurances. Full details will be sent with your card.

MBNA Europe Bank Limited is registered as a branch in Ireland under number E3873 at 46 St Stephen's Green, Dublin 2. Incorporated in England and Wales under number 2783251. Registered Office: Stansfield House, Chester Business Park, Chester CH4 9QQ. Credit is available subject to status to Irish residents aged 18 years and over.

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

# EU directive on money laundering

John Fish reported that, on the previous day, the European Parliament had voted in favour of amendments to the directive that were supported by the CCBE. The directive would now proceed through the conciliation process and it was hoped that the amendments would ultimately be adopted. The USA and Japan were also coming alive to the issue and had sought the advice of the CCBE.

#### Miley v Flood

The director general briefed the Council in relation to the outcome of the Supreme Court appeal by Stephen Miley against the decision of Kelly J. The Supreme Court had given the parties an opportunity to agree on a particular course of action, which had then been approved by the court. Regrettably, the court had chosen not to express a view on the judgment of Kelly J, which now represented the law in relation to legal professional privilege in Ireland. The Council noted, with regret, that the society had no means of having the judgment reviewed by the court, being mere notice parties to the proceedings.

# Proposed Judicial Council on Judicial Conduct and Ethics

The president reported that he had raised the proposed exclusion of members of the practising profession from the committee consider complaints of misconduct by judges in discussions with the minister for justice, equality and law reform earlier in the week. The minister had taken the society's views on board and had agreed to adjust the composition of the committee so as to include both a solicitor and a barrister representative. The director

general said that this was a major breakthrough for the society and was a welcome development for the practising profession and their clients.

#### Courts and Court Officers Bill, 2001

The Council discussed the contents of the bill and it was agreed that Council members would forward their comments to David Martin, for inclusion in the society's submission on the bill. The director general confirmed that, in relation to the eligibility of solicitors for appointment as judges, the concept of a 'litigation solicitor' had not been included in the bill and all solicitors with 12 years' practice would be eligible for appointment to the High Court and Supreme Court benches.

# Solicitors' accounts regulations

Gerard Doherty asked that Council members would consider the draft regulations closely and forward any views to Compensation Committee. He noted that there was nothing new in the regulations, other than policy changes already approved by the Council and changes to wording and definitions arising out of the Solicitors (Amendment) Act, 1994. In any event, all changes had identified in explanatory memorandum draft accompanying the The regulations. Council agreed that the draft regulations should be circulated to the local bar associations, with an invitation for their comments by an early date. It was also agreed that they should be furnished to the accountancy bodies, with the same response date. The Council set a time limit of 11 May 2001 for the submission of

# Proposals for a Personal Injuries Assessment Board

The director general briefed the

Council on the recent report of

a Department of Enterprise, Trade and Employment working group, which had recommended the establishment of a Personal Injuries Assessment Board (PIAB). It was noted that a previous working group had considered the establishment of a personal injuries tribunal and had rejected it. For some reason, the idea had been resurrected and it appeared that a decision had been taken not to consult with the legal profession. The government had announced its intention to implement the group's recommendation and an implementation group was to be formed. The director general said that the only certainty in relation to membership of the PIAB was that it would include a representative from the insurance industry. The proposed composition and method of operation of the PIAB revealed its anti-claimants bias. Undoubtedly, there would be pressure on claimants to accept the amount offered by the board. He believed the proposal was unfair to claimants and good news for negligent employers. He also felt it was impractical, would add unnecessary bureaucracy and reintroduce Michael Peart noted that article 6 of the European convention on rights required impartiality in tribunals and it was arguable that a PIAB with an insurance representative could not be regarded as impartial. The Council noted that the Courts Service Board had not been consulted in relation to the proposal, even though Noel Treacy TD had indicated that the PIAB would be independent entity within the Courts Service'.

#### Jurisdictions of the courts

The president reported that he had raised the issue of the changes in the jurisdictions of the courts with the minister in his recent discussions. The minister had made it clear that there would be no change to the decision already made and the jurisdictions would increase to the levels set out in the bill. However, he had accepted that a substantial revision of the District Court fees was also needed

# In briefing this month

- Council report
  - page 41
- Legislation update
- page 43
- Personal injury judgments
- page 44
- Practice notes page 46
- Registrar's Committee
- Criminal Law Committee
- Guidance and Ethics Committee
- FirstLaw Update page 47
- Administrative
- Banking
- Constitutional
- Contempt
- Contract
- Criminal
- Damages
- Family
- Garda compensation
- Habeas corpus
- Housing
- Judicial review
- Land law
- Litigation
- Revenue

#### Eurlegal

page 55

- Horizontal co-operation agreements: the new regulations and guidelines
- Recent developments in European law

# Sealing Facility Now Available

At Royal & SunAlliance we are delighted to announce that we now have the facility to seal Administration Bonds in our Dublin office. This facility will result in a major improvement in our turnaround times, with sealed documents now issued by return of post.

In addition, as a convenience to you the solicitor, we have now posted our Administration Bond Proposal and High Court Bond Forms on the Royal & SunAlliance web site. These documents can now easily be downloaded.

We would also highlight the full range of Legal Indemnity Products that are available from Royal & SunAlliance. These include Defective Title Indemnities, Missing Beneficiaries, Deed of Gift Indemnities, and more besides. If you would like an Information Pack or to discuss any aspect of Legal Indemnity Insurances please call the Special Risks Unit who are always willing to help.

Royal & SunAlliance - Insuring your world



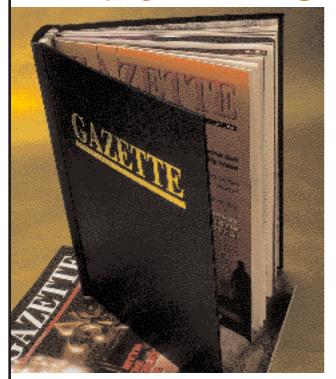
Pictured above (seated) is Gerry Traynor, Manager Special Lines
Department sealing the first administration bond, witnessed by Alec Diamono
Miley & Miley Solicitors and members of the Special Risks Team.

13/17 Dawson Street Dublin 2 Telephone (01) 6363948 Facsimile (01) 6363118 www.royalsunalliance.ie

To obtain Proposal & Bond Form just click on "Our Products" and then "Commercial"



# Keep your magazines safe with a



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.

# Gazette binder

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

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.

## **LEGISLATION UPDATE: 10 APRIL - 11 MAY 2001**

ACTS PASSED Electricity (Supply) (Amendment) Act, 2001

Number: 9/2001

Contents note: Gives effect to a 5% employee shareholding scheme in the ESB. Amends and extends the Electricity (Supply) Acts, 1927 to 1995 to provide for the issue of capital stock by the ESB; amends paragraph 11 of schedule 12 to the Taxes Consolidation Act, 1997 and provides for related matters

Date enacted: 17/4/2001 Commencement date: 17/4/2001

Housing (Gaeltacht) (Amendment) Act, 2001 Number: 10/2001

Contents note: Amends and extends the Housing (Gaeltacht) Acts, 1929 to 1979 and provides for related matters

Date enacted: 23/4/2001 Commencement date: 23/4/2001

#### Teaching Council Act, 2001 Number: 8/2001

Contents note: Establishes a council to be known as An Chomhairle Mhuinteoireachta, or, in the English language, the Teaching Council, to promote the professional development of teachers and to provide for the registration and regulation of teachers. Repeals the Intermediate Education (Ireland) Act 1914 and provides for related matters

Date enacted: 17/4/2001 Commencement date: Commencement order/s to be made (per s1(2) of the act)

#### **SELECTED STATUTORY INSTRUMENTS** Capital Gains Tax (Multipliers)

(2001) Regulations 2001 Number: SI 125/2001

Contents note: Specify the multipliers by reference to which sums which are allowable as a deduction from the consideration for the disposal of an asset in the year of assessment 2001 are to be increased under s556(2) of the Taxes Consolidation Act, 1997 for the purpose of computing the chargeable gain accruing to a person on such a disposal

#### Criminal Justice Act, 1999 (Part III) (Commencement) Order 2001 Number: SI 193/2001

Contents note: Appoints 1/10/ 2001 as the commencement date for part III of the act (sections 8 to 24, Amendments to abolish preliminary examinations)

District Court (Criminal Justice)

Rules 2001

Number: SI 194/2001

Contents note: Amend order 14, order 17, order 18, order 19, order 20, order 24, order 26 and order 27 of the District Court Rules 1997 (SI 93/1997), in particular taking account of changes arising from the entry into force of the Criminal Justice Act, 1999 and the Bail Act,

Commencement date: 1/10/2001

#### European Communities (Licensing of Drivers) Regulations 2001 Number: SI 168/2001

Contents note: Provide for the introduction of a driver theory test in accordance with the requirements of Council directive 91/439/EEC on driving licences

Commencement date: 25/4/2001

#### Income Tax (Employments) Regulations 2001 Number: SI 135/2001

Contents note: Amend the PAYE (Income regulations Tax (Employments) Regulations 1960 [SI 28/1960]) consequent on the moves to a tax credit system and the calendar tax year; provide for the granting of relief in respect of permanent health benefit contributions under a net pay arrangement similar to that which applies to occupational pension schemes; provide for the introduction of the euro currency in relation to these regulations with effect from

Commencement date: 6/4/2001

1/1/2002

#### Income Tax (Relevant Contracts) Regulations 2001 Number: SI 131/2001

Contents note: Amend the Income Tax (Relevant Contracts) Regulations 2000 which govern the deduction of tax from payments made by principal contractors to sub-contractors in the construction, forestry and meat-processing industries, consequent on the alignment from 1/1/2002 of the income tax year with the calendar year

Commencement date: 6/4/2001

#### Long-Term Care Insurance (Relief at Source) Regulations 2001 Number: Śl 130/2001

Contents note: Make provision in relation to the scheme of tax relief at source for long-term care insurance premiums introduced in the Finance Act, 2001

Commencement date: 6/4/2001

Medical Insurance (Relief at Source) Regulations 2001

Number: SI 129/2001

Contents note: Make provision in relation to the scheme of tax relief at source for medical insurance premiums introduced in the Finance Act, 2001

Commencement date: 6/4/2001

#### Planning and Development Act, 2000 (Commencement) Order

Number: SI 153/2001

Contents note: Appoints 17/4/ 2001 as the commencement date for part XVI of the act (sections 229-241, Events and funfairs), other than section 239 which relates to funfairs. Appoints 17/4/2001 as the commencement date for related sections of the act - sections 156, 157 and 158 insofar as they relate to prosecutions under sections 230, 233 or 235; section 246(1) (other than paragraphs (a), (b), (c) and (e) of that sub-section) and section 246(3)(a); section 268(2). (See also earlier commencement orders: SI 349/2000 and SI 449/2000)

#### Planning and Development (Licensing of Outdoor Events) Regulations 2001

Number: SI 154/2001

Contents note: Set out the type of events for which a licence under part XVI of the Planning and Development Act, 2001 shall be required and provide for matters of procedure and administration in relation to applications for, and the grant of, licences for events and in relation to events to be held by the local authority

#### Road Traffic Act, 1994 (Part III) (Amendment) Regulations 2001 Number: SI 173/2001

Contents note: Amend the certificate to be issued by the Medical Bureau of Road Safety under section 19 of the Road Traffic Act, 1994 and as set out in the Road Traffic Act, 1994 (Part III) Regulations 1994 (SI 351/1994) to provide for the certification of the presence of a drug or drugs Commencement date: 1/5/2001

Road Traffic (Licensing of Drivers) (Amendment) Regulations 2001 Number: SI 169/2001

Contents note: Amend the Road Traffic (Licensing of Drivers) Regulations 1999 (SI 352/1999) to provide for the requirement of a theory test certificate issued under the European Communities (Licensing of Drivers) (Amendment) Regulations 2001 (SI 168/2001)

Commencement date: 25/4/2001

Special Savings Incentive Accounts Regulations 2001 Number: SI 176/2001

Contents note: Make provision in relation to the special savings incentive accounts introduced in the

Finance Act, 2001

Commencement date: 1/5/2001

#### FOOT AND MOUTH DISEASE **REGULATIONS**

The following regulations are in addition to the list published in Legislation update in last month's

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Export and Movement Restrictions) (Revocation) Order 2001 Number: SI 166/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Import) Order 2001 Number: SI 162/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Import Restrictions) (No 2) (Second Amendment) Order 2001 Number: SI 143/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Import Restrictions) (No 4) Order 2001 Number: SI 118/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Import Restrictions) (No 4) (Amendment) Order 2001

Number: SI 163/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Restriction on Artificial Insemination) Order 2001 Number: SI 144/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Restriction on Artificial Insemination) (Amendment) Order 2001 Number: SI 161/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Restriction on Movement of Persons) Order 2001 Number: SI 160/2001

Diseases of Animals Act, 1966 (Foot and Mouth Disease) (Section 29A(4)) (No 2) Order

Number: SI 149/2001

Prepared by the Law Society Library



# Personal injury judgments

Tort – breach of common law and statutory duties – defence of delegation of statutory duty – extent of contributory negligence

## CASE

Martin Connell v Noel McGing, High Court, judgment of Mr Justice Vivian Lavan of 8 December 2000.

## THE FACTS

artin Connell was employed by Noel McGing on board Mr McGing's fishing boat. On 22 March 1995, Mr O'Connell was on duty at the stern on the fishing boat, then off the Donegal coast, when the crew began the difficult and hazardous operation of hauling in a net full of fish. There was evidence that Mr McGing knew at that time – and for six months prior to

March 1995 – that the crewman operating the haulage machinery on the boat was unable to see the net as it was being hauled out of the stern of the boat.

Any hitch in the retrieving process could be dangerous to the safety of the boat and crew. Mr Connell was close to the stern rail. As the hauling operation was taking place, a hitch arose whereby the net was about to snarl. Appreciating the neces-

sity of guiding the net rope onto the machinery, Mr Connell sprang to the net rope to guide it in. While doing this, his ankle was caught in the heavy netting and he was dragged along the deck of the vessel and suffered injuries.

Mr Connell sued Mr McGing in the High Court claiming damages for negligence and breach of statutory duty. Mr Justice Lavan in the High Court heard evidence and legal submissions over two days. At the conclusion of the case, counsel for Mr McGing indicated to the court that he would not be strenuously challenging a finding of negligence against his client, Mr McGing. He would argue, however, that there had been a substantial element of contributory negligence against Mr Connell, having regard to his age, experience and skill.

#### THE JUDGMENT

avan J stated, in the circumstances, he had little difficulty in concluding that Mr Connell succeeded on the issue of negligence and held that Mr McGing was liable on both breach of statutory and common-law duties. The particular issue arose of the extent, if any, of the degree of contributory negligence of which Mr Connell may be guilty.

In his defence, Mr McGing argued that Mr Connell had failed to take reasonable care for his own safety, failed to act in accordance with established practice as a fisherman and exposed himself to the risk of injury.

The judge noted that the nature of the particular statutory obligations relied upon by Mr Connell was to compel the employer of a trawler to take certain precautionary and preventative measures to try and reduce the possibility of an accident.

It had been argued that as Mr Connell had engaged along with other crew members in discussion with the employer, Mr McGing, as to the safety alterations which ought to have taken place in regard to the fishing vessel in question, the employer should not be liable. Lavan J noted that it had long been accepted that there was no defence of delegation of a statutory authority whereby a person subject to a statutory duty can relieve himself fully of liability by claiming that he had delegat-

ed the duty or its performance to another. The judge referred to the statutory recognition of that principle in section 57(2) of the *Civil Liability Act*, 1961.

Noting that while delegation of a statutory duty was not a special defence, the judge stated that this did not mean that a defendant would always be liable in every case where there had been apparent delegation. The important issue was not whether there had been delegation, but simply the usual question: whose fault caused the accident?

The judge noted that for breach of statutory duty, contributory negligence had a different meaning from that in an action for common-law negligence. The essential difference was that in relation to statutory duty, an error of judgment, heedlessness or inadvertence would not constitute contributory negligence, because the statutory protection was passed for the express purpose for saving workers such as Mr Connell from their own carelessness or inattention. However, in the context of a common-law duty, an act of inadvertence, if it is an act which a reasonably careful workman would not do, would constitute contributory negligence.

Lavan J quoted Lord Wright's statement in Caswell v Powell Duffryn Associated Collieries Ltd ([1940] AC 152): 'The policy of the statutory duty protection would be nullified if a workman in a factory were held debarred

HE AWARD

Lavan J awarded Martin Connell £7,500 in special damages, £30,000 damages to the date of the trial and £30,000 damages in the future. The judge held, on the balance of probabilities, that arthritis would at some stage in the future affect Mr Connell between the ages of 50 and 55 years, and thus prevent him from continuing his duties as a skipper. This would force him to lose two or three years of his livelihood as a skipper. Accordingly, Lavan J allowed for future loss of wages, a full two years' loss of the equivalent of Mr Connell's net yearly salary of £37,250, which would bring a finding for future loss to the sum of £74,500.

Judgment of £142,000, together with costs, was awarded to Mr Connell.

from recovering because he was guilty of some carelessness or inattention to his own safety, which though trivial in itself threw him into danger consequent on the breach by his employer of the statutory duty'.

Lavan J accepted that Mr Connell was an experienced sea-

man and fisherman. The judge nevertheless found it difficult to accept the proposition that because an employee had been engaged in discussing with his employer matters that might be rectified in relation to the dayto-day work of a particular vessel, the employer was in some way permitted to delegate the employer's duty or to raise it as a defence against a plaintiff, as in this case. The judge's view of the evidence was that what was in operation on the day of the accident was a dangerous procedure to the knowledge of the employer, Mr McGing. The employer

could not in law delegate his duties under the statutory code in this regard. On the evidence, Mr Connell acted in a moment of crisis

Lavan J held there was no contributory negligence on the part of Mr Connell, and held that the employer was fully liable.

Tort – road traffic accident – personal injuries – question of who was liable – conflict of evidence – effect of consumption of alcohol and excessive speed – extent of contributory negligence

## CASE

Sean Sherry v Paddy Smith and Eugene O'Shea, High Court, judgment of Mr Justice Richard Johnson of 20 December 2000.

## THE FACTS

road traffic accident took Aplace after dark on 13 October 1996 at or near the village of Kill, Co Kildare. Two motor vehicles were involved, one driven by Sean Sherry and the other driven by Paddy Smith. Both parties were travelling towards Dublin from the Kildare direction; they collided together. The accident took place at what is generally known as the Naas dual carriageway. There are several lanes on the dual carriageway, with traffic moving from one lane into another as appropriate.

Sean Sherry was driving a Volkswagen Golf and his car collided with the rear of a minibus driven by Paddy Smith; there were nine people in the minibus at the time.

As a result of the crash, Mr Sherry's car was turned around in the roadway. Mr Smith's minibus was pushed from behind, overturned on its left side, skidded along the ground until its roof collided with the main traffic light pole and came to a halt across two lanes of the carriageway. Mr Sherry issued proceedings in the High Court against the minibus driver and owner.

Evidence was given at the trial that Mr Sherry (the plaintiff) had been in Naas earlier and had consumed two and a half pints of lager, had attempted to go to a club called Swan Dowlings which was full, and went from there to another disco which is situated near Kill

on the Kildare side.

Mr Sherry stated that he was driving towards Dublin at approximately 60 to 65 miles an hour. As he came towards the traffic lights, he saw the green light and, to make sure he got through the green light, he accelerated up to 70 miles an hour. He said that Mr Smith's vehicle swung suddenly from the slow lane across his path without signalling any intention of doing so and he could not avoid the collision. Mr Sherry stated he tried to brake but to no avail and the collision took place. Mr Sherry's Volkswagen Golf did a 180-degree turn and faced back towards Naas.

In cross-examination, it was put to Mr Sherry that he was

doing 90 to 94 miles an hour. Mr Sherry hotly contested this, as indeed did his witness who was a front-seat passenger in the car. The passenger stated he would never sit in a car with someone driving at that speed.

Mr Smith, the driver of the minibus, in his evidence stated that he had come with a number of passengers from Kilcock to bring them to the Ambassador Hotel for a disco. Mr Smith had spent many years in the army driving this road on a regular basis and therefore, it was argued, he knew the road very well.

Mr Smith admitted in evidence that he was totally unaware of the presence on the roadway of Mr Sherry's vehicle.

#### THE JUDGMENT

r Justice Johnson referred to the evidence and in particular the evidence of Mr Munroe and Dr Woods, both eminently qualified engineers, who worked from the photographs, the debris of the accident and the measurements of the road; they came to the conclusion that the Volkswagen Golf driven by Mr Sherry must have been on average travelling at a speed of 90 miles an hour. The judge noted that evidence was given by a number of passengers of the minibus who

indicated that Mr Smith, the driver of the minibus, was travelling at a modest speed.

The judge referred to evidence that Mr Sherry was breathalysed after the accident and was found to have 125ml of alcohol per the usual ml of blood. A medical doctor gave evidence that this would reduce judgment and possibly produce a state of euphoria in Mr Sherry.

Johnson J held that Mr Sherry was driving with his headlights on up the Naas dual carriageway. Mr Smith was driving on the same dual carriageway with the intention of turning right at Kill. The cars had each other in view for a considerable length of time and, had the parties been keeping a proper lookout, they would have seen each other.

The judge held that Mr Smith drove from one lane to another without seeing Mr Sherry's car was on the road. There was a duty on people moving from one traffic lane to another to ensure that they do

so without causing danger to any other road-user; changing from one lane to another obliged drivers to check carefully their mirrors to ensure that it was safe to move into the other lane.

However, Johnson J held that Mr Sherry was driving at an excessive speed in his Volkswagen Golf and accepted the evidence of the engineers that he was travelling at approximately 90 to 94 miles an hour. Mr Smith's minibus came across the path of the Volkswagen

Golf, thereby creating an emergency for Mr Sherry. Because of the speed at which he was travelling, he was unable to cope. His capacity to cope with the emergency was further diminished by his consumption of alcohol.

The judge held that Mr Smith, the driver of the minibus, had his indicator on at the time he crossed from one lane to another. However, Mr Sherry contributed to the accident in two ways: he drove at an excessive speed, and he had consumed alcohol. Mr Sherry was, accordingly, unable to cope with the emergency with which he was presented. However, Johnson J was also

satisfied that Mr Smith was negligent in his failure to appreciate that Mr Sherry was on the roadway at all.

In the circumstances, the judge held that blameworthiness lay mainly with Mr Sherry and he found that Mr Sherry was 75% responsible for the accident and that Mr Smith was 25% responsible.

In relation to the injuries, Mr Sherry was 30 years of age at the time of the accident and was a chef working for P&O lines. In the accident, he suffered a bleeding nose, abrasions of the nose, a cut on the lower lip, soft tissue injury to the right side of the chest, right shoulder and neck and injury to his finger. There was evidence that Mr Sherry continued to suffer from pain in his shoulder and down his forearm on the right side and suffered problems with his back. The medical evidence was that he would benefit from physiotherapy, but unfortunately there was no physiotherapy available on the ships where he worked. G

These cases were summarised by solicitor Dr Eamonn Hall.



Johnson J held that Mr Sherry did have a continuing disability but that this was of a minor nature and a full recovery would be anticipated with a complete physiotherapy treatment, which unfortunately he had not received.

General damages were awarded to Mr Sherry in the sum of £25,000; there were also special damages of £3,610. However, because of the fact that Mr Sherry was 75% responsible for the accident, he was only entitled to 25% of the amount of the award, together with costs.



# Practice notes

#### Section 62 of the Solicitors Act, 1954

A number of solicitors have been approached by a firm of insurance providers inviting them to become members of a panel to whom clients who have been involved in accidents would be referred. In order to obtain admittance to the panel, the solicitor would be asked to pay a once-off sum. Thereafter, the solicitor would pay a set figure for every client referred to him.

Solicitors are reminded of the provisions of section 62 of the Solicitors Act, 1954, which states as follows:

Section 62(1) - 'A solicitor shall not reward, or agree to reward, an unqualified person for legal business introduced by such person to the solicitor'.

Registrar's Committee

## Statute of Limitations (Amendment) Act, 2000: child sexual abuse cases

Practitioners should note that s2 of the Statute of Limitations (Amendment) Act, 2000, which inserted a new s48A(3) into the Statute of Limitations 1957, provides that personal injury actions arising out of instances of sexual abuse occurring to minors may be brought not later than one year after the passing of the Statute of Limitations (Amendment) Act, 2000. As that act was passed on 21 June 2000, such actions will become statute-barred on 20 June 2001

Criminal Law Committee

## Confidentiality in the solicitor's office

n essential aspect of the pro-Afessional service which a solicitor offers to clients is that all information relating to the client will be kept absolutely confidential. To achieve this, it is necessary to ensure that any individual who has access to information relating to clients' affairs understands that that information must be kept confi-

dential and that the individual is committed to keeping it so.

Solicitors are reminded that when new staff are employed in a firm, they should be introduced to the rules, systems and practices of the firm, including the necessity to keep clients' affairs confidential.

Computer and other service engineers may, of necessity, have access to client information. Solicitors should take precautions to ensure that service engineers and others who have access to information on firms' computers understand that they are required to keep the information confidential.

Solicitors should also ensure the following:

· If the hard disk of the comput-

er is being replaced that it is not removed by the engineer from the building without the prior consent of the solicitor

 That back-up tapes/disks remain in the control of the solicitor.

> John P Shaw, chairman, Guidance and Ethics Committee



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

#### **ADMINISTRATIVE**

#### Traveller issues

Local authority – accommodation – housing issues – travellers – role of local consultation committee

The applicant brought proceedings regarding the right of local committees to be consulted by a local authority in the provision of traveller accommodation. Murphy J was satisfied that the applicant had a right to be consulted and granted in part the relief sought in the form of an injunction.

Jeffers v Louth County Council, High Court, Mr Justice Murphy, 05/04/2001 [FL3690]

# Planning and environmental law

Demolition – conditions attached to planning permission – whether development carried out in accordance with planning permission – whether court had power to grant relief sought

The applicant sought certain court orders in respect of the development of a gas turbine power plant in Waterford. Finnegan J was satisfied that an injunction would issue in relation to the requirement by the respondent to give notice in respect of demolition works. Otherwise, the reliefs sought would be refused.

O'Connell v Dungarvan Energy Limited, High Court, Mr Justice Finnegan, 27/02/2001 [FL3564]

## Planning and environmental law

Unauthorised development – Dublin City Council – consultative case stated – enforcement notice – whether decision to serve enforcement notice must be in form of formal order

The proceedings were a

consultative case stated by a judge of the District Court. The case centred on whether or not the decision to serve an enforcement notice must be in the form of a formal order. Herbert J held that the enforcement notice was not valid and the case stated must be answered in the negative.

**Dublin Corporation v O'Callaghan**, High Court, Mr **Justice Herbert**, 13/02/2001
[FL3608]

#### **BANKING**

# Conversion, Statute of Limitations

Allegations of fraud – insurance law – land law – lodgment of cheque – whether claim maintainable

The plaintiffs initiated proceedings relating to the lodgment of a cheque to their bank account, alleging that proceeds from the cheque were wrongly converted by the bank. Finnegan J held that the plaintiffs' case was statute-barred and accordingly dismissed the proceedings.

Moffitt and Moffitt v Bank of Ireland, High Court, Mr Justice Finnegan, 17/11/2000 [FL3628]

#### CONSTITUTIONAL

#### Legal profession, litigation

Right of access to courts – whether fees order in breach of applicant's rights

The applicant had challenged the imposition of certain fees in pursuing litigation. In particular, the applicant cited examples of stamp duties required in order to file certain court documents. The applicant's judicial review proceedings were dismissed in the High Court. On appeal, the Supreme Court, Murphy J delivering judgment, held that the applicant had not proved that the relevant fees order was unconstitutional and dismissed the appeal.

*Murphy v Minister for Justice*, **Supreme Court, 09/03/2001** [FL3673]

#### **CONTEMPT**

# Fair procedures, judicial review

Practice and procedure – order for costs – contempt of court – role of trial judge – attachment and committal – obligation of witnesses to attend court – judicial review – whether committal of applicant in accordance with fair procedures

The applicant issued judicial review proceedings in respect of his committal to prison. The applicant had been committed for an alleged contempt of court. Kelly J held that the applicant had not at any stage been in contempt. Orders of *certiorari* would issue to quash the orders in question. In addition, the applicant would be awarded his costs.

Curtis v Judge Kenny, High Court, Mr Justice Kelly, 09/03/2001 [FL3579]

#### CONTRACT

#### Conveyancing, land law

Decree of specific performance – purchase price – allegations of fraud – conflict of evidence – whether contract of sale should be enforced The dispute centred on the contract price payable in respect of the purchase of property. There was a conflict of evidence

in relation to the amount payable on foot of the contract and the amount paid to date. Herbert J found in favour of the plaintiff and awarded costs and a sum of damages.

Whelan v Kavanagh, High Court, Mr Justice Herbert, 29/01/2001 [FL3630]

#### **Employment**

Interlocutory injunction – payment of salary – entitlement to sick pay – conditions of employment – balance of convenience – whether damages adequate remedy – whether plaintiff entitled to injunctions sought

A dispute arose between the plaintiff and the defendants over the plaintiff's employment. In this regard, the plaintiff sought a number of injunctions. Kinlen J held that the plaintiff would be entitled to an order directing the payment of a weekly sum. The hearing would be expedited.

**Rooney v OJ Kilkenny**, High Court, Mr Justice Kinlen, **09/03/2001** [FL3536]

#### Insurance

Brussels convention – preliminary issue – whether jurisdiction of High Court excluded by clause in insurance contract

In proceedings taken by the plaintiff for a declaration that a contract of insurance with the defendant as insurer was a valid and binding contract, the defendant had contested the jurisdiction of the High Court to hear the plaintiff's claim. The defendant sought to set aside the service of the proceedings on them on the grounds that the insurance policy conferred sole jurisdiction to hear disputes between the parties on the Tribunal de Commerce, Paris. The High Court rejected the

# VdeP

# Become a stockmarket entrepreneur



Take Control of Your OWN Financial Future

EARN - WHILE - YOU - LEARN

on the Stock Market



Comprehensive home study stock market course comprising Printed Modules, Charting Software and Daily Online Support

Online trading, tools, tips, downloads and newsletters keep your fingers on the pulse

Course content covers the internationally recognised Registered Persons Exam

Built-in buy and sell signals

Fully endorsed by leading stockbrokers

Explained in layman's terms

Leaders in stock market education

# DOUBLE

YOUR INCOME IN ONE DAY

The LSI supplies the knowledge, the time and the tools to take the sweat out of study

Ring Paddy now on

041 9873817/8

Mobile: 086 8040931

London • Dublin • Johannesburg • New York • Sydney

defendant's claim and the defendant appealed. The Supreme Court affirmed the ruling of the High Court and dismissed the appeal.

*Minister for Agriculture v Alte Leipziger*, Supreme Court, **23/02/2001** [FL3661]

# Local government, public procurement

Award of contract – road improvement works – selection criteria – whether method of selection by local authority fair – whether local authority infringed European law

The applicant challenged the method which by had selected respondent candidates for the award of a roads improvement contract. The applicant alleged the method involved discriminatory. Kelly J held that the criteria employed by the respondent were not discriminatory and dismissed the proceedings.

Whelan Group v Clare County Council, High Court, Mr Justice Kelly, 09/03/2001 [FL3588]

#### **CRIMINAL**

#### Delay, fair procedures

Criminal law – judicial review – delay – fair procedures – sexual offences – whether delay in making extradition arrangements entitled appellant to order of prohibition

The appellant had been charged with a number of sexual offences allegedly committed against two girls when he was aged 14. After

a criminal some delay, prosecution against him was commenced. The High Court refused him an order of prohibition restraining the respondent from proceeding with the prosecution and the appellant appealed. The Supreme Court allowed the appeal, holding there had been an altogether unnecessary delay in relation to seeking the appellant's extradition.

**BF** v **DPP**, **Supreme** Court, **22/02/2001** [FL3656]

#### **Extradition**

Allegations of fraud – consultative case stated – whether corresponding offence in Ireland to offence charged in United States of America – scheme to defraud banks

The respondent had been charged with offences by prosecution authorities in the United States. The issue arose as to whether corresponding offences existed in Ireland which would enable the extradition of the respondent to proceed. In the District Court and the High Court, it was held that the extradition could not proceed. In the Supreme Court, Keane CJ held that there were corresponding offences and allowed the appeal.

Attorney General v Oldridge, Supreme Court, 19/12/2000 [FL3643]

#### Extradition

Rule of specialty – service of documents – dismissal of proceedings – jurisdiction of Irish courts

The applicant sought to appeal

against a High Court order striking out the service of certain documents upon the British Secretary of State. The Supreme Court, McGuinness J delivering judgment, held that the proceedings in this jurisdiction against the British Secretary of State were correctly discontinued. The appeal would be dismissed.

Adams v DPP and Secretary of State for Home Affairs, Supreme Court, 06/03/2001 [FL3707]

#### Fair procedures

Appeal – fair procedures – handling stolen property – whether defence properly put to jury

The applicant sought to appeal against his conviction for handling stolen property. The court held that the original trial judge had unfortunately became preoccupied with other matters and had not put the defence in question to the jury. The application would be allowed and the conviction quashed.

DPP v Francis Hanley, High Court, Mr Justice Barrington, Mr Justice McCracken, Mr Justice Quirke, 05/11/99 [FL3545]

# Fair procedures, judicial review

Order of prohibition – judicial review – bias – whether decision to grant stay flawed

The respondent judge had granted a stay in criminal proceedings being undertaken against a former taoiseach. The Director of Public Prosecutions sought to judicially review the

decision. Ms Justice Carroll held that the trial judge was entitled to have reached the decision in question and the proceedings would be dismissed.

DPP v Judge Haugh and Haughey, High Court, Ms Justice Carroll, 03/11/2000 [FL3593]

## Fair procedures, road traffic offences

Case stated – whether District Court judge correct in law in dismissing charge

This was a case stated from the District Court regarding the procedure surrounding the arrest and caution of the respondent. Ó Caoimh J held that the District Court judge was incorrect in dismissing the charge and so answered the case stated.

*DPP v Jamie Cullen*, High Court, Mr Justice Ó Caoimh, **07/02/2001** [FL3615]

#### **Prisons**

Judicial review – prisons – temporary release

The applicant sought to challenge the decision of the respondents regarding a refusal of temporary release while serving a prison sentence. The applicant's proceedings were dismissed in the High Court. On appeal, Hardiman J, delivering judgment, held that there was no evidence of any discriminatory criteria having been applied and dismissed the appeal.

*Kinahan v Minister for Justice*, **Supreme Court, 21/02/2001** [FL3694]



# Doyle Court Reporters

**EXCELLENCE IN REPORTING SINCE 1954** 

- Daily transcripts
- Real-time
- Search & Retrieval Software
- Conferences
- Arbitrations
- Inquiries

USA REGISTERED COURT REPORTING QUALIFICATIONS

Principal: Áine O'Farrell

2 Arran Quay, Dublin 7.

Tel: 872 2833 or 286 2097 (After Hours). Fax: 872 4486. E-mail: doyleaos@indigo.ie Website: www.doylecourtreporters.com

# www.lawsociety.ie



The Law Society's website contains a wealth of information for the practising solicitor including:

- Employment opportunities: updated weekly
- Continuing Legal Education programme
- An overview and updates on the work of the society's committees
- Contact names of Law Society personnel
- Comprehensive index of member

- services
- Gazette on-line: updated monthly
- Links to other legal sites on the net
- Legislation updates: updated quarterly
- Committee reports and publications
- Forthcoming conferences and seminars: regularly updated
- . What's new: updated weekly

THE MEMBERS' AREA of the website contains practical information for solicitors such as practice notes, policy documents, precedents for practice, professional information, frequently asked questions and an interactive bulletin board

Have you accessed the Law Society website yet?

#### Video evidence

Judicial review – duty to preserve evidence – role of Garda Síochána – whether unfair to accused to permit trial to proceed

The applicant had sought an order of prohibition against his impending prosecution. Video evidence of the alleged crime had been in the possession of the gardaí but was no longer available. The relief sought was refused in the High Court. On appeal, Hardiman J was satisfied that the applicant was entitled to the relief sought and accordingly made the appropriate order.

**Braddish v DPP**, **Supreme Court**, **18/05/2001** [FL3691]

#### Video evidence

Judicial review – video evidence – whether order of prohibition should be granted

The applicant sought to prohibit his impending trial on the grounds that a video of the incident was not available. Kearns J was satisfied that the trial judge could deal with such matters by way of instructions to the jury and refused the relief sought.

**Dunne v DPP**, High Court, Mr **Justice Kearns, 23/03/2001** [FL3681]

#### Jurisdiction of District Court

Judicial review – whether District Court judge acted correctly in hearing complaint

The proceedings concerned the hearing of a summons headed 'Listowel area' at the Abbeyfeale District Court. The District Court judge proceeded to hear the matter despite protests from the applicant's solicitor. Judicial review was granted in the High Court and the respondents appealed against the order. Geoghegan J, delivering judgment in the Supreme Court, held that the District Court judge had acted within jurisdiction in hearing the matter and allowed the appeal.

*O'Brien v Judge O'Halloran & DPP*, Supreme Court, **29/11/2000** [FL3670]

#### Proceeds of crime

Seizure of assets - practice and

procedure – meaning of phrase 'possession or control' – whether appropriate to make order regarding property

The plaintiff sought an interlocutory order (pursuant to section 3 of the Proceeds of Crime Act, 1996) against the second defendant, prohibiting him from disposing of or otherwise dealing with or diminishing the value of a certain property. O'Sullivan J held that an order sought by the applicant would not constitute a substantial risk of injustice. However, given the wish of counsel on behalf of the second defendant to advance constitutional arguments, it was not appropriate to make an order at this time.

*FJM v JR and JR*, High Court, Mr Justice O'Sullivan, **21/12/2000** [FL3557]

#### Sentencing

Sexual assault – application for leave to appeal against sentences imposed

The applicant had received sentences of four-and-a-half years and eight-and-a-half years in respect of sexual assault offences. The applicant sought leave to appeal against the sentences imposed. Lynch J, delivering judgment, held there was no reason to interfere with the sentences imposed and dismissed the application.

**DPP v Grummer**, Court of Criminal Appeal, 28/07/99 [FL3523]

#### Sentencing

Appeal against severity of sentence – rehabilitation of applicant

The applicant sought leave to appeal against sentences imposed in respect of assaults, both involving the use of syringes. Barron J, delivering judgment, held that there was no error in the sentences imposed. If the applicant underwent rehabilitation whilst in prison, the state authorities may wish to consider his release. The application would be refused.

*DPP v McCarthy*, Court of Criminal Appeal, 30/07/99 [FL3692]

## Legal aid, road traffic offences

Fair procedures – judicial review – absence of legal representation – legal aid – road traffic offence – whether matter should be remitted to the District Court

The proceedings concerned the imposition of convictions in respect of road traffic offences. The applicant initiated judicial review proceedings claiming that the trial judge acted in excess of jurisdiction. Kearns J held that there was want of jurisdiction in the manner the original proceedings were conducted. Accordingly, the matter would be remitted for rehearing to the District Court. *Mark Gilmartin v Judge* 

Mark Gilmartin v Judge Murphy and DPP, High Court, Mr Justice Kearns, 23/02/2001 [FL3607]

#### **DAMAGES**

#### Land Registry

Conveyancing – Land Registry – liability for damages – value of land decreased – methodology of calculating damages – whether Land Registry liable for error

The proceedings concerned a dispute over an error which had occurred in a Land Registry map. The plaintiff sought damages in relation to the error. Carroll J held that the Land Registry was at fault for the error in question and awarded £10,000 in damages.

Persian Properties v Registrar of Titles, High Court, Ms Justice Carroll, 14/02/2001 [FL3629]

#### **FAMILY**

#### Children and young persons

Powers and duties of health boards – definition of 'guardian' – functions of District Court – whether health board can authorise placement of children outside of state – Adoption Act, 1952 – Child Care Act, 1991, sections 36, 47

The proceedings concerned the placement of children by a health board outside the

jurisdiction. Finnegan J was satisfied that the District Court was entitled to direct the placement of a child outside the state pursuant to section 47 of the *Child Care Act*, 1991.

Western Health Board v KM, High Court, Mr Justice Finnegan, 14/03/2001 [FL3546]

#### **Evidence**

Nullity suit – practice and procedure – appointment of medical inspector – interviewing of witnesses

The petitioner had sought the appointment of a medical inspector in regard to a nullity suit. However, permission was refused by the High Court (Budd J) for the medical inspector to interview anyone other than the parties themselves. The petitioner appealed this order. Denham J, delivering judgment, held that the order of the High Court was correct and dismissed the appeal.

*McG v F*, Supreme Court, **17/01/2001** [FL3667]

#### Property

Judicial separation – discovery – maintenance – division of assets – disclosure – evidence – ancillary orders – attachment and committal – whether full disclosure made by respondents – whether respondent should be penalised by order for costs – Family Law Act, 1995

The applicant sought a decree of judicial separation as well as ancillary orders involving maintenance and property adjustment. Budd J made a number of property adjustment orders in favour of the applicant. The respondent had been less than forthcoming about some of his financial affairs. An order for costs on a solicitor-and-client basis would be made against the respondent

*PO'D v JO'D*, High Court, Mr Justice Budd, 31/03/2000 [FL2641]

#### Professional negligence

Medicine – immunity from suit – evidence given by court-appointed witness – privilege – whether witness enjoyed immunity from suit in respect of evidence given

A decree of nullity had been granted in proceedings involving the plaintiff. The plaintiff issued proceedings seeking to recover damages against the third defendant who had tendered psychiatric evidence in the matrimonial proceedings. O'Sullivan J held that the evidence given was protected by absolute privilege and the case against the third defendant would be dismissed.

O'Keeffe v Casey and Others, High Court, Mr Justice O'Sullivan, 01/02/2001 [FL3521]

#### GARDA COMPENSATION

#### Syringe attack

Tort – damages – Garda Síochána compensation – attack involving syringe

The plaintiff, while on duty as a garda, had been injured by a prisoner wielding a syringe. The plaintiff brought a claim pursuant to the *Garda Compensation Acts*. Murphy J held that the syringe injury had caused delayed stress and awarded a sum of £25,380 in damages.

Shiels v Minister for Finance, High Court, Mr Justice Murphy, 25/03/2001 [FL3687]

#### Post-traumatic stress

Tort – personal injuries – posttraumatic stress – Garda Síochána (Compensation) Acts, 1941 and 1945

The applicant had been injured whilst on duty as a garda. Murphy J was satisfied that the applicant had suffered a number of injuries and awarded a total of £32,500 in damages.

**Brady v Minister for Finance, High Court, Mr Justice Murphy, 26/03/2001** [FL3706]

#### Statute of Limitations

Tort – personal injuries – Statute of Limitations – preliminary issue – action based upon assault – whether action statute-barred

The plaintiff sought to pursue a claim for damages against the defendants claiming that he had been unlawfully assaulted by a member of An Garda Síochána. As such, the plaintiff's claim by way of negligence was statute-barred. Mr Justice Morris held that the action in so far as it was based upon assault was a separate cause of action and was not subject to the three-year limitation period. Accordingly, the plaintiff's action was not statute-barred.

**Devlin v Minister for Justice**, **High Court, Mr Justice Morris, 04/04/2001** [FL3679]

#### HABEAS CORPUS

#### Medicine, mental health

Constitutional law - habeas corpus proceedings - legality of detention hospitalisation - whether detention of applicant unlawful - Mental Treatment Act, 1945, section 194 – Bunreacht Na hÉireann 1937 The applicant had been detained under the Mental Treatment Act, 1945. The applicant initiated corpus proceedings habeas pursuant to article 40 of Bunreacht Na hÉireann. The applicant had demanded that he be discharged from hospital. Kelly J held that the applicant had not made out a case that his present detention was unlawful and the application for release was refused.

Gooden v St Otterans, High Court, Mr Justice Kelly, 14/12/2000 [FL3525]

#### **HOUSING**

#### Legal aid, local government

Local government – judicial review – fair procedures – legal aid – whether order for the delivery of premises made in unfair circumstances

The applicant sought to quash orders relating to her eviction from housing owned by Dublin Corporation. The applicant had difficulties in obtaining legal aid and the case had been adjourned. The case did eventually proceed and the orders sought by Dublin Corporation were granted. Ó Caoimh J was not satisfied that

the applicant was entitled to the relief sought and refused the application.

Byrne v Judge Scally and Dublin Corporation, High Court, Mr Justice Ó Caoimh, 12/10/2000 [FL3665]

#### JUDICIAL REVIEW

# Local government, trade and industry

Market trading – refusal of permission to trade – whether designation of market trading area in breach of applicant's right as casual trader

The applicant took judicial review proceedings regarding the designation of a certain area as a market trading area in Blessington, Co Wicklow. The applicant wished to trade in another area of the town in which he had previously traded but had been refused permission to do so. Mr Justice Morris held that the applicant had failed to discharge the necessary onus and refused the relief sought.

Dermot Byrne v Blaise Treacy and Wicklow County Council, High Court, Mr Justice Morris, 07/02/2001 [FL3626]

# Planning and environmental law

Development – environmental impact statement – whether judicial review of decision to grant planning permission should be granted

The applicant sought judicial review of decision by An Bord Pleanála to grant planning permission of a development to Trinity College, Dublin, at a grounds in Dartry. McKechnie J held that the applicant had not reached the specified threshold and therefore the application would be refused.

Kenny v An Bord Pleanála, High Court, Mr Justice McKechnie, 15/12/2000 [FL3575]

# Planning and environmental law

Implementation of development plan – whether stay on respondent's plans should be granted

The applicant sought various reliefs relating to the implementation of Wicklow County Council's development plan. O'Sullivan J held that the applicant was not entitled to the relief sought and a stay would not be granted regarding the respondent's implementation of the development plan.

Halpin v Wicklow County Council, High Court, Mr Justice O'Sullivan, 15/03/2001 [FL3689]

#### LAND LAW

#### Landlord and tenant

Notice of intention to claim relief—oral tenancy — whether premises constituted 'tenement' within meaning of landlord and tenant legislation — whether building ancillary and subsidiary to yard The case concerned the

The case concerned the entitlement of a tenant to claim relief under the landlord and tenant legislation. A dispute as to whether the premises of the tenant constituted a 'tenement', thus entitling the tenant to claim relief. Judge Buckley was satisfied that the yard of the premises was subsidiary and ancillary to the shed and thus the premises was a 'tenement' within the meaning of the acts.

*Flynn v McMahon*, Dublin Circuit Court, Judge Buckley, **03/05/2001** [FL3675]

#### Adverse possession

Land law – property – adverse possession – animus possidendi – whether applicant entitled to be registered as owner of lands in question – whether use of lands continuous – Registration Of Title Act, 1964, section 19

The applicant sought to be registered as owner of certain lands in County Longford. The registrar of titles refused the application and an appeal was taken to the High Court. Ms Justice Carroll held that the applicant had failed to establish 12 years' continuous occupation and the claim must fail.

James Mulhern v John Brady, High Court, Ms Justice

#### Carroll, 14/02/2001 [FL3555]

#### Conveyancing, Revenue

Property – sale of business – taxation – specific performance – VAT – return of deposit – Revenue – whether contract of sale enforceable – whether VAT payable on foot of contract of sale

The plaintiff was seeking a decree of specific performance in respect of a contract of sale of a property. There was a dispute concerning the payment of VAT in respect of the sale. McCracken J held that there was a liability for the payment of value-added tax. The contract of sale would be rescinded and the deposit of £18,000 would be returned to the plaintiff, along with the appropriate interest.

Forbes v Tobin and Tobin, High Court, Mr Justice McCracken, **08/03/2001** [FL3537]

#### Occupier's liability

Personal injuries – contributory negligence – duty of care – licensee – appeal

The appellant had been injured while out walking and had sued the defendant. In the High Court, McCracken J had found that the plaintiff was an invitee and should be awarded damages. However, the plaintiff was held to have been guilty of contributory negligence. On appeal in the Supreme Court, Hardiman J found that the plaintiff was, in fact, a licensee but upheld the findings regarding contributory negligence.

**Thomas v Leitrim County Council, Supreme Court, 07/03/2001** [FL3680]

#### LITIGATION

#### Statute of Limitations

Practice and procedure – tort – negligence – personal injuries – equity – whether claim statute-barred – preliminary issue – delay – correspondence – settlement negotiations – whether actions and representations of defendants induced plaintiff to refrain from issuing summons

The plaintiff had been involved

in motor collision accident, thereby sustaining injuries. The accident occurred in April 1995 and the plenary summons was not issued until December 1998. The plaintiff prima facie accepted that the action was statutebarred but contended that the delay in issuing the plenary summons was due to the actions of the defendants and that they were therefore estopped from denying the claim of the plaintiff. The High Court accepted the plaintiff's argument and struck out the relevant portion of the defendants' defence and instructed that the case should now proceed to trial. On appeal, the Supreme Court, Keane CJ delivering judgment, allowed the appeal and held that the defendants were entitled to rely upon a defence under the Statute of Limitations, 1957.

Ryan v Connolly and Connolly, Supreme Court, 31/01/2001 [FL3618]

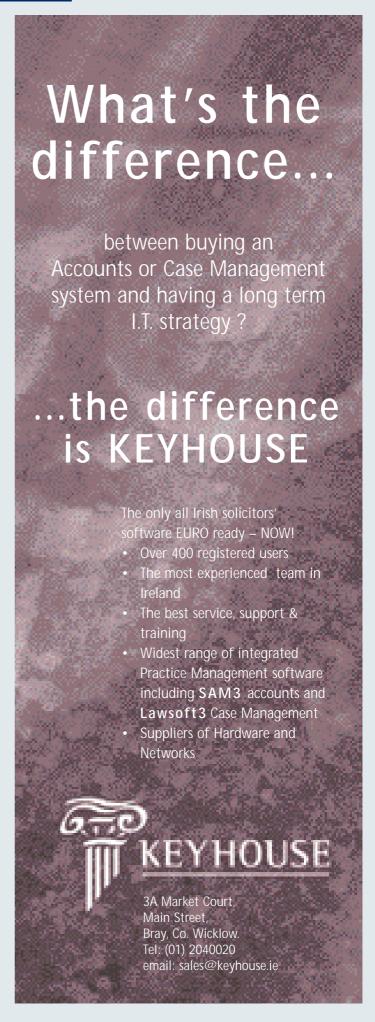
#### **REVENUE**

#### Taxation

Statutory interpretation – first arm's-length sale of motor vehicles. The proceedings concerned is the imposition of vehicle registration tax in relation to the open market selling price of cars. The applicant had determined that a certain value was applicable to certain cars while the Revenue Commissioners contended that the value should be greater. Kearns J found in favour of the applicant and granted an order quashing the decision of the respondent.

Motor Distributors vRevenueCommissioners,HighCourt,MrJusticeKearns,02/02/2001 [FL3644]G

The information contained bere is taken from FirstLaw's Legal Current Awareness Service, published every day on the Internet at www. firstlaw.ie. For more information, contact bartdaly@firstlaw.ie or FirstLaw, Merchants Court, Merchants Quay, Dublin 8, tel: 01 679 0370, fax: 01 679 0057.



# RETIRING?

- Wish to access tax-free cash in your pension fund?
- Want to know more about Approved Retirement Funds?

ARF.ie is part of Custom
House Capital Limited
which is authorised by the
Central Bank of Ireland
under Section 10 of the
Investment Intermediaries
Act 1995.

**CONTACT OUR WEBSITE** 

# www.ARF.ie

24-26 South Cumberland Street, Dublin 2, Ireland. Tel: (+353-1) 242 7630 Fax: (+353-1) 260 4848 Directors: Mr. Harry Cassidy, Mr. John Whyte.

ARF.ie

# Law Reform (Miscellaneous Provisions) Bill

The Law Reform Commission is currently drafting its annual Law Reform (Miscellaneous Provisions) Bill. The aim of these bills is to effect technical and minor amendments to legislation and non-controversial modifications to the common law. It is hoped that these amendments will result in the removal of archaic provisions and legislative anomalies and the general simplification of the law.

Practitioners, government departments, state agencies,

and others are hereby invited to submit suggestions for suitable amendments for inclusion in this year's *Law Reform (Miscellaneous Provisions) Bill.* The commission is particularly interested in removing anomalies and mistakes that tend to cause problems in practice.

There is no need for any respondent to carry out extensive research as the Law Reform Commission has full-time researchers, who can conduct background research.

#### Please forward suggestions to the following address:

Law Reform Commission IPC House 35-39 Shelbourne Road Ballsbridge Dublin 4

Tel: 01 637 7600, fax: 01 637 7601, e-mail: info@lawreform.ie

or visit our website at

www.lawreform.ie



# Eurlegal

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

# Horizontal co-operation agreements: the new regulations and guidelines

The EC Commission recently published new legislation concerning horizontal co-operation agreements, that is, cooperation agreements between competitors. The new legislative package consists of the following:

- Commission regulation 2658/2000 on the application of article 81(3) of the EU treaty to categories of specialisation agreements<sup>1</sup> ('the specialisation block exemption')
- Commission regulation 2659/2000 on the application of article 81(3) of the treaty to certain categories of research and development agreements<sup>2</sup> ('the R&D block exemption')
- Commission notice: Guidelines on the applicability of article 81 to horizontal co-operation agreements<sup>3</sup>.

The new legislative package replaces the following items of legislation:

- Commission regulation 417/85 of 19 December 1984, as amended, on the application of article 81(3) EC to categories of specialisation agreements
- Commission regulation 418/85 of 19 December 1984, as amended, on the application of article 81(3) to categories of research and developments agreements
- Notice on agreements, decisions and concerted practices in the field of co-operation between enterprises<sup>4</sup>
- Notice concerning the assessment of co-operative joint ventures under article 81.5

The purpose of this article is to assess the guidelines and to deal only passively with the two new regulations/block exemptions. The guidelines discuss and consider the basic principles which underlie the EU Commission's new policy with regard to horizontal arrangements. These principles will be discussed in the next section below. The guidelines then go on to consider the principles applicable in relation to a number of specific categories of horizontal agreements, such as R&D, commercialisation and standardisation agreements. These specific rules are dealt with later in the article.

# Horizontal agreements and the new guidelines

The dynamic nature of the market and the explosion of the concepts of globalisation and technology mean that companies, and in particular small and medium-sized companies, need in certain circumstances to share/apportion risk and pool know-how. In order to do so. they often need to establish cooperation agreements with their competitors. The task of the EU Commission is to balance these industry requirements with the need to ensure that companies do not enter into agreements which are restrictive of competi-

The guidelines distinguish between agreements that almost *always fall* under article 81(1) (ex article 85(1) of the *EC treaty*), those that *do not fall* within the terms of article 81(1) and those that *may fall* within the perimeters of that article.

The guidelines state that

price-fixing agreements or agreements aimed at limiting output or sharing markets/customers will almost always fall under article 81(1). However, if a certain provision is necessary for the functioning of an otherwise non-restrictive agreement, this general rule will not apply. An example of such an agreement would be a production joint venture where decisions on output are taken jointly by the parties. If the joint venture also markets the jointlymanufactured goods, then decisions on prices need to be taken jointly by the parties to such an agreement. It follows, therefore, according to the guidelines, that the inclusion of provisions on prices and output do not automatically cause the agreement to fall under article 81(1). In these circumstances, the provisions on prices and output will have to be assessed together with the other effects of the joint venture on the market to determine the applicability of article 81(1).

The guidelines also provide that certain categories of agreements do not normally fall within the terms of article 81(1), such as agreements between non-competitors, co-operation agreements between competing companies which cannot independently carry out the project or activity which is covered by the co-operation, or agreements concerning an activity which is far removed from the marketing or sales level such as, for example, a pure R&D agreement. However, the guidelines go on to provide that agreements such as these may fall within the terms of article 81(1) if the firms involved in the agreement have significant market power which leads to foreclosure problems.

The final category of agreements – agreements that may fall within article 81(1) - require, according to the guidelines, an analysis of market-related criteria, such as the market position of the parties and other structural factors, before a decision can be made in relation to the anticompetitive (or otherwise) nature of the agreement. To begin such an analysis, the guidelines provide that the correct relevant market has to be determined by using the methodology of the Commission notice on the definition of the relevant market for the purposes of Community competition law.6

Paragraph 29 of the guidelines provides that other economic indicators, apart from market share, have to be taken into account in order to assess whether the agreement in question falls within the terms of article 81(1). In particular, the guidelines provide that the position of competitors in the marketplace should be assessed. The Herfindahl-Hirshman Index (HHI) is endorsed as an appropriate indicator of market concentration. The HHI is calculated by adding the squares of the individual market shares of all competitors. With a HHI below 1,000, the market concentration is characterised as low, between 1,000 and 1,800 as moderate, and above 1,800 as high. For example, in a market with ten firms with shares of 30%, 20%, 10%, 10%, 10%, 5, 5%, 5%, 5%, the HHI is 1,600 before they co-operate. If the first two

firms co-operate, the HHI becomes 2,900. The degree of concentration has, in this particular example, increased from moderate to high. High concentration in a market is one factor to be taken into account when assessing anti-competitive effects.

In addition, the guidelines provide that other economic indicators, such as the stability of market shares, entry barriers and buyer/supplier power should also be considered. Where high market shares are unsustainable, the agreement is, obviously, less likely to offend against the provisions of article 81(1).

However, if the agreement does fall within the terms of article 81(1), it will then be necessary to assess the agreement in accordance with the terms of article 81(3) (ex article 85(3) of the *EC treaty*). At paragraphs 27 to 36 of the guidelines, a number of general principles in relation to qualification for exemption under article 81(3) are considered, as follows:

- The parties must establish that efficiencies are likely to be created by the co-operation agreement and that these cannot be achieved by any less restrictive means (pars 32 and 35)
- Efficiencies which occur due to output reduction, the exercise of market power or market sharing are not to be taken into account (par 33)
- Economic benefits have to favour consumers (par 34),
- Effective competition cannot be eliminated by the horizontal agreement (par 36).

# Rules applicable to each category

Specific rules are outlined in the guidelines in relation to a limited number of agreement types as follows:

- Research and development agreements
- Joint production agreements, including specialisation and certain sub-contracting agreements

- Joint selling, distribution and promotion agreements
- Agreements on standards, and
- Environmental agreements.

Other types of horizontal agreements, such as agreements on the exchange of information, minority shareholding agreements and agreements covered by specific legislation<sup>7</sup> are not covered by the guidelines.

Paragraph 12 of the guidelines provides that, as agreements may combine different stages of co-operation (for example, an R&D agreement followed by the production of the results of that agreement), it is the 'centre of gravity' of the agreement which determines the section of the guidelines, which applies.8 In determining the 'centre of gravity', the guidelines provide that account must be taken of two factors. In the first place, the starting point of the co-operation must be considered. For example, the guidelines provide that a co-operation involving both joint R&D and joint production of the results would normally be covered in the specific section in the guidelines on Agreements on research and development as the joint production will only take place if the joint R&D is successful. This implies that the results of the joint R&D are decisive for production. The R&D can thus be regarded as the starting point of the co-operation.

Second, in determining the 'centre of gravity' of the agreement, the degree of integration of the different functions which are being combined must be considered. So in the example given in the paragraph above, the assessment would change, according to the guidelines, if the agreement foresaw full integration in the area of production and only a partial integration of the R&D activities. In this case, the possible anti-competitive effects and economic benefits of the co-operation would largely relate to the joint production and the agreement would be

assessed in accordance with the principles outlined in the specific section of the guidelines on production agreements.

#### **R&D** agreements

Research and development agreements are the first category of agreements dealt with. The range of agreements covered varies from outsourcing certain R&D activities to the joint improvement of existing technologies to a co-operation concerning the research, development and marketing of completely new products. They may take the form of a co-operation agreement or of a jointly-controlled company.

The EU Commission has a number of concerns in relation to the anti-competitive effects of R&D co-operation agreements, for example, that they may restrict innovation, cause the co-ordination of the parties' behaviour and, lastly, that they may cause foreclosure problems. However, the commission considers that these types of negative effects are only likely to emerge if the parties to the agreement in question have 'significant power on the existing markets and/or competition with respect to innovation is significantly reduced'.

There is no absolute threshold which determines that an R&D agreement creates some degree of market power and that it therefore falls to be considered under article 81(1). R&D agreements are, however, exempted under the block exemption for these agreements (referred to above) as long as the combined market share of the parties to the agreement does not exceed 25% of the market. The other conditions of the R&D block exemption must, of course, also be fulfilled. Under these circumstances, most R&D agreements only have to be analysed if the parties' combined market share exceeds 25% of the relevant market.

#### **Production agreements**

The guidelines provide that

there are essentially three categories of production agreements: joint production agreements where the parties agree to produce certain products jointly; specialisation agreements whereby the parties agree, unilaterally or reciprocally, to cease production of a product and to purchase it from the other party; and sub-contracting agreements whereby one party (the contractor) entrusts to the other party (the sub-contractor) the production of a product. Sub-contracting agreements are usually vertical agreements, although there are two exceptions to this. The first is where the agreement to subcontract is between competitors and the second is where it is between non-competitors and there is a transfer of know-how to the sub-contractor. The first of these types of agreements is covered by the guidelines whereas the second is dealt with by a separate notice.9

The commission considers that the primary source of competition problems that may arise from production agreements is the co-ordination of the parties' competitive behaviour as suppliers. It also considers that production agreements may create foreclosure problems and other negative effects towards third parties – for example, where one of the parties has a strong market position on an upstream market and it uses its position on that market to enable the parties to the agreement on a downstream market to raise the prices on that downstream mar-

Again, as with R&D agreements, there is no absolute market share threshold which determines that a production agreement creates market power and, thus, falls within article 81(1). However, as mentioned above, agreements concerning specialisation or joint production are block-exempted (sub-contracting agreements do not benefit from the block exemption) provided they are concluded between parties with a com-

bined market share not greater than 20% of the relevant market. The other conditions of the specialisation block exemption would also have to be fulfilled. Therefore, for agreements covered by the block exemption, anti-competitive effects only have to be analysed if the parties' combined market share exceeds 20%. The block exemption comes into play for the majority of agreements discussed under this category.

However, where the parties to a specialisation/production agreement have more than 20% of the market, the guidelines provide that the primary test to determine the effect on competition is the degree to which the parties have a small or large proportion of their total costs in common, in other words, 'commonality'. The effect on either of the parties' competitive behaviour is unlikely if the parties have a small proportion of their costs in common.

#### **Purchasing agreements**

Purchasing agreements cover the joint buying of products and are also dealt with by the guidelines. Joint buying can be carried out by a jointly controlled company, by a company in which many firms hold a small stake, by a contractual arrangement or an even looser form of co-operation. The parties to the purchasing agreement will benefit from the fact that they can purchase together, but this may lead them into a position where they have buyer power. In the context of buyer power, the EU Commission has two main concerns. The primary concern is that lower prices may not be passed on to end-users or consumers further downstream. The second is that it may cause cost increases for competitors of the joint purchasing arrangement on the selling markets. This could happen if the supplier, eager to satisfy the needs of the members of the joint purchasing arrangement, was unable to supply others and/or if the supplier cross-subsidised

low selling prices to the members of the joint selling arrangements with high prices to other buyers.

Market power does not exist, and article 81(1) is therefore not infringed where the parties' combined market share is less than 15%. For agreements above this threshold, factors such as the extent of the purchaser's power on the market, the existence of the countervailing power of suppliers and the degree of concentration on markets are to be taken into account. If the agreement is found to infringe article 81(1), the agreement may still qualify for an exemption under article 81(3). It is noteworthy in this regard, however, that if it is found that any of the parties have a dominant position on either the market for purchases or sales, exemption will not be possible under article 81(3). There is no block exemption for joint purchasing agreements.

# Commercialisation agreements

These agreements involve cooperation between competitors in the selling, distribution or promotion of their products. The guidelines provide that at one end of the spectrum there is joint selling that leads to joint determination of all commercial aspects related to the sale of the product, including price. At the other end, there are more limited agreements that only address one specific marketing function, such as distribution, service or advertising.

The primary concern of the EU Commission in relation to joint selling agreements is that the agreement will lead to the fixing of prices. For commercialisation arrangements that do not involve joint selling: the EU Commission points to two concerns: that the agreement could lead to the exchange of confidential information and/or that parties may have 'commonality'. In relation to distribution agreements, the primary concern is that the co-operation

agreement could lead to partitioning of the market by competitors which are active in different markets.

Commercialisation agreements between competitors which do not involve price fixing are only subject to article 81(1) if the parties to the agreement have some degree of market power. The commission considers that in most cases it is unlikely that market power exists if the parties to the agreement have a combined market share of below 15%. If the agreement is found to infringe article 81(1), the agreement may still qualify for an exemption under article 81(3). There is no block exemption for commercialisation agreements.

#### Standardisation agreements

Standardisation agreements are defined by the guidelines as agreements which have as their primary objective the definition of technical or quality requirements with which current or future products, production processes or methods may comply. The guidelines provide that standard-setting agreements should not have restrictive effects where participation in the agreements is 'unrestricted and transparent and where compliance with the standard is voluntary'. On the other hand, the guidelines provide that standard-setting agreements which are used as a means of excluding actual, or potential, competition almost invariably fall within article 81(1). Again, as above, if the agreement is found to infringe article 81(1) it may still qualify for an exemption under article 81(3). Again, there is no block exemption for standardisation agreements.

#### **Environmental agreements**

Environmental agreements are defined by the guidelines as those agreements by which the parties undertake to achieve pollution abatement, as defined in environmental law, or other environmental objectives as defined by the *EC treaty*. The

guidelines provide that 'if no precise individual obligation is placed upon the parties, or if they are loosely committed to contributing to the attainment of a sector-wide environmental target', the agreement will fall outside article 81(1). On the other hand, the guidelines provide that agreements which are entered into by a major share of the industry, at national or EU level, are likely to be caught by article 81(1) where they restrict the parties' ability to devise the characteristics of their products, or the way in which they are produced. Finally, and again as above, if the agreement is found to infringe article 81(1) it may qualify for an exemption under article 81(3). There is no block exemption for horizontal environmental agreements.

The new rules employ a more pragmatic approach towards the possible anti-competitive effects on the marketplace of horizontal arrangements. In addition, the implementation of the new rules means that a more sophisticated and developed economic analysis will be applied to arrangements in the assessment of their restrictive effects. In the press release published by the EU Commission at the time of the adoption of the new legislative rules, the commission stated that: 'the new rules embody a shift from the formalistic regulatory approach underlying the current legislation towards a more economic approach in the assessment of horizontal cooperation agreements. The basic aim of this new approach is to allow competitor collaboration where it contributes to economic welfare without creating a risk for competition'. The correct and consistent implementation of the new rules should, therefore, produce significant advantages for industry and, particularly, for smaller companies in this dynamic age where co-operation is essential. G

Lynn Sheehan is a solicitor with the Cork law firm Ronan Daly Jermyn.



# focusing on your profitability

We offer over 20 years hands-on experience of practice management within Irish law firms. **out source** is available to all sizes of firms nationwide on a full or part-time basis.

#### services offered:

- Benchmarking (compare your firm to best industry practice)
- Provision of a part-time financial controller
- Monthly/quarterly accounts
- Treasury management (maximising deposit interest etc.)
- Overhead analysis & reduction
- Partnership remuneration (profit-sharing etc.)
- Euro compliance

- Mergers, entering new partnerships etc
- Staff remuneration
   (levels of pay, bonus, pension schemes etc.)
- Accounting bureau
   (on-going service and problem solving)
- Payroll bureau
- Accounting/Practice Management Systems (selection of the most suitable product, implementation, training etc)
- Business planning and structuring

Contact David Rowe at: **out** \*source 140-142 Pembroke Road, Dublin 4

Telephone: 01 664 3402 \* Fax: 01 664 3403 \* e mail: info@outsource-finance.com \* Website: www.outsource-finance.com

#### LEGAL AID BOARD



## PANEL OF PRIVATE SOLICITORS

#### **CIRCUIT COURT**

The Legal Aid Board is extending the use of solicitors in private practice to include judicial separation and divorce cases in Dublin and certain other locations throughout the country.

The Board is setting up a panel of private solicitors to provide the services in these Circuit Court cases.

Solicitors who wish to join the panel may obtain further details and application forms from the following address:

Legal Services Section Private Practitioner Scheme Legal Aid Board St Stephen's Green House Earlsfort Terrace Dublin 2

Ph: (01) 2400900 Fax: (01) 2400972

#### **Footnotes**

- 1 2000 L 304 OJ 3.
- 2 2000 L 304 OJ 7.
- 3 2001 C 3, 2.
- 4 OJ C 75, 29 July 1968, 3.
- 5 OJ C43, 16 February 1993, 2.
- 6 OJ C 372, 9 December 1997, 5.
- 7 For example, see in this regard, Council regulation 2/62 of 4 April 1962 on agriculture, Council regulation 1017/68 of 19 July 1968 on transport by railroad and international waterway, and Council regulation 4056/86
- of 22 December 1986 on maritime transport.
- 8 Unless they fall under Council regulation no 4064/89 of December 1989 on the control of concentrations between undertakings (OJ L 395/1), as last amend-
- ed by the merger regulation no 1310/97 of July 1997 (OJ L 180/1).
- 9 Notice concerning the assessment of certain sub-contracting agreements in relation to article 81(1) of the *EC treaty* OJ C1 1979, 2.

# Recent developments in European law

#### **COMPETITION**

#### State aid

Case C-379/98 PreussenElektra AG and Schleswag AG, 13 March 2001. PreussenElektra is an electricity supplier which operates more than 25 conventional and nuclear power stations in Germany as well as a maximum-voltage and high-voltage electricity distribution network. A German law requires public electricity suppliers to purchase electricity produced within their area of supply from renewable sources at minimum prices, which are higher than the real economic value of that type of electricity. The draft law had been notified to the commission in 1990. The commission had authorised it, holding it to be in accordance with the energy policy aims of the EU. The system was amended in 1998. A mechanism for allocating extra costs due to the purchase obligation to upstream electricity network operators was established. Schleswag is a regional electricity supplier. It is required to purchase electricity produced within its area of supply from renewable energy sources. That obligation involved a cost, which rose from 5.8 million DEM in 1991 to about 111.5 million DEM in 1998. Under the 1998 allocation mechanism, Schleswag applied to PreussenElektra for payment of certain sums, which it had already spent in accordance with its purchase obligation. PreussenElektra argued that this payment was contrary to EU law as it amounted to applying an amended system of state aid that had not been notified to the commission. The ECJ examined whether this system

amounted to state aid. Not all advantages granted by a state amount to aid - it only applied to assistance granted directly or indirectly through state resources. In this case neither the statutory obligation nor the allocation of financial burden between private supplier and private operators of upstream electricity networks involved a direct or indirect transfer of state resources. The fact that the purchase obligation is imposed by the state and confers an undeniable advantage on certain undertakings does not confer on it the character of state aid within the meaning of the treaty. These rules were capable, at least potentially, of hindering intra-EU trade. However, they are aimed at protecting the environment by contributing to the reduction of emissions of greenhouse gases. Thus, their objective is the same as one of the priority objectives of the EU. In these circumstances, the German rules are not contrary to the free movement of goods.

#### **EMPLOYMENT**

#### **Gender discrimination**

Case C-79/99 Julia Schnorbus v Land Hessen, 7 December 2000. Ms Schnorbus had passed an examination in law in the German state of Hesse. She was required to undergo practical legal training and then to pass a further examination before being eligible to obtain a position as a judge or as a prosecutor. She applied to the Ministry of Justice in Hesse for such training. Her application was refused. She objected, arguing that the selection criteria used discriminated against women as it

gave a preference to candidates who had completed military or civilian service (which only men are required to do). The ECJ examined the application of directive 76/207/EEC on the implementation of equal treatment for men and women as regards access to employment, training, promotion and working conditions to a case such as this. It confirmed that the admission of applicants to legal training fell within the scope of the directive. The court held that the German provisions provided evidence of indirect gender discrimination. As women were not required to do compulsory military or civilian service, they could not benefit from the preference given to candidates who had undertaken such service. However, the provision could be justified as the male candidates had suffered delay as a result of their service. The provision was objective in nature and was prompted solely by the desire to counterbalance the effect of this delay. Thus, the court held that the selection criteria did not infringe the provision of the directive.

#### **HUMAN RIGHTS**

ADT v United Kingdom, The Times, 7 August 2000. The applicant is a practising homosexual. In 1996, his home was searched and the police seized videotapes containing footage of the applicant and other males engaged in sexual activity. He was charged with gross indecency between men contrary to section 13 of the Sexual Offences Act 1956 and convicted. He lodged an application with the European

Commission of Human Rights. The case was referred to the European Court of Human Rights (ECHR). The ECHR had to consider whether his conviction violated article 6 of the European convention on human rights, which guarantees the individual's right to a private life. He also argued that article 14, which states that a person's convention rights shall be applied without discrimination, had been breached - the legislation applied only to male homosexuals and not to female homosexuals. The court held that the applicant's right to respect for his private life had been interfered with. However, article 8(2) allows restrictions of this right in accordance with the law for certain reasons, such as upholding national security or protecting public health or morals. The court examined the possible application of article 8(2), specifically the protection of morals. It held that there was no evidence of any likelihood of the contents of the tapes being rendered public. The court concluded that the activities were purely private and that its approach must be to adopt the same narrow margin of appreciation as in other cases involving intimate aspects of private life. Thus, the court found that the reasons put forward for maintaining legislation criminalising homosexual acts between men in private were not sufficient to justify the legislation and the interference with the right to privacy. The court held that as article 8 had been breached, it was not necessary to examine the article 14 case. The court awarded £21,000 for pecuniary and non-pecuniary loss. G

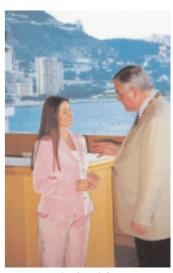
# SOLICITORS IN FULL SWING

ohn P Shaw, representing Lahinch, captured the President's prize at the Irish Solicitors' Golfing Society tournament which took place at the Enniscrone Golf Club on 18 May. John Deacy, representing Claremorris, carried off the Director general's cup (13 and over), while John D Shaw, representing Mullingar, took the St Patrick's Plate (12 and under). Michael Keane of Claremorris won the prize for the best first nine holes, while Michael Sherry took the best second nine.



Getting into the groove in Monaco

Delegates from Mayo at the society's recent annual conference in Monaco joined fellow Mayoman, president Ward McEllin, and his wife Ann for a special reception. Making himself at home in the centre of the picture is Mayo Bar Association president James Cahill



In the pink
President Ward McEllin chats to
Lesley Osborne of Osborne
Recruitment, as the sun goes
down over Monaco. Osborne
Recruitment were one of the main
sponsors of the society's annual
conference this year

#### CRIMINAL LAW COMMITTEE

# Seminar

The Bush Hotel, Carrick-on-Shannon Saturday, 30 June, 10am – 3.30pm

Chairman: Judge Oliver McGuinness

Road traffic act offences – recent developments

Speakers: Gerry Gannon, Solicitor

Kevin Kilrane, Solicitor

Criminal Justice Act, 1999 – new preliminary examination procedures Speaker: Barry Donoghue, Chairman, Criminal Law Committee

Incorporation of *European convention on human rights into Irish law* 

Speaker James MacGuill, Solicitor

COST PER PERSON: £50 INCLUDING LUNCH AND MATERIALS

# Name: \_\_\_\_\_\_\_ Practice name & address: \_\_\_\_\_\_\_ Please reserve \_\_\_\_\_\_ place(s) for the above seminar. Booking forms should be returned to Colette Carey, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7, to be received no later than 28 June.



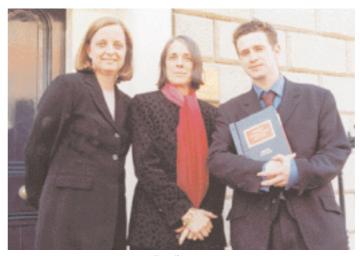
#### Reaching out across the pond

Paul O'Connor, dean of UCD Law Faculty, joined Senator George Mitchell (right) to announce details of the forthcoming summer school being held from 25 June to 20 July, which will take place at UCD and Queen's University in Belfast, sponsored by the two institutions and New York's Fordham University. Senator Mitchell, a chancellor of Queen's and an adjunct faculty member at Fordham, will participate in the programme, which will cover the international protection of human rights, comparative contract law, international business transactions and alternative dispute resolution



#### Planning meeting

Solicitors John Gore-Grimes and Patrick Sweetman pictured with the Law School's Gabriel Brennan at a recent CLE seminar on planning and development at Blackhall Place



#### Family snap

Legal publishers Round Hall Sweet Maxwell have recently launched their new *Family legislation service*. At a reception to mark the event were (*from left*) Round Hall's commercial manager Catherine Dolan, Mrs Justice Susan Denham, and Conor Power, general editor of the publication



Eugene Fanning (*right*) took to the streets with his new boss Laurence Shields to celebrate his

joining LK Shields as partner with responsibility for communications, technology and regulated industries



## New property law journal published

Pictured at the launch of *Property law review*, a joint publication from the Society of Chartered Surveyors and Dublin law firm A&L Goodbody, were the journal's general editor Professor John Wylie (*left*), consultant to A&L Goodbody, and SCS president John Costello



Down Wicklow way

Law Society President Ward McEllin and director general Ken Murphy recently visited the Wicklow Bar Association. Also in the picture are the bar association's president David Tarrant and secretary Gus Cullen

# 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



SPANISH LAWYERS

# RAFAEL BERDAGUER

**ABOGADOS** 

PROFILE:

Spanish 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:

General 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** 

#### LAW AGENCY SERVICES

**ENGLAND & WALES** 



S O L I C I T O R S

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 and Legal Aid 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.demon.co.uk
 www.fearonlaw.demon.co.uk

 LITIGATION
 PROPERTY
 PROBATE

 Sarah Butler
 John Phillips
 Francesca Nash

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

# 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

# SADSI Advanced course bites the dust

Students arriving in Blackhall Place expecting an advanced course were stunned to learn that it no longer existed. Instead, in its place was a professional practice course 2.

The PPC2, which started in April 2001, is very different from the last advanced course (the 49th), which represented the end of an era for the Law School and apprentices. No more intimate courses of 80 or 100 students, no more all-day lectures and tutorials together. The features of the new classes of 300-plus students are lectures and tutorials at different times, freedom of seating (something formerly denied apprentices) and, finally, a much better system of teaching and learning.

As part of the new approach that the Law School has adopted over the past two years, apprentices are being treated more like college students and less like secondary school pupils. The emphasis has also changed from lecturing and teacher-dominated learning to more tutorial and study time for students. The skills weeks in May provided students with interactive activities which sharpened their negotiating and advocacy abilities - as well as providing much entertainment, mostly unintended.

The social life of the PPC2 apprentice has also changed. The informality of the smaller group has gone and is replaced by the tutorial groups or the much larger class night out in venues such as the Morrison (thanks to the Law School and Osborne Recruitment), Samsara, Thomas Reade's, Reynards and the Old Library Bar in Blackhall Place. Another change was the number of apprentices who participated in the recent weekend away in

Galway, which was a huge success thanks to the enthusiastic support of PPC2 apprentices and native Galway apprentices and their GASS group.

While the only module now left for the PPC2 apprentices is commercial law, the course is a long way from over, with a number of barbecues in June and the ball in the Shelbourne Hotel on 21 June. The advanced course is dead, long live the PPC2!

Keith Walsh, PPC2 social rep

# Party on!

he next SADSI social events will be held in Limerick on 15 June (drinks reception at Willie Sexton's Pub, 8.30pm). For further information, contact western rep Daragh Feeney on tel: 091 564011 (w) or midwestern rep John Herbert on tel: 061 313222 (w) or 087 979 4464.

- Cork rep Clare O' Shea-O'Neill is organising weekly mixed five-a-side soccer and a hill-walking trip to Killorglin on 18 August. Her contact address is cmoson@hotmail.com or c/o Coakley Moloney, 49 South Mall, Cork. Writing with your name, address and phone number will ensure regular updates on happenings 'down under'. The soccer begins on 5 June, 6.15-7.30pm, at the Sam Allen Sports Centre, Churchfield (no 3 bus, stop after Faranree Church).
- At 6.30pm on Friday 29 June, a bus leaves University Church, St Stephen's Green, for Johnny Fox's pub in the Wicklow Mountains, returning at midnight. For further information, contact Dublin reps Una McEvoy on tel: 01 878 3290 or Lillian O'Sullivan at postmaster@arthurcox.ie.

# Showing off their skills



Apprentices on the professional practice course part 2 go through their paces in a mock court as part of the Law School's recent 'skills week' module

#### APPRENTICES' DIRECTORY

SADSI is compiling a directory, beginning with the October 2000 PPC and continuing with future PPC1s and PPC2s. Anyone from the October 2000 course who has not yet filled in a contact form should get in touch with Kieran Doran, c/o Gannon and Liddy, 30 Lower Baggot St, Dublin 2

# Time is of the essence

Vith summer approaching and holidays on your mind, a reminder from SADSI to all those battling to free themselves from the shackles of the office. The Organisation of Working Time Act, 1997 defines 'employee' to include a person who works under a contract of employment or apprenticeship.

The annual leave entitlement is four weeks in a leave year (which begins on 1 April) in which an apprentice works at least 1,365 hours. For further details of leave allowed, see section 19 of the act. The National Minimum Wage Act, 2000 also applies to apprentice solicitors.

# Careers Day

ollowing on the heels of June's hectic social schedule, July brings Careers Day to the Presidents' Hall on the afternoon of Friday 27 July. This event should be of great interest to apprentices at all stages of training. Issues covered will include salary scales, conversion of qualifications to

work in other jurisdictions, working in-house and working for the DPP and Chief State Solicitor's Office. The talks will be followed by a barbecue and drinks reception in the Rose Garden room. Further details will be available on the Law Society website and in the July issue of the Gazette.



# CORK COUNTY COUNCIL REQUIRES

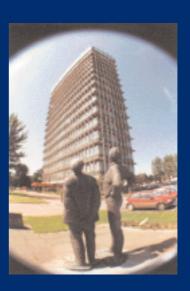
# **EXECUTIVE SOLICITORS**

Salary: £27,207 (€34,546) gross per annum,

rising by annual increments to £38,828 (€49,301) gross per annum.

Candidates shall on the latest date for receipt of completed application forms for the office:

- have been admitted and enrolled as a Solicitor in the State;
- have at least five years satisfactory experience as a Solicitor, including adequate experience of court work, after admission and enrolment as a Solicitor, and
- possess a high standard of professional training and experience.



## **ASSISTANT SOLICITORS**

Salary: £23,600 (€29,966) gross per annum, rising by annual increments to £33,905 (€43,050) gross per annum.

#### **Candidates Shall:**

- have been admitted and enrolled as a Solicitor in the State:
- have on the latest date for receipt of completed application forms for the office, at least two years satisfactory experience as a Solicitor, including adequate experience of court work, after admission and enrolment as a Solicitor, and
- possess a high standard of professional training and experience.

These positions are open to both male and female candidates. Panels will be created from which future vacancies may be filled.

Application forms and further particulars may be obtained from the Personnel Officer, Room 1404, County Hall, Cork or email: <a href="mailto:recruit@corkcoco.ie">recruit@corkcoco.ie</a> ,with whom completed applications must be lodged not later than 5.00 p.m. on Friday, 22<sup>nd</sup> June, 2001.

# Property Lawyer

ur client is one of Ireland's leading companies, holding a significant property portfolio. The office of the Company Solicitor, which provides in-house legal services, now wishes to recruit a solicitor for the Property Department of the office to provide comprehensive in-house conveyancing services to internal business units.

Reporting to the Deputy Company Solicitor, the successful candidate will have a sound knowledge of conveyancing law and practice and is likely to have three to four years relevant post-qualification experience.

This is an excellent opportunity to join a select team of in-house lawyers and to develop your legal career.

To apply, send your detailed CV, which will be treated in strict confidence to Box Number 60.



# Are you serious about Human Rights? We are!

# Senior Legal Advisor on Human Rights

- reporting to the Chief Constable via the Head of Legal Services Salary up to £50K depending on experience

As a modern community focused policing service committed to the protection and vindication of the Human Rights of everyone in Northern Ireland, the Royal Ulster Constabulary is both actively and positively engaged in moving forward under the recommendations of the Patten Report to become the new Police Service of Northern Ireland.

Under the recommendations of the Report and the initiative of the Chief Constable, the Royal Ulster Constabulary currently wishes to invite applications from suitably qualified individuals for the post of Senior Legal Advisor on Human Rights.

A key position within the Legal Services Branch, it will be the successful applicant's responsibility to provide comprehensive specialist Human Rights legal advice to the Royal Ulster Constabulary on all aspects of their activity including operations which raise Human Rights considerations. This will include producing draft policy guidelines and proposed training courses for officers.

In addition to holding a Degree in Law or a Law related discipline, it is essential that candidates applying for this post have a minimum of 6 years' experience in the Legal field to include elements of the following: academic research into International Human Rights Standards; knowledge of Civil and Criminal Justice Systems of the United Kingdom and/or Republic of Ireland; proven ability to provide practical advice on how Human Rights Legislation will impact on public sector organisations. The salary for this post will be negotiated with the successful applicant in line with current market trends.

A list of all the essential and desirable criteria will be set out in the Job Description.

A list of successful candidates will be held for similar vacancies occurring during the next two years.

If you are interested, please write for an application form and job description to: The Royal Ulster Constabulary, Recruitment, 'B' Department, 42 Montgomery Road, Belfast BT6 9LD Completed applications must be returned by 5.00pm on Friday 22 June 2001.

The Royal Ulster Constabulary is committed to equality of opportunity in employment. All applications for employment are considered strictly on the basis of merit, irrespective of religion, race, gender or disability. In accordance with our Equal Opportunities policies we would particularly welcome applications from the Roman Catholic community who are currently under represented in our workforce.







# MARY B CREMIN RECRUITMENT LTD.

#### QUALITY SERVICE FOR QUALITY PEOPLE

SPECIALISTS IN LEGAL RECRUITMENT

- Solicitors Legal Executives
- Legal Advisers
   Company Secretaries
- Receptionists
   Law Clerks
   In House

#### Mary B Cremin Recruitment Ltd.

39 Fitzwilliam Place, Dublin 2
Tel: (01)663 5901 Fax: (01) 662 8662
Email: roisin.moriarty@marybcremin.ie

#### 21 YEARS OF EXCELLENCE

www.marybcremin.ie



BCL LAWBASE Legal Office Management Systems requires a Software Apps. Support / Trainer

Applicants should have 2 years experience as Accountant / Technician along with Microsoft qualification and a full driving licence.

BCL Ltd., 55 Lansdowne Road Ballsbridge, Dublin 4.

T. 01 6604545 F. 01 6605002 E. info@bcl-international.com



#### 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



14-15 ST ANDREW STREET,
DUBLIN 2

TEL: 01 677 6477 FAX: 01 6776972 EMAIL: ATLAS@IOL.IE FOR LEGAL EAGLES EVERYWHERE

With over 30 years of experience to call on, Atlas Personnel Group can resource all your legal requirements, whether you are recruiting or you are ready to advance your own career.

Call Caroline Tierney in our Legal Division on 01 677 6477 or email Caroline. Tierney@atlaspg.ie



Contact Suzanne Johnston or Melanie Holmes in strictest confidence

Tel: 01 638 4400 Fax: 01 638 4444 suzanne@osborne.ie melanie@osborne.ie

Osborne Recruitment 104 Lr Baggot Street Dublin 2 Hong Kong: Comm lawyer for Int Bank.

Suit 2-5 yrs PQE

**Australia:** IT/IP lawyer for City firm.

Top package!

**Dublin 2:** Comm Sol Big 5 law firm

Partnership prospects

**Dublin 15:** In-house Sol. Suit 1yr+ PQE

Lots of travel!

**Dublin 8:** Senior Lit Exec £24k

Excellent prospects!

# Is your firm looking for the best legal staff?

#### Look no further!

Advertise your vacancies in the *Law Society Gazette*, the only magazine that has 100%
penetration of the Irish legal market.

Talk to Sean 0 hOisin about your advertising needs on 01 837 5018, 086 811 7116 or

e-mail: seanos@iol.ie.



stablished in 1986, PPG Legal has since become Ireland's leading Legal Recruitment Consultancy.

We draw from our industry contacts & extensive professional knowledge to provide focused & realistic assessments of our candidates' prospects.

Our clients include the large City & National law firms, medium & smaller 'niche' firms, as well as industry clients in diverse sectors ranging from Banking & Finance to Information Technology.

Our service includes the benefit of our extensive database of candidates & a rigorous interviewing process which selects the most appropriate candidates for selection.

For further information given in complete confidence call (01) 6098845, Fax: (01) 6773573 or email: elee@ppg.ie

#### May Be?



As an established market leader in legal recruitment, Hays ZMB offers qualified lawyers strategic recruitment advice on the many opportunities in private practice and in-house both in Dublin and overseas - in London, the rest of Europe, the US and Australia.

#### **Dublin**

#### Commercial 5+

Top firm seeks lawyers with 5 years' pqe to join their vastly successful team. Transactional, commercial experience an absolute must. You will be someone able to hit the ground running and will be rewarded with excellent benefits and a great team environment. (Ref. CSIG15258)

#### **Employment 2-5**

Top Employment practice in leading firm requires lawyers with between 2 and 4 years' pqe. A great mix of contentious and non contentious work, in a supportive team environment with excellent career prospects. (Ref. CSIG15254)

#### Pensions 1-3

A demand exists for enthusiastic, committed and technically proficient pensions lawyers with 1-3 years' pge, looking to join a top law firm offering both transactional and advisory work in this rapidly changing discipline. Plenty of encouragement and support. (Ref. CSIG15259)

#### PPP/Projects 3-4

Great opportunity for 3-4 year qualified to join preeminent PPP team at one of Ireland's top firms. Background in construction and banking important. The firm's blue-chip client base provides an excellent platform for the successful candidate. (Ref. CSIG14159)

#### Banking 1-3

This popular firm has an excellent reputation for its forward looking approach. Its leading banking department can offer you a broad spread of work, including some of the most cutting edge banking work. A great move for more client contact and responsibility. (Ref. CSIG15204)

#### Insolvency 0-2

Wonderful opportunity for newly qualified or junior lawyers to join this leading insolvency practice. Responsibilities include corporate recovery and reconstruction work and a great chance to make your mark in this demanding and challenging area of law. (Ref. CSIG15188)

#### London

#### Property 2-3

To £70,000

Excellent opportunity to join the property group of this top global firm. Acting for a wide range of top drawer domestic and international investors and occupiers, you will have great hands-on experience and plenty of marketing involvement. (Ref. OSCI.15.23)

#### Corporate 3-5 To £70,000

This incredibly profitable medium-sized firm has a fantastic reputation for corporate work - very strong in private equity and increasingly recognised for its take over and yellow book work. Good academics and experience required. (Ref. CSIG12505)

#### Financial Services 0-1 To £52,000

The financial services practice of this fast growing firm is looking for an additional lawyer. They advise on securities, derivatives and commodities, regulatory and contractual matters and the establishment of onshore and offshore funds. (Ref. CSIG15268)

www.zureka.com

For further information in complete confidence please contact Cliona Sherwin on 00 353 1 661 2522. E-mail cliona.sherwin@hayszmb.co.uk or confidential fax 00 353 1 661 2744. Alternatively write to her at Hays ZMB, 62 Baggot Street, Dublin 2, Ireland.

#### 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 8 June 2001)

Regd owner: Arthur Byrne (deceased); Folio: 2553; Lands: Rathmore and Barony of Rathvilly; **Co Carlow** 

Regd owner: Michael and Ann Manning; Folio: 10270F; Lands: Wells and Barony of Idrone West; Co Carlow

Regd owner: Vera Lawlor; Folio: 4055; Lands: Bough and Barony of Rathvilly; **Co Carlow** 

Regd owner: Andrew Murphy (deceased); Folio: 9682F; Lands: Carlow and Barony of Carlow; **Co** Carlow

Regd owner: Margaret Reilly, Aughtreough, Redhills, Co Cavan; Folio: 12663; Lands: (1) Aughtreagh (part), (2) Drumbrawn (part), (3) Corcashel (part); Area: (1) 14.5062 acres, (2) 0.175 acres, (3) 0.2562 acres; **Co Cavan** 

Regd owner: Charles Daly; Folio: 11588; Lands: Known as a plot of ground situate in the townland of Ballycommane, the Barony of Carberry West (West Division) and the County of Cork: **Co Cork** 

Regd owner: Charles Daly, Folio: 10550; Lands: Known as a plot of ground situate in the townland of Roagh, the Barony of Carberry West (West Division) and the County of Cork; Co Cork

Regd owner: Bernard Doherty, 16 St Eunan's Terrace, Letterkenny, Co Donegal; the Reverend Daniel O'Doherty of Ard Cholum, Letterkenny, County Donegal; Eunan Blake of Ard Columcille, Letterkenny, County Donegal. Folio: 22520, Lands: Letterkenny; Area: 5.5812 acres; Co Donegal

Regd owner: James Buchanan, Garryharry, Letterkenny, Co Donegal; Folio: 19244F; Lands: Garrowcarry; Area: 0.513 acres; **Co Donegal** 

Regd owner: Laurence Sweeney, Tullyhorkey, Ballyshannon, Co Donegal; Folio: 9752F; Lands: Tullyhorky; Area: 3.644 acres; **Co Donegal**  Regd owner: Michael and Bernadette Jeffries, 6 Barry Avenue, Finglas West, Dublin 11; Folio: DN54042L; Lands: Property known as 6 Barry Avenue situate in the Parish of Finglas and District of Finglas North; **Co Dublin** 

Regd owner: Vincent Gammell (halfshare), Unit 2H Newtown Industrial Estate, Coolock, Dublin 17; Folio: 18001F; **Co Dublin** 

Regd owner: Aidan Horgan (halfshare), Unit 2H Newtown Industrial Estate, Coolock, Dublin 17; Folio: 18001F; **Co Dublin** 

owner: Patrick Higgins, Ballindooley, Galway, Co Galway; Folio: 13069; Lands: Townland of Carrowbrowne and Barony of Galway; Area: 0.2270 hectares; **Co Galway** 

Regd owner: Rosetta McClelland, Doohulla, Ballyconnelly, Co Galway; Folio: 5207; Lands: Townland of (1) Doohulla (2) Doohulla (3) Emlaghmore; and Barony of Ballynahinch; Area: (1) 4.906 hectares; (2) 181.289 hectares; (3) 266.133 hectares; **Co Galway** 

Regd owner: Michael Connaughton, Cross Street, Loughrea, Co Galway; Folio: 17078; Lands: Townland of Bawnoge and Barony of Loughrea; Area: (1) 1.1548 hectares, (2) 0.733 hectares; **Co Galway** 

Regd owner: Edward Sylvester White; Folio: 2396F; Lands: Townland of Ballyhorgan West and Barony of Clanmaurice; **Co Kerry** 

Regd owner: Peter Fowler; Folio: 16160; Lands: Townland of Kilbrook in the Barony of Ikeathy and Oughterany; **Co Kildare** 

Regd owner: Joseph Whelan (deceased); Folio: 2135; Lands: Toormore and Barony of Fassadinin; Co Kilkenny

Regd owner: Kieran and Bernadette Loughran; Folio: 32548F; Lands: A plot of ground known as 12, Sli Saingil Thiar, situate to the North Side of West Singland Road in the Parish of St Patrick and City of Limerick; **Co Limerick** 

Regd owner: Christopher O'Sullivan (deceased); Folio: 3986L; Lands: Townland of Singland and Barony of Clanwilliam; **Co Limerick** 

Regd owner: Robert and Theresa McNamara; Folio: 201L; Lands: A leasehold estate in the parcel of land with the dwellinghouse thereon situate on the east side of Corbally Road in the Parish of St Patrick; **Co Limerick** 

Regd owner: Joseph and Ethnea Hackett, 25 Dublin Street, Longford; Folio: 263L; Lands: Demesne; Area: .04375 acres; Co Longford

Regd owner: Patrick Gorman, Corneddan, Ballinalee, Co Longford; Folio: 4840; Lands: Clontumpher; Area: 21.075 acres; Co Longford

# 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 July Gazette: 29 June 2001. For further information, contact Catherine Kearney or Louise Rose on 01 672 4828 (fax: 01 672 4877)

Regd owner: Eileen Rogan, 23 St Nicholas Avenue, Dundalk, Co Louth; Folio: 1881L; Lands: 23 St Nicholas Avenue; **Co Louth** 

Regd owner: Patrick Goonan, Cloonamna, Kilmovee, Co Mayo; Folio: 17080F; Lands: Townland of (1) Sonvolaun, (2) Cloonamna, (3) Cloonamna, (4) Cloonamna, (5) Cloonfaulus and Barony of Costello; Area: (1) 1.979 hectares, (2) 2.587 hectares, (3) 10.342 hectares, (4) 1.847 hectares, (5) 14.943 hectares; Co Mayo

Regd owner: Nicholas Somers, Baltrasna, Ashbourne, Co Meath; Folio: 5739F; Lands: Baltrasna; Area: 0.50 acres; Co Meath

Regd owner: Patrick Smith, Sean Colgan Street, Oldcastle, Co Meath; Folio: 5785; Lands: Oldcastle; Area: 65.687 acres; **Co Meath** 

Regd owner: Thomas Donaghy (Junior), Annalitton, Castleblayney, Co Monaghan; Folio: 5233F; Lands: Maghernakill; Area: 0.913 acres; **Co Monaghan** 

Regd owner: Una Kilgarriff, Market Street, Ballaghaderreen, Co Roscommon; Folio: 23506; Lands: Townland of (1) Ballaghaderreen and (2) Lung and Barony of Costello; Area: (1) 0.0080 hectares, (2) 0.2200 hectares; **Co Roscommon** 

Regd owner: John Tooher; Folio: 37390; Lands: Ballyduff, Derrinlieragh and Tinlough and Barony of Ormond Lower; **Co Tipperary** 

Regd owner: Mortimer Gleeson (deceased); Folio: 29202 and 20673; Lands: Deerpark and Lahid and Barony of Ormond Upper; Co Tipperary

Regd owner: Matthew and Carmel Browne; Folio: 19594; Lands: Ayle and Barony of Clanwilliam; Co Tipperary

Regd owner: Peter Queally; Folio: 1038; Lands: Townland of Ballinlough and Barony of Decies-without-Drum; **Co Waterford** 

Regd owner: Reverend Seamus Heatherton, Kilrush Lower, Clonmellon, Navan, Co Westmeath; Folio: 9710; Lands: Moygrehan Upper; Area: 20.26875 acres; **Co Westmeath** 

Regd owner: Mary Martin, Hillcrest, Moate, Co Westmeath; Folio: 6016; Lands: Magheramurry; Area: 2.968 acres; Co Westmeath

Regd owner: Henry Cuffe, Clonbrusk, Athlone; Folio: 20054; Lands: Clonagh; Area: 0.6312 acres; **Co Westmeath** 

Regd owner: Thomas Furlong (deceased); Folio: 18301; Lands: Coolamurry and Barony of Bantry; Co Wexford

Regd owner: John Wilfred Lett (deceased); Folio: 11961 (revised): Lands: Tomgarrow and Barony of Ballaghkeen North; **Co Wexford** 

Regd owner: Monica Tarsia; Folio: 3561; Lands: Townland of Ennereilly in the Barony of Arklow; **Co Wicklow** 

#### **WILLS**

**Canton, James,** late of Edenderry, Co Offaly. Would any person having knowledge of a will made by the above named deceased who died on 26 February 2001, please contact Patrick J Farrell & Co, Solicitors, Newbridge, Co Kildare, tel: 045 431542

Connolly, Sarah (deceased), late of 16 Macken Street, Dublin. Would any person having knowledge of an original will of the above named deceased who died on 12 August 1988, please contact O'Neill Regan & Company, Solicitors, 51 Temple Road, Blackrock, County Dublin, tel: 01 2882100, fax: 01 2833473

Costello, John Patrick (retired stud groom, deceased), formerly of Drumcliffe, Co Sligo and also of County Kildare and late of Oak House, Benburb Street, Dublin 7. Would any person having knowledge of a will made by the above named deceased who died on 11 September 2000, please contact Mullaneys, Solicitors, Thomas Street, Sligo, tel: 071 42529, fax: 071 44093, e-mail: mullaneys@mullaneysol.com



Probate & Succession Genealogy – Worldwide

# TITLE RESEARCH

# YOUR PARTNER IN TRACING MISSING BENEFICIARIES

- Free professional assessments
- Range of cost structures
- Excellent success rate worldwide
- A complete service to the profession

For more information or our detailed brochure please call



+44 020 7549 0900

Charter House, 2 Farringdon Road, London EC1M 3HN Fax: +44 020 7549 0949 DX: 53347 Clerkenwell Email: info@title-research.co.uk www.title-research.com

Creedon, Peter (deceased), late of Coolierher, Ballymakeera, Macroom, Co Cork. Would any person having knowledge of a will made by the above named deceased who died on 2 March 2001, please contact Fitzgerald & O'Leary, Solicitors, 70 Shandon Street, North Gate Bridge, Cork, tel: 021 4301307, fax: 021 4300020

Finnegan, Anne (otherwise Annie) (deceased), late of Green Street, Castlepollard, Westmeath. Would any person having knowledge of a will executed by the above named deceased who died on 19 October 2000, please contact Oliver O Sullivan & Co, Solicitors, Castlepollard, Co Westmeath, tel: 044 61460, fax: 044 61066

Garry, Michael (deceased), late of Ballinvalley, Delvin, Westmeath. Would any person having knowledge of a will executed by the above named deceased on the 11 February 1995 and who died on 12 February 1995, please contact Oliver O Sullivan & Co, Solicitors, Castlepollard, Co Westmeath, tel: 044 61460, fax: 044 61066

Hadden, Patrick Beven, late of 'Jalna', Church Road, Bantry, Cork. Would any person having knowledge of the whereabouts of the original will dated 7 February 1992 of the above named deceased who died on 10 March 2000, please contact Wolfe & Co, Solicitors, Market Street, Skibbereen, Co Cork, tel: 028 21177, fax: 028 21676

**Teresa Heffernan** (deceased), late of 6L Iveagh Trust, Dublin 8 and formerly of Wells, Bagenalstown, Co Carlow. Would any person having knowledge of a will executed by the above named deceased who died on 13 April 2001, please contact James Cody & Sons, Solicitors, Bagenalstown, Co Carlow, (ref: MGC), tel: 0503 21303

**McCarthy, Francis** (deceased), late of 11 Colmcille Road, Gurranabraher, Cork. Would any person having knowledge of a

will executed by the above named deceased who died on 6 February 2001, please contact Fitzgerald & O'Leary, Solicitors, 70 Shandon Street, North Gate Bridge, Cork, tel: 021 4301307, fax: 021 4300020

McMahon, Ita (deceased), late of Sarsfield Street, Nenagh, County Tipperary and Ashlawn Nursing Home, Limerick Road, Nenagh, County Tipperary. Would anyone having knowledge of the whereabouts of the will of the above named deceased who died on 24 February 2001, please contact MacGrath & Co, Solicitors, 51 Kenyon Street, Nenagh, County Tipperary, tel: 067 33455

#### **EMPLOYMENT**

Mature solicitor, employed outside the profession and based in Connaught region, with limited PQE seeking to gain practical experience. Available for locum/assistant/paralegal position in general practice for June, July and August. Computer and technology literate. MS Word, Microsoft Works and Clarisworks proficient. Touchtyping/word-processing 20-30 wpm. Own car. Please reply to Box no 50

Sunny South East – interested in a move to a medium-sized (five solicitors and one apprentice) progressive, friendly office in an area free of commuting difficulties with excellent salary and conditions. H.D. Keane & Co, Solicitors, 21 O'Connell Street, Waterford seeks solicitor 0-2 PQE. Primarily litigation and some conveyancing. Application to: michael.lee@hdkeane.com tel: 051 874856

Solicitor required with litigation experience for position within the in-house legal department of a progressive claims-handling and loss-adjusting company. Please apply to The Miller Farrell Group, Nutley Building, Merrion Centre, Nutley Lane, Dublin 4, atten-

tion Charmaine O'Sullivan, e-mail: charmaine.osullivan@farrells.ie

Solicitor required for Limerick city practice with a view to partnership. Excellent prospects and conditions. Experience in litigation essential and some experience in conveyancing would be desirable. Must be able to work on own initiative. Apply with CV in strictest confidence to Hugh Mulcahy, Mulcahy Doran & Company, Accountants, 71 O'Connell Street, Limerick

**Conveyancing solicitor required** for inhouse law department of one of Ireland's leading companies. See display ad on page 65 of this *Gazette*. Send detailed CV in strict confidence to **Box no 60** 

**Locum conveyancing solicitor** required for in-house legal department. Telephone 01 7015930 for details

Apprentice solicitor required for six months for the GSM Association, the global industry body for mobile communications. Recruitment is as part of the Law Society's apprentice placement scheme. Email klavelle@gsm.org or tel 01 209 1813.

#### **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

For sale: seven-day ordinary publican's licence. Contact Jim McMorrow, Solicitor, Manorhamilton, Co Leitrim, tel: 072 55302

For sale: seven-day ordinary publican's licence, County Tipperary. Contact FP Gleeson & Co, Solicitors, Liberty Square, Thurles, Co Tipperary, DX 40 002 Thurles, tel: 0504 22577, fax: 0504 22213, e-mail: info@tipperarylaw.com

#### EYE INJURIES AND OPHTHALMOLOGIAL 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

Seven-day publican's licence for sale. Contact Denis M Molloy, Solicitors, Bridge Street, Ballina, County Mayo; tel: 096 70660/21061/21304, fax: 096 70636, ref: MMBM/mc

Seven-day ordinary publican's licence for sale. Contact Sweeney McGann, Solicitors, 67 O'Connell Street, Limerick, tel: 061 418277, fax: 061 319496, e-mail: enquiries@sweeneymcgann.com

Sole practitioner practice for sale in Co Cork. Located 30 minutes from Cork city centre in good town with good employment. Ideal opportunity for energetic young solicitor. Includes all office equipment and software. Substantial potential for further expansion. Enquires in confidence to Box No 51

#### TITLE DEEDS

#### In the matter of the Landlord and Tenant (Ground Rents), Acts 1967-1989: notice of intention to acquire fee simple

To whom it may concern: all that and those the lands of Borrisoland North, Barony of Kilnamagh Upper in the county of Tipperary containing 1.430 hectares or thereabouts. Particulars of applicant's lease or tenancy are unknown.

Take notice that I, Joan Power-Kenny of Lower Main Street, Borrisoleigh, Thurles, County Tipperary, being a person whom I believe to be entitled under section eight of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978, propose to purchase the fee simple in the lands described in paragraph 1. And further take notice that such application shall be made before the county registrar on the 20 June 2001.

Signed: James J Kelly & Son, Solicitors, Patrick Street, Templemore, Co Tipperary

#### In the matter of the Landlord and Tenant (Ground Rents) Acts, 1967-1984: notice of intention to acquire fee simple

To the person or persons for the time being entitled to the interest of Patrick J Wood in the premises hereinafter described: description of property to which this notice refers: all that and those the premises known as no 24 Thomas Street in the city of Dublin.

Particulars of applicant's lease or tenancy: lease dated 10/8/1885 from Patrick J Wood to William Whelan for a term of 200 years from 10/8/1885 subject to a yearly rent of £25 and to the covenants and conditions therein contained

Take notice that Caitriona Power of Thomas Street, Dublin 8, being a person entitled under the provisions of the *Landlord and Tenant (Ground Rents) Act*, 1967, proposes to purchase the fee simple interest in the property described in paragraph 1 above.

Signed: O'Donnell Solon & Co (solicitors for the applicant), 167 Lower Kimmage Road, Dublin 6W

#### In the matter of the Landlord and Tenant Acts, 1967-1987: Noreen Shanahan (applicant); Barry Gormley, 3 Oak Lodge, Grotto Avenue, Booterstown, County Dublin (respondent)

Take notice that on 20 June 2001 application will be made by Noreen Shanahan of 4 Parkview, Carrick-on-Suir in the County of Tipperary to the county registrar of the county of Tipperary sitting at the Courthouse, Clonmel at 12pm or at the next opportunity thereafter for an order:

1) Confirming that the applicant is entitled under the acts to acquire the fee simple interest in the premises known as

the Wicker Shop at Chapel Street, Carrick-on-Suir, in the county of Tipperary, and appointing, if necessary, a person to represent the unknown holder of the freehold interest in the premises and to execute a conveyance to the applicant of all the interest(s) if any superior to that of the said Barry Gormley, and determining the purchase price payable in respect of the said acquisition, and determining the person or persons entitled to receive the said purchase money and the amount(s) proportion(s) thereof that he wishes to receive, and compelling Barry Gormely to execute an assurance of his interest in the premises to the applicant as to the costs payable by the parties in respect of this hearing.

2) Such further order/relief or directions as may be necessary in the cirumstances of the case

Dated: 25 April 2001

Signed: Michael J O'N Quirk & Co (solicitors for the applicant), Main Street, Carrick-on-Suir, Co Tipperary

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978 and in the matter of premises known as nos13 and 14 Hendrick Street, Dublin 7: an application by Banagher Investments Limited

Take notice that any person having any interest in the freehold estate of or superior interest in the following premises: all that and those the lands premises and hereditaments known as nos 13 and 14 Hendrick Street which said premises are situate in the Parish of Saint Paul and City of Dublin and are held under a lease dated 6 September

1765 and made between William Bury of the one part and Alexander McMahon and Henry Pentland of the other part for a term of 900 years from 29 September 1765 subject, along with other premises, to the yearly rent of £120.0s.3d

Take notice that the applicant, Banagher Investments Limited, being the person entitled under sections 9 and 10 of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978, intends to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Dated: 23 April 2001

Signed: O'Rafferty Powderley (solicitors for the applicant), 18 Merrion Row, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967* and in the matter of premises known as nos 13 and 14 Hendrick Street, Dublin 7: an appli-

#### cation by Banagher Investments Limited

Take notice that any person having any interest in the lessee's interest under a lease dated 6 September 1765 and made between William Bury of the one part and Alexander McMahon and Henry Pentland of the other part for a term of 900 years from 29 September 1765 subject to the yearly rent of £120.0s.3d

Take notice that the applicant, Banagher Investments Limited, being the person entitled under sections 9 and 10 of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978, intends to submit an application to the county registrar for the county and city of Dublin for the apportionment of the rent payable under the aforementioned lease as between all that and those the lands premises and hereditaments held under the aforementioned lease and any party asserting that they hold other lands premises or hereditaments under the aforementioned lease are called upon to furnish evidence of title to the below within 21 days from the date of this

In default of any such notice being received, Banagher Investments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the other lands premises or hereditaments unknown or unascertained.

Dated: 23 April 2001

Signed: O'Rafferty Powderley (solicitors for the applicant), 18 Merrion Row, Dublin 2

# 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

**C**ASES

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

#### 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: scconn@iol.ie

#### **Michael Williams**

Training in Generic Mediation/Conflict Management Skills

TEL:
Adele Gannon

01 8328730
Grace Corrigan

01 2892896

EMAIL: info@mediationsolutions.ie

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978 and in the matter of premises known as numbers 50 and 52 Blackhall Place, Dublin 7: an application by Banagher Investments Limited

Take notice any person having any interest in the freehold estate of or the superior interest in the following premises all that and those the lands premises and hereditaments consisting of the Minister's Residence and Methodist Church now known as numbers 50 and 52 Blackhall Place respectively, all of which said premises are situate in the Parish of Saint Paul and City of Dublin and are held under a lease dated 6 September 1765 and made between William Bury of the one part and Alexander McMahon and Henry Pentland of the other part for a term of 900 years from 29 September 1765 subject, along with other premises, to the yearly rent of £120.0s.3d and under a sub-lease dated 25 June 1835 made between Edward Ledwidge of the one part and William Ferguson, John Ousley Bonsall, James McDowel, Thomas Craig, William Haughton, Christopher Hamilton, Arthur Jones, William Kent, Digby Frederick Faulks, Samuel Cromwell and Francis White of the other part for a term of 800 years from 25 March 1835 at a yearly rent of £16.16s.0d.

Take notice that the applicant, Banagher Investments Limited, being the person entitled under sections 9 and 10 of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978, intends to submit an application of the county registrar for the county and city of Dublin for the acquistion of the freehold interest any intermediate interests in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below within 21 days from the date of this notice.

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

Dated: 23 April 2001

Signed: O'Rafferty Powderley (solicitors for the applicant), 18 Merrion Row, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Act, 1967 and in the matter of the premises known as numbers 50 and 52 Blackhall Place, Dublin 7: an application by Banagher Investments Limited

Take notice any person having any interest in the lessee's interest under a lease dated 6 September 1765 and made between William Bury of the one part and Alexander McMahon and Henry Pentland of the other part for a term of 900 years from 29 September 1765 subject to the yearly rent of £120.0s.3d.

Take notice that the applicant, Banagher Investments Limited, being the person entitled under sections 9 and 10 of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978, intends to submit an application to the county registrar for the county and city of Dublin for the apportionment of the rent payable under the aforementioned lease as between all that and those the lands premises and hereditaments consisting of the Minister's Residence and Methodist Church now known as numbers 50 and 52 Blackhall Place respectively all of which said premises are sit-

uate in the Parish of Saint Paul and City of Dublin and the balance of the lands premises and hereditaments held under the aforementioned lease and any party asserting that they hold other lands premises or hereditaments under the aforementioned lease are called upon to furnish evidence of title to the below within 21 days from the date of this notice.

In default of any such notice being received, Banagher Investments Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the other lands premises or hereditaments are unknown or unascertained.

Dated: 23 April 2001

Signed: O'Rafferty Powderley (solicitors for the applicant), 18 Merrion Row, Dublin 2

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by Patrick McCormack of Croi Mhuire, Balheary, Swords, in the County of Dublin

Take notice that any person having any interest in the freehold estate of the property known as Croi Mhuire, Balheary, Swords in the county Dublin held under indenture of lease dated 7 November 1951 made between Jeremiah O'Connor of the one part and Philip Finnegan of the other part for the term of 500 years from the 1 May 1951 subject to the yearly rent of £5 and the covenants and conditions therein contained. The said lease, dated 7 November 1951, is registered as a burden on folio 6161 Co Dublin at entry No 1, part III (instrument no 2126/11/51, dated 29 November 1951). The said Jeremiah O'Connor is registered as full owner on said folio 6161 of the register of ownership of freehold land, Co Dublin.

Take notice that the said Patrick McCormack intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in

#### AN APOLOGY

Round Hall Sweet & Maxwell terminated the licensing agreement with Itelis Limited for the inclusion of cases from the Irish Law Times Reports and the Irish Law Reports Monthly on the LEXIS-NEXIS database with effect from June 2000.

Owing however to an unfortunate omission on the part of Itelis Limited, for which we have apologised to Round Hall Sweet & Maxwell, instructions were not issued for the material to be removed from LEXIS-NEXIS. We accept that, for the period 1 June 2000 to 30 April 2001, this material was not covered by the licence granted to Itelis Limited and was therefore included in the LEXIS-NEXIS service in breach of Round Hall Sweet & Maxwell's copyright. Itelis Limited have paid agreed damages to Round Hall Sweet & Maxwell by way of compensation for the breach of copyright.

We would like to thank Round Hall Sweet & Maxwell for their contribution and cooperation over the years and in particular for their forbearance in allowing us to complete this task.

the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Patrick McCormack 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 free-hold reversion in each of the aforesaid premises are unknown or unascertained. Dated: 24 May 2001

Signed: Kennedy McGonagle Ballagh (solicitors for applicant), 20 Northumberland Road, Dublin 4

#### Law Society Bushmills Millenium Malt 25 YEARS OLD

£85 (plus £9 post and packaging)
First come, first served. Only one bottle per member

Contact Alan Greene, Bar Manager, Law Society of Ireland, Blackhall Place, Dublin 7, tel: 01 6724919, e-mail: agreene@lawsociety.ie



