Law Society Gazette

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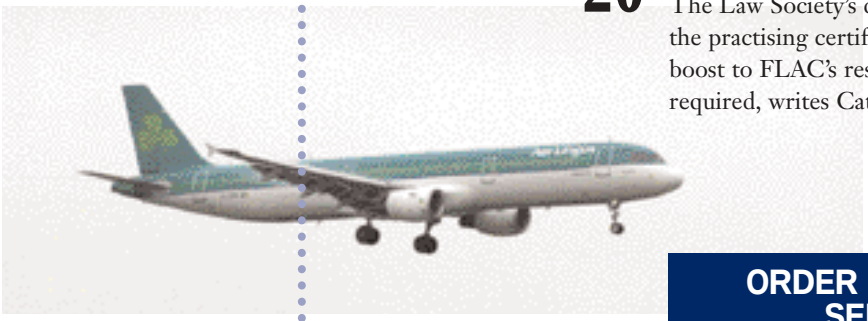
Cover Story



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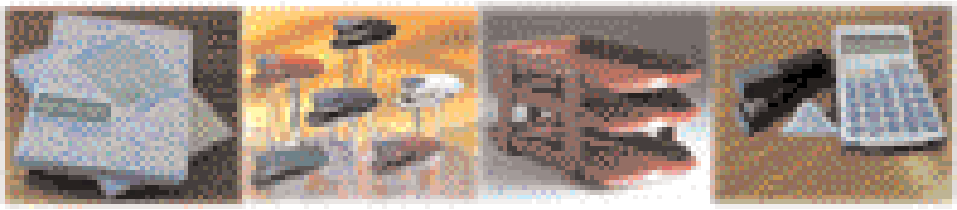

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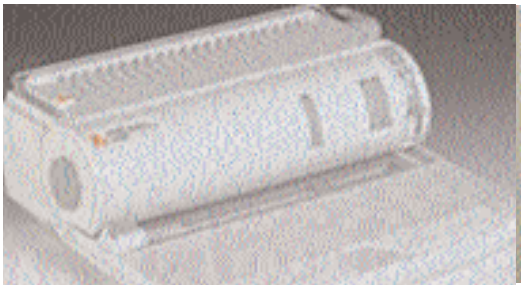

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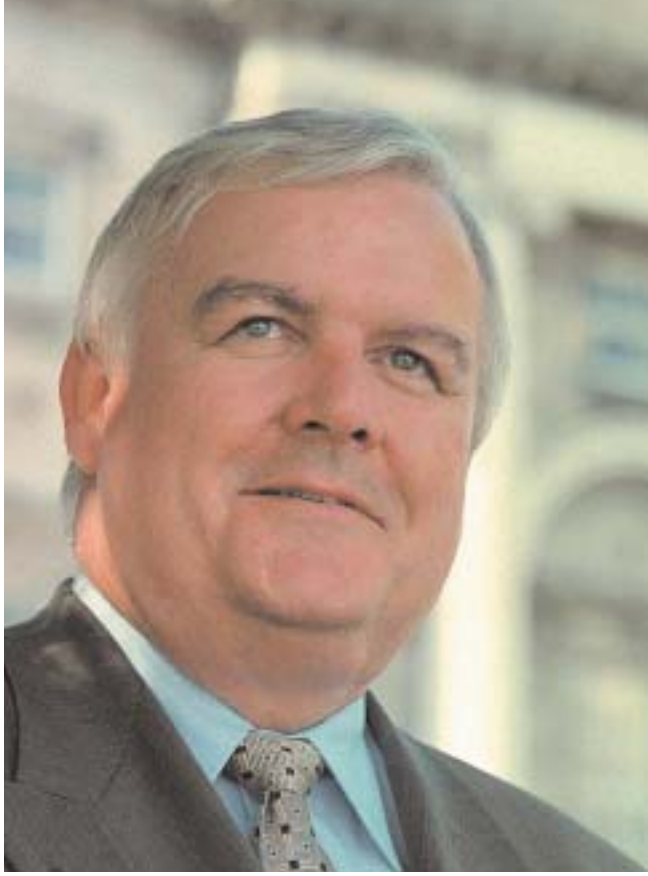

Last call

Who would have thought that 12 months could pass so quickly? This time last year I was trying to plan ahead for the kinds of obstacles we might run into during my presidential term, and, I suppose, anticipating some small victories. After all, when you fight the good fight, you're bound to win on some occasions aren't you? And so it proved.

As this is my last president's message, it might be worthwhile to do a little double-entry accounting to see what we achieved during the year, and where we were less successful.

One of my main priorities as president was to ensure the passing of new *Solicitors' accounts regulations*. I dealt with this issue at length last month, and I won't detain you here by repeating myself. I will only add that I am convinced that the new regulations were urgently needed and that the profession – and our clients – will benefit from their introduction. I am proud that we managed to achieve this during my term of office.

We also won the argument that solicitors (and barristers) should be included on the new commission on judicial conduct and ethics. We were initially excluded in the government bill establishing the commission, but the Minister for Justice, John O'Donoghue, agreed to amend the proposal after meeting myself and the Director General Ken Murphy. I would like to take this opportunity to put on record my thanks to the minister for the gracious way he treated us – and, of course, for eventually seeing things our way!

We also saw the *Courts and Court Officers Bill, 2001* laid before the Dáil. At last, we can look forward to the appointment of solicitors to the superior court benches. And we're going to need them, because that bill also increases the jurisdiction of the District and Circuit courts, putting significant pressure on the staff and judges of both courts.

Our annual conference in Monaco was a resounding success and thoroughly enjoyed by everybody. In that regard, I'd like to thank Mary Kinsella and the Conference Committee for the long hours and hard work they put in to make it such an entertaining and worthwhile event. The annual conference is now firmly established as the largest single gathering of Irish solicitors, and that's where its true value lies.

Those were some of the high points: what about the lows? Well, it seems that every vested interest in the country wants to curtail the citizen's right to sue for injuries received as a result of someone else's negligence. The government's plans introduce a Personal Injuries Assessment Board continues apace, cheered on from the sidelines by IBEC and the Irish Insurance Federation. Who says irony is dead?

'It seems that every vested interest in the country wants to curtail the citizen's right to sue for injuries received as a result of someone else's negligence'

A pig in a poke

And, of course, the profession is being investigated again. This time it's the Competition Authority; last year it was the OECD. We've got used to having people snuffling around, trying to unearth 'restrictive practices' like so many truffles. It wouldn't be the same without them. But they haven't found any yet, and I'm confident they never will because, as a profession, we are just about as open and transparent as you could hope for. Still, if it keeps them off the streets…

On balance, then, I'd say we came out ahead this year.

One of the reasons that we did is because of the sterling efforts of the Law Society's secretariat in Blackhall Place. I may be doing you an injustice in suggesting that perhaps you don't realise just how dedicated and hard working these people are, but I do. I've had the advantage of working closely with them all year and I can't praise them highly enough. When we talk about fighting the good fight on your behalf, they are the shock troops. They deserve your gratitude and your respect. They have mine.

So that's it, then. It's been an honour and a privilege to have served as your president. I thank you for it.

Ward McEllin,
President

Courts Service issues euro guidelines

The Courts Service has issued new guidelines for solicitors on how the euro changeover is going to affect the issue of proceedings in the various courts.

In the **District Court**, practitioners can include Irish punt and the equivalent euro amounts in **civil summonses or processes** which issue up to and including 31 December 2001. Documents issued after 31 December 2001 should display euro amounts only except where the circumstances of the case require that reference also be made to Irish punts. If the court return date is after 31 December 2001, the documents should display euro amounts only. The same applies to summonses under the *Enforcement of Court Orders Act, 1926*.

District Court **instalment orders, variation orders, committal orders and decrees** may show Irish punt amounts and the equivalent euro amounts if lodged on or before 31 December 2001 and should show euro only amounts after, *unless the court directs otherwise*.

In the **Circuit Court**, practitioners issuing **proceedings claiming specific financial relief** may include Irish punt amounts and the equivalent euro amounts in documents which issue up to and including 31 December 2001. Documents issued after 31 December 2001 should display euro amounts only, except where the circumstances of the case require that reference also be made to Irish punt amounts.

In the **High Court**, Irish punt amounts and the equivalent euro amounts may be included in **summonses, petitions affidavits, all pleadings and documents filed in the several offices of the Supreme and High courts** that issue up to and including 31 December 2001. Documents issued after 31 December 2001 should display euro amounts only, except where the circumstances of the case require that reference also be made to Irish punt amounts.

The Courts Service also says that **all court fee stamps** issued before 31 December 2001 must be accounted for in Irish punt amounts at the rates prescribed in the existing fees orders. And it adds that the minister for justice proposes to make new orders prescribing court fees in convenient euro amounts which will be effective from 1 January 2002. All court fee stamps issued on or after 1 January 2002 must be accounted for in euro at the rates effective from 1 January 2002.

Finally, the Courts Service insists that Irish punt cheques should not be presented to any of its offices after 31 December 2001, and that if such cheques have been amended to show euro amounts they will simply not be accepted. Similarly, it says that none of its offices will accept post-dated cheques in the old currency.

(See also Warning! Euro ahead *in this month's* Vision *supplement.)*

SHERIFFS' AND REGISTRARS' FEES

Dublin city sheriff Brendan Walsh has advised that the new euro rates for fees in sheriffs' and county registrars' offices throughout the country will be as shown below:

- Fee to be paid at the time of lodgement of execution order against goods: €15.24 (currently £12)
- Fee to be paid at the time of lodgement of execution order for possession of premises (ejectment): €139.67 (currently £110)
- Fee for search of orders and certificate of search: €16.51 (currently £13).

English 'hired gun' solicitor shoots himself in the foot

An English solicitor has been fined £25,000 and made to pay costs by the Solicitors' Disciplinary Tribunal in England for pursuing his client's interests too vigorously. In a case that may set alarm bells ringing in the minds of some practitioners here, the case suggests that there are limits on how far a solicitor can go in damaging the interests of non-clients while pursuing lawful instructions.

According to a report in a recent issue of the English *Law Society's Gazette*, the solicitor in question was acting for a landlord and sent out a number of letters because there were arrears of ground rent. Initially, he didn't write to the residential occupier but direct to the mortgagees, telling them that there were long-standing arrears and that his client had decided to forfeit the lease. He demanded cleared funds within a tight timescale and told the mortgagee that no time extension would be allowed. One of his letters demanded the arrears of rent (stg£6.50), his costs in the action to date (stg£125), his client's managing agent's costs to date (stg£70), VAT (stg£34.12) and a Land Registry search (stg£16), totalling £251.62.

The tribunal found that the solicitor had breached the English *Solicitors' Practice Rules 1990* 'in that in pursuing instructions on behalf of a client, he acted in circumstances which failed to preserve the good repute of the respondent and the solicitors' profession'. It also held that he had acted contrary to his position as a solicitor by taking unfair advantage for himself and another person, that he improperly sought to demand monies other than those recoverable under due process of law, and that he wrote letters which were misleading with a view to extracting unfair advantage from third parties.

The tribunal found that his letters were 'on any reading to be regarded as intimidatory'. It also rejected out of hand his assertion that 'banks wrote worse letters', and said that solicitors are required to adhere to higher standards than those that apply in the commercial world.

The report in the English *Gazette* concluded: 'This case makes it clear that solicitors in England and Wales are not hired guns for their clients, but owe wider duties'.

REVENUE'S RENT-A-ROOM SCHEME

Section 208 of the *Finance Act, 2001* amended sections 91, 92, 92A and 93B of the *Stamp Duties Consolidation Act, 1999* to ensure that for instruments of transfer executed on or after 6 December 2000, there would be no stamp duty clawback where the person in occupation of the house/apartment received rent on or after 6 April 2001 for a letting out of furnished residential accommodation in part of the house/apartment concerned. The Revenue has advised that it will not seek to claw back stamp duty in the same circumstances as outlined above where instruments of transfer were executed *before* 6 December 2000.

Radical overhaul of nullity laws needed, says society

The concept of a 'voidable' marriage should be abolished, as should the reasons that can be used to declare marriages null and void, such as impotence and an inability to sustain a normal marital relationship. Instead, such cases should be argued under the divorce legislation.

These are among the main recommendations of a new report by the Law Society's Law Reform Committee, which also calls for a complete overhaul of the law of nullity of marriage. The report, *Nullity of marriage: the case for reform*, was launched at a press conference in the Law Society's headquarters last month.

The Law Reform Committee's report argues that a separate civil ceremony should be required to effect a valid marriage. Religious ceremonies should no longer include an element giving effect to a civil law marriage.

It also proposes that specialised regional family courts, and judges trained in family law, should be provided to hear nullity applications as part of their caseload. Decisions should be reasoned and written judgments should be delivered on substantive issues in all major cases. The *in camera* rule should be adapted, if necessary, to allow reporting of court proceedings, subject to the protection of the parties' privacy and their consent.

In nullity cases where children are involved, their interests should be represented by a guardian *ad litem* (someone who 'is appointed a guardian for a law suit'). This would be a temporary appointment, ending when the court proceedings are finished.

In addition, it says that the courts should be able to award financial provision on a limited basis as part of a nullity decree. This financial relief should be finite, and should aim to help the financially weaker spouse attain financial independence where possible. It should be based on criteria similar to those used in the divorce legislation, subject to the finite nature of any award. At present, no such relief is available if a marriage is declared null and void.

Law Society President Ward McEllin launches the society's report on nullity at a press conference last month

The report calls for the introduction of 'clean break' divorce because assigning cases previously based on voidable grounds to the divorce jurisdiction would worsen the position of parties without this change. 'We also believe that clean break divorce should be examined on its own merits, in the interests of fairness and certainty', it adds.

Among its many other recommendations for reforming the law of nullity, the report proposes:

- The development of a special legal framework for couples who choose to live together. People could opt out of this 'code for cohabitees', but it would lay down assumptions and basic rights, just as the *Partnership Act* and the *Sale of Goods Act* did in other areas
- Any person wishing to marry must notify the registrar of any previous marriage ceremony to which he or she has been a party (even if it is void) and must satisfy the registrar as to his or her eligibility to contract the proposed marriage. Failure to comply with this requirement should be an offence.

Disabled rights conference

A conference on the legal and social rights of disabled people will be held on 23 November in the Conference Centre, Student Building, Belfield, UCD. The conference, which will also look at the implications of the equality legislation for the disabled, will run from 9.30am to 4.30pm, and costs £20 (including lunch). Mr Justice Donal Barrington will chair the morning session, while the afternoon session will be chaired by Mr Justice Declan Budd. For further information about the conference, contact Brian Sheridan on tel: 021 427 5998.

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in October: Michael P McMahon, 5/6 Upper O'Connell Street, Dublin 1 – £6,099.

LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME

Unit prices: 1 October 2001
Managed fund: 327.655p
All-equity fund: 90.388p
Cash fund: 188.233p
Pension protector fund: –

CIRCUIT COURT PRECEDENTS ON DISK

Former chief clerk of Cork Circuit Court, Sam Gill, has released an electronic version of his 1993 book *Draft order precedents in the Circuit Court*. The disk provides a comprehensive range of draft orders, covering such issues as injunctions, discovery, decrees and counterclaims, infant settlements, licensing, landlord and tenant, family law, High Court and Circuit Court appeals, and warrants. The precedents disk costs £50 and is available from Sam Gill, Knockanes, Adare, Co Limerick.

SIGN LANGUAGE COURSE IN THE LAW SCHOOL

The latest addition to the languages programme in the Law School is a course in *Irish sign language for beginners*, which is due to begin in early to mid-November. The course will span eight weeks and will take place on Tuesday evenings from 5.30-7pm in the Education Centre. The teacher, Helena Saunders, is a qualified trainer in Irish sign language and deaf awareness. Places are strictly limited to 15 and anyone interested should contact Deirdre Healy in the Law School as soon as possible on tel: 01 672 4802 or fax: 01 672 4803. The fee for the course will be £40.

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Letters

Groundhog Day for landlords?

From: Tony O'Toole, ACRA

It's that time of year again when the ground rent landlords start flexing their muscles and engage some members of the legal profession to use foul or fair means to get their feudal ground rent from the householders of Ireland.

As suggested by the Disciplinary Tribunal, we wish to bring the following to the attention of your members. A solicitor recently had to apologise to the Disciplinary Tribunal for threatening to issue a forfeiture notice leading to ejectment for non-payment of ground rent on a domestic dwelling. Forfeiture as a landlord remedy has been abolished since section 27 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* became law on 1 August 1978.

As the complainant, ACRA (the national body for residents' associations), made it clear to the Disciplinary Tribunal that it was not looking for heads, nor had we anything personal against the solicitor in question.

Over the years, many ordinary householders have suffered through exaggerated threats being made to them. ACRA'S campaign for the final and total elimination of ground rent on domestic dwellings continues apace.

We look upon the elimination of this feudal code as a necessary element of social and legal reform and would like to enlist the support of the entire legal profession to that end and consign it to the dustbin of history, where it properly belongs.

And, for the record, as chairman of the ACRA ground rent sub-committee, I was treated in a very fair way at the Disciplinary Tribunal.

A note from the Editor:
Mr O'Toole ought to be interested in the news story that appears on page 4 of this issue.

Over to you, Mr Browne!

From: Angela McCarthy, Cork

I am referring to a letter in the August/September issue of the *Gazette* (page 8) written by Niall Browne, Dublin, entitled *Concealment and 'unconscionable' actions*.

The letter highlights the hope and self-esteem we might all now nurture because of a Supreme Court majority judgment dealing with this issue and stated to be published in the Irish Law Reports Monthly.

We are given snippets of information in the letter – 'the judgment heading names it as fraud', that it 'was concerned with the issue of contract', that such actions were 'named unconscionable by the Supreme Court' and, finally, of course, that 'if a solicitor is aware of concealment of facts by the other side's client, there is a case law for him to rely on … that will give hope to both himself and his client'.

Hope is all the letter gives, as I remain in the hope of finding it (having spent an hour on it already). Perhaps the less ingenious of us could be given a few more hints as to its whereabouts in the ILRM, or maybe even a name and reference?

ON A WING AN

State aid to the airline sector in the European Union has become a subject of widespread legal interest since the destruction of New York's World Trade Center on 11 September. Clearly, several airlines that relied heavily on transatlantic routes for their profits have been presented with enormous operating and financial difficulties. This led to demands from those airlines for significant quantities of state aid to compensate for the loss of income. In response, the European Commission, which has strong powers of control based on articles 87 and 88 of the *EC treaty*, has taken a hard line and has, to date, signalled its approval of relatively limited aid.

On the one hand, this attitude has been denounced by some politicians as an unwarranted interference in the right of the Irish government to deal with a public sector company as it sees fit. On the other hand, the other major Irish carrier Ryanair has threatened to challenge even limited state aid granted to Aer Lingus and Sabena. So, just what are the rules applicable to the grant of state aid?

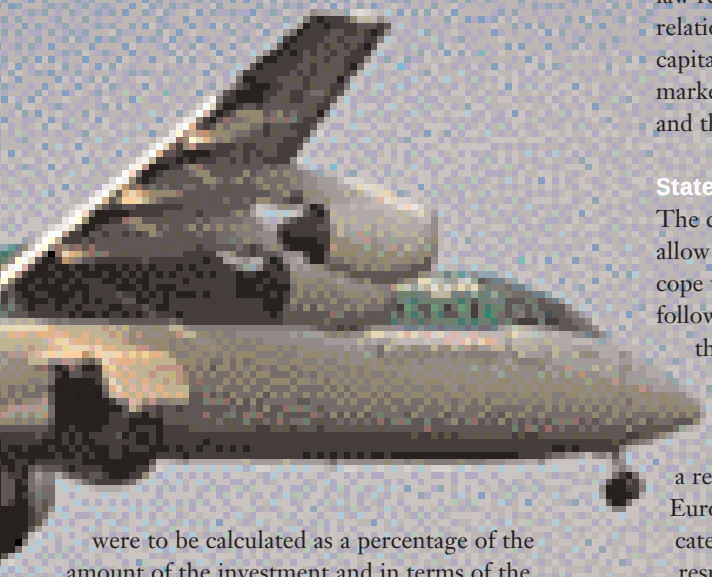
Three specific types of aid have been mooted recently for the airlines: a contribution to cover the losses in the days following 11 September, when airlines were prohibited from flying into the United States; a guarantee to cover insurance for war risk; and capital injections to restructure Aer Lingus and Sabena. Despite arguments to the contrary by several of the airline operators and sympathetic politicians, each of these constitutes state aid and is, therefore, subject to commission control.

A contribution to cover operating losses is categorised as operating aid. Operating aid is very rarely permitted by the commission since it is regarded as economically bad because it is not aimed at developing a company's business but merely props it up, thereby relieving the company of the competitive pressures of the market (see Case T-459/93, *Siemens v Commission* [1995] ECR II-1675).

Guarantees provided by the state, even though they do not involve the state in any immediate grant of finance, also qualify as state aid, since they relieve the company of the cost of acquiring the guarantee. In its 1997 *Report on competition policy*, the commission reported that a Netherlands scheme for reinsuring non-marketable risks (such as civil war, expropriation or nationalisation) relating to investments by Dutch companies was considered state aid, even though the scheme was self-financing, with the state body charging risk premiums that

Ever since the disastrous events of 11 September, the government has been trying to find ways of keeping Aer Lingus in the air. But no matter how much we want to fly the flag, the European Commission has other ideas – and state aid to national airlines is not one of them. Conor Quigley examines the legal framework that may yet clip Aer Lingus's wings

D A PRAYER



MAIN POINTS

- What constitutes state aid?
- Options open to Aer Lingus
- State aid provisions in the *EC treaty*

were to be calculated as a percentage of the amount of the investment and in terms of the political risks involved in each particular country. Where a borrower is unable to find a credit institution prepared to lend on any terms, the European Court has recently held (in Case C-288/96 *Germany v Commission* [2000] ECR I-nyr) that the entire amount of the secured loan which it obtains must be regarded as aid.

Injections of capital into a company by the state will also be classified as state aid where the investment is made in circumstances which would not appeal to a private investor, such as if there is no reasonable prospect of obtaining a reasonable return on the capital within a reasonable period. This applies even where the company is already wholly-owned by the state. For these purposes, EC law requires the state to have transparent financial relations with publicly-owned companies. If a capital injection is justifiable by reference to the market investor test, it will not constitute state aid and the commission cannot object to it.

State aid in exceptional situations

The commission intimated that it was prepared to allow certain aid to the airline sector in order to cope with the exceptional situation which arose following 11 September. However, it recognised that much of the problem facing the industry was as a result of chronic under-capitalisation and excessive fragmentation, the solution to which lay in a restructuring of the industry throughout the European Union. It therefore limited the categories of aid which it would allow as a direct result of the events of 11 September to aid justified under article 87(2)(b) to make good the damage caused by exceptional occurrences.

Article 87(2)(b) EC provides that aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market. Natural disasters include, for example, flooding, droughts, tornadoes, forest fires, earthquakes, volcanic eruptions, and diseases of plants and animals of catastrophic proportions. Exceptional occurrences include war, serious civil disturbance, nuclear explosions and other cases of *force majeure*. Aid may cover both the costs of repairing damage as well as compensation for economic loss. The aid must be limited to that which is necessary to make good the damage and

WHAT CONSTITUTES STATE AID?

No definition of state aid is provided in the *EC treaty*. Rather, article 87(1) EC provides that it applies to any aid granted by the state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods in so far as it affects trade between member states. Normally aid is given by way of a financial grant or through a tax exemption reducing the amount of tax otherwise payable by a company. It may, however, arise in other ways.

must not lead to over-compensation.

The commission considered that the costs arising directly from the closure of American airspace for four days was a direct consequence of the events of 11 September. Aid was therefore permitted as long as it was granted on a non-discriminatory basis to all airlines and was limited to the costs incurred. Aid to cover war-risk insurance which was not available on the commercial market was also permitted, on condition that a reasonable premium was charged (although this could be waived in the short term).

At one stage, it was apparent that the Minister for Public Enterprise, Mary O'Rourke, was seeking to bypass the commission's stringent control on state aid by appealing to the Council of Transport Ministers to intervene. Two means were open to the council to take a decision.

First, article 88(2) EC allows the council, acting unanimously, to authorise aid in derogation from the provisions of article 87, if such a decision is justified by exceptional circumstances (**see panel**).

Second, article 87(3)(e) says that the council, acting by a qualified majority on a proposal from the commission, and taking account of economic and social requirements, can extend the range of aids which may be considered compatible with the common market. In the past, for example, the council has authorised state aid to shipbuilding under this article. Indeed, the aid allowed to the shipbuilding industry included operating aid to allow shipbuilders in the European Union to compete on the world market. Arguably, this could have been used at least in order to counteract the effects of the $15 billion dollars of aid granted to the American airline industry and which might have distorted transatlantic competition to a considerable degree.

It appears that the council refused to agree to such measures. As regards article 88(2), it was reported that some member states were adamantly against allowing aid to the airline sector. Unanimity could not, therefore, be reached. Nor was article 87(3)(e) available to the minister of public enterprise, since the commission was unwilling to make the requisite proposal and, in any event, a qualified majority in support may not have been attainable. Regarding the effects of American aid, the commission held that aid must be examined in the context of its external trade policy. If it transpires that the American aid produces predatory effects, the commission reserves the possibility of further action.

Restructuring and rescue aid

Capital injections which do not satisfy the market investor test will only be allowed by the commission where they form part of a viable restructuring of the

WHAT ARE EXCEPTIONAL CIRCUMSTANCES?

The notion of exceptional circumstances must be wider than the notion of exceptional occurrences in article 87(2)(b), since otherwise it would be devoid of purpose. Nevertheless, it involves the idea of something extraordinary, unforeseen and not permanent. It might apply to facts or situations which may relate to one sector in particular or to the economy in general but which, assessed in the context of a specific member state or a specific sector, show that there has been a change on such a scale as compared to what was previously considered normal (or at least not extraordinary) that corrective measures are needed for which there is no provision in the existing rules governing the sector in question (see Case C-122/94, *Commission v Council* [1996] ECR I-881, *per* Advocate General Cosmas).

airline in question. The commission was not prepared to contemplate altering its approach to restructuring aid in the light of the events of 11 September. Since this was a matter which concerned the airline industry long before then, restructuring aid is to be subject to the normal rules applied in the context of article 87(3)(c) EC, which permits the authorisation of restructuring aid for firms in difficulty.

Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment, and the attendant social and economic problems, onto other producers who are managing without aid and to undertakings in other member states. The general principle followed by the commission is therefore to allow the grant of restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the Community interest.

Article 87(3)(c) EC allows aid for the development of economic areas or activities, not for the development of individual undertakings. It is the overall position in a given sector which should be taken into consideration, not the position of a few undertakings operating in that sector. Aid granted to individual undertakings must, therefore, have as its purpose the development of the particular sector or region. Consequently, state aid granted to a company which is used to offset losses and does not form part of a satisfactory restructuring programme is not permissible under article 87(3)(c) EC (see Case C-42/93, *Spain v Commission* [1994] ECR I-4175).

Rescue loans have been mooted as a short-term aid. In order to be approved by the commission, rescue aid must consist of liquidity support in the form of loan guarantees or loans at an interest rate at least comparable to those observed for loans to healthy firms. The aid must be warranted on the grounds of serious social difficulties, have no adverse spillover effect on other member states, and be restricted to the amount needed to keep the firm in business by covering, for example, costs of wages and routine supplies. It may initially be authorised for up to six months, although this period may be extended in exceptional circumstances. Where a restructuring plan is submitted to the commission, rescue aid is authorised until the commission has reached a decision on the plan.

Restructuring aid, in order to be allowed, must ensure that there is an improvement in the way in which the economic activity is carried out. It must be linked to a viable restructuring plan to which the member state concerned commits itself, in the absence of which the commission will not authorise the aid. The plan should provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital should be enough to enable the restructured firm to compete in the marketplace on its own merits. The commission is not entitled to insist on privatisation as a condition for permitting restructuring aid. Nevertheless, in the past, the commission has frequently observed that the member state concerned has agreed to privatisation, and this has been a factor taken into account when authorising restructuring aid.

A further problem for Aer Lingus is that it is the commission's stated policy that restructuring aid should be granted only once. Where restructuring aid has been granted to the firm in the last ten years, the commission will normally allow further restructuring aid only in exceptional and unforeseeable circumstances for which the firm is not responsible. Significant restructuring aid was granted to Aer Lingus in the 1990s.

If the commission agrees that Aer Lingus be awarded any further restructuring aid, it is a racing certainty that Ryanair will pounce on the commission in the courts for departing from this policy. Just what element of discretion is left to the commission will be a matter of considerable legal debate! G

Conor Quigley is a barrister specialising in EU law.

STATE AID PROVISIONS IN THE *EC TREATY*

Article 87:

1) Save as otherwise provided in this treaty, any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between member states, be incompatible with the common market
2) The following shall be compatible with the common market:
   a) ...
   b) aid to make good the damage caused by natural disasters or exceptional occurrences
   c) ...
3) The following may be considered to be compatible with the common market:
   a) ...
   b) ...
   c) aid to facilitate the development of certain activities or of certain economic trading areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest
   d) ...
   e) such other categories of aid as may be specified by decision of the council acting by a qualified majority on a proposal from the commission.

Article 88:

1) ...
2) ... On application by a member state, the council may, acting unanimously, decide that aid which that state is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of article 87 ... if such a decision is justified by exceptional circumstances ...
3) The commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid ... The member state concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

The long-running series of legal battles between Denis Riordan and the state, and more recently the judiciary itself, looks to have come to an end – at least for the moment – with the imposition of two *Isaac Wunder* orders on the litigious Limerick lecturer. Dessie Shiels outlines the background to the recent committal of Mr Riordan to prison for contempt by the Supreme Court

MAIN POINTS

- Denis Riordan's history of litigation
- Integrity of the judiciary questioned
- What are *Isaac Wunder* orders?

On 5 October 2001, Limerick lecturer Denis Riordan was jailed for contempt of court after having accused three members of the Supreme Court, before whom he was appearing, of being 'corrupt'. The accusation came during a court application in respect of a previous court order made against him following his unsuccessful challenge to the way in which the *Good Friday agreement* referendum had been conducted. This was not the first time that Mr Riordan had clashed with the judiciary. Nor was it his first major setback.

The contempt incident came only a short time after the significant decision in *Riordan v An Taoiseach and Others* (unreported, High Court, 11 May 2001), which, although nowhere near as well publicised, probably marked the effective end of Mr Riordan's campaign of challenging the state over the exercise of its legislative and executive functions. In that case, the provisions of a previously-granted *Isaac Wunder* order took effect to ensure that Mr Riordan could not issue his proposed proceedings against the government or any member of the government without the prior consent of the High Court.

WUNDE

Whether or not one is convinced of Mr Riordan's oft-discussed media image as a 'guardian of the public interest' is of little significance, but there is no getting away from the fact that at least some of the litigation he has engaged in recently has been an abuse of process. So just how did Mr Riordan go from being someone who initially challenged governments in the exercise of their functions and accepted defeat as it came, to being someone who began to question the decision-makers themselves – the judiciary – and who eventually succumbed to the 'martyrological' approach of inviting his own imprisonment for contempt by accusing Supreme Court judges of 'corruption'?

Multiple proceedings

The Riordan saga effectively began with the case of *Riordan v An Tánaiste Dick Spring* ([1996] 2 ILRM 107), where Budd J in the High Court accepted that Mr Riordan was a citizen with a 'genuine and sincere interest in the political life of the country'. Accordingly, he had the *locus standi* to bring proceedings seeking a declaration that the actions of a particular member of the government were contrary to, and in breach of, the constitution.

Mr Riordan contended that since article 28.6.3 of the constitution required that the tánaiste either act

Limerick lecturer Denis Riordan talks to the media outside the Four Courts in Dublin after losing his High Court challenge to the nomination of Hugh O'Flaherty to the European Investment Bank

ERWALL

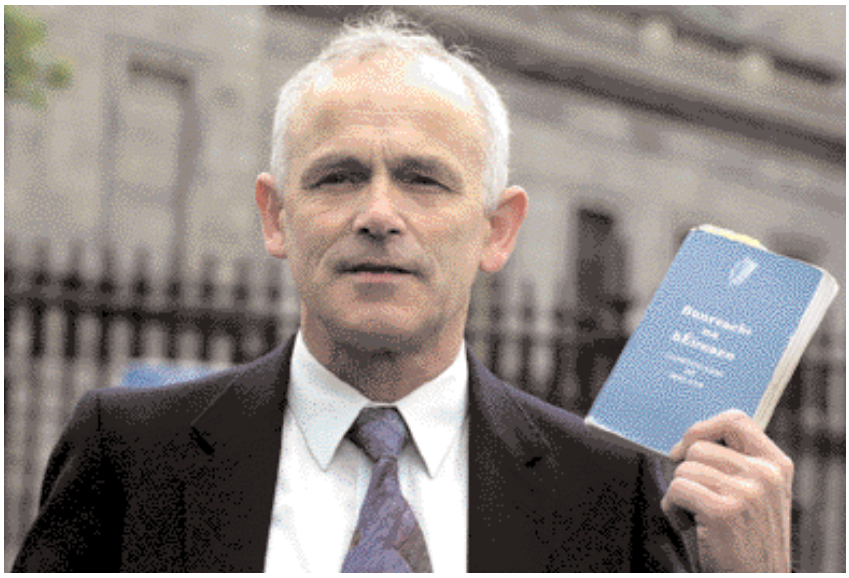
for, or in place of, the taoiseach during the taoiseach's 'temporary absence', it was unconstitutional for both office-holders to be absent from the state at the same time. The High Court, however, took a broad interpretation of the constitutional provision and held that 'temporary absence' did not have a simple geographical meaning but instead meant a temporary absence from the ability to perform duties.

Mr Riordan's appeal to the Supreme Court ([1998] 1 ILRM 494) was subsequently dismissed.

His next case was *Riordan v An Taoiseach John Bruton and Others* ([1999] 4 IR 321, High Court, 1997 and Supreme Court, 1998), where he went into overdrive with a litany of challenges to the government which had left office on 26 June 1997. Mr Riordan challenged the constitutional validity of both the *15th Amendment to the Constitution Act, 1995* (which permitted divorce legislation) and the *Family Law (Divorce) Act, 1996*. Further, he challenged the appointment of Alan Dukes as a member of that government, the establishment by that government of the office of tánaiste and the appointment of a minister of state to that office. Finally, he challenged the appointments of Mr Justice McCracken as sole member of a tribunal and Ms Justice Carroll as chairperson of a committee on nurses' pay.

All these challenges were dismissed by both the High Court and, on appeal, the Supreme Court.

In *Riordan v An Taoiseach Bertie Ahern and Others* ([1999] 4 IR 343, High Court, 1998 and Supreme Court, 1998 and 1999), Mr Riordan initially applied



The good book: the greatest gift is a sound constitution

by judicial review proceedings to restrain the holding of the referendum on the 19th amendment to the constitution (the *Good Friday agreement* referendum) on the basis that article 46 of the constitution was being violated in the procedure which had been adopted by the respondents. Essentially, he argued that the Oireachtas could not propose, and the people could not approve of, a conditional amendment to the constitution.

Having considered and dismissed legal arguments to that effect, the High Court (Kelly J) went on to consider the delay which had occurred before Mr Riordan had brought his application. Even though both houses of the Oireachtas had passed the relevant bill on 22 April 1998, Mr Riordan had left it until 19 May 1998 to seek the judicial review to restrain the holding of the referendum, which was due to take place on 22 May 1998. Kelly J made it clear that even had Mr Riordan been successful in the legal arguments already considered by him, the High Court would in any event have dismissed his proceedings for the sole reason of Mr Riordan's unacceptable delay.

Mr Riordan then appealed that High Court decision to the Supreme Court after the amendment had already been made to the constitution. He was again unsuccessful in bringing a motion as part of his appeal process to stay the order previously made by the High Court and in seeking leave to extend the grounds of appeal. Mr Riordan, in any event, proceeded unsuccessfully with his substantive appeal that the *Good Friday agreement* referendum had been in breach of article 46 of the constitution.

The summer of 2000 was to prove a busy one for

DEALING WITH VEXATIOUS LITIGANTS

The whole episode of the various Riordan proceedings raises a further interesting question for the Irish legal system. While *Isaac Wunder* orders do provide an effective remedy to restrict plaintiffs in respect of particular defendants, they do not, however, provide a remedy in cases where a plaintiff issues multiple sets of proceedings which are repeatedly an abuse of process in respect of different defendants. The Riordan proceedings raise the question of the possible need for legislation to provide for such a remedy in Ireland.

The need for such a jurisdiction to deal with what are colloquially known as 'vexatious litigants' has been recognised in the UK. Section 42 of the Britain's *Supreme Court Act 1981* provides that the attorney general may seek a court order against any person who has 'habitually and persistently and without any reasonable ground' instituted vexatious legal proceedings or made vexatious applications, preventing that person from ever instituting any proceedings without the leave of the High Court. Orders against 'vexatious litigants' have been granted frequently. While they are generally granted against litigants who engage in much relitigation, one particular case illustrates how the true value of the jurisdiction lies where a plaintiff engages in litigation to the point of ludicrousness.

In *HM's Attorney General v Low* (EWHC, 14 January 1998), the respondent, Mr Low, was a minister in the 'Transcendental Meditation Movement' and held 'passionate views' as to the 'care of animals and the wellbeing of human beings'. At least 36 actions brought by him had come to an end after court orders were made striking out his claims. The attorney general set out in great detail the various proceedings which Mr Low had brought. The list was, to say the least, spectacular. Those who had been sued by Mr Low included his own solicitors and counsel and those of various defendants, any number of the judiciary and administrative staff of the courts, the then prime minister John Major, eight cabinet ministers, the chancellor of the exchequer, the home secretary, the English queen in her capacity as patron of the RSPCA, the secretary of state for Wales over a planning matter, and a firm of tree-felling experts.

Not content with matters with a public element, Mr Low sued a car dealer over an unsatisfactory car and some veterinary surgeons after the death of some of his dogs. To further present his views, he took issue with the Archbishop of Canterbury over the archbishop's attitude in respect of abortion, homosexuality, the opening hours of public houses and shops, and the national lottery.

To cap it all, he brought proceedings against Wrexham Borough Council and 27 other defendants, upon which the master of the High Court commented that 'only a genius could understand the endorsement on the writ'. In such circumstances, the court decided that an order under section 42 of the *Supreme Court Act 1981* was warranted to prevent Mr Low from ever again bringing proceedings of the kind which he had shown a clear propensity to bring.

This plethora of proceedings is the most extreme example of what can happen when a litigant decides to exercise his right of access to the courts in a consistently abusive manner to ludicrous extremes. In such cases, an order of the kind granted in the UK under section 42 of the *Supreme Court Act 1981* can clearly be seen to be necessary and justified. It remains to be seen whether the Irish courts will ever be faced with such an extreme example as that of Mr Low, but it is possible.

The multiple Riordan proceedings have demonstrated that it is possible for a person to bring proceedings before the Irish courts in any number of matters against any number of defendants. In an extreme case, where such proceedings are judicially determined to be an abuse of process, *Isaac Wunder* orders will be of limited value only.

The Irish courts might in the future find themselves considering the need to grant, pursuant to their inherent jurisdiction, an order akin to that under section 42 of the UK's *Supreme Court Act 1981*.

Alternatively, similar Irish legislation may be required.

Mr Riordan. On 12 June 2000, in *Riordan v An Taoiseach and Others* (unreported, High Court, 12 June 2000), he began his challenge to the nomination by the government of Hugh O'Flaherty as vice-president of the European Investment Bank. He sought a declaration that since the government had deprived him of the opportunity to apply for the post, the method of Mr O'Flaherty's selection was unconstitutional. Having found that the government in exercising its executive function in that regard did not have to notify the public and accept applications, the High Court (Morris J) refused the declaratory relief sought. Once again, Mr Riordan unsuccessfully appealed to the Supreme Court.

Questioning the *bona fides* of the judiciary

With defeats suffered over the divorce legislation, the *Good Friday agreement* referendum and the O'Flaherty nomination, it would not have been surprising had Mr Riordan taken a break from his challenges – or ended them altogether. However, in summer 2000, Mr Riordan began proceedings seeking to question the very *bona fides* of the judiciary itself. Such proceedings were not and could not be welcomed. The oath of office taken by members of the judiciary requires them to duly and faithfully execute their office 'without fear or favour, affection or ill will towards any man' and to uphold 'the constitution and the laws'. Judges do not act as extensions to the government or the Oireachtas in defending the exercise of their respective functions at all costs. Where, however, as with Mr Riordan's cases, those executive or legislative functions have been exercised in accordance with the constitution, judges are required to uphold their legality. Where they do so, it is not in the public interest, constitutionally or democratically, that they should be subjected to allegations that they have acted with *mala fides*.

In *Riordan v An Taoiseach and Others* (unreported, Supreme Court, 29 June 2000), Mr Riordan contended by motion that judgments and orders of the Supreme Court previously given in the proceedings under consideration were fundamentally flawed by major errors in the application of the law and interpretation of the constitution, including, it was contended, at least one repudiation of the constitution. This, he contended, meant that the judiciary was 'corrupt' in rendering corrupt judgments and had acted with *mala fides*. His contentions were founded on what he described as the magnitude of the errors from which they could be deduced. His contentions were given short shrift in a judgment by Murray J in the Supreme Court and were dismissed as an abuse of process as being bound to fail under the test in *Barry v Buckley* ([1981] IR 306) and as having already reached final determination.

The Supreme Court went on to consider and reject a further contention made by Mr Riordan that questioned the impartiality of two of the judges involved in previous decisions by suggesting that the two judges in question had an interest in such proceedings.

That Supreme Court judgment (29 June 2000) had followed closely the High Court (Smyth J) decision in *Riordan v Chief Justice Hamilton and Others* (unreported, High Court, 26 June 2000), where Mr Riordan's proceedings were against the entire Supreme Court, again attacking them personally. There, Mr Riordan had to be warned about the manner in which he addressed the court, with the High Court stating:

'It is, of course, possible to criticise people in a civilised way without using such language. Generally, most people disregard the views of others unless they are of the same opinion. It is not, however, a very sound way testing reasonableness and does not necessarily accord with critical intelligence'.

The High Court also ordered that Mr Riordan's proceedings be stricken from the record of the court, as containing scandalous or unnecessary matters.

Significantly, the High Court on that occasion (26 June 2000) also imposed an *Isaac Wunder* order on Mr Riordan, characterising his proceedings as 'a range of proceedings in the nature of serial litigation compounded one on the other'. In following the earlier decision in *McSorley v O'Mahony* (unreported, High Court, 6 November 1996), the High Court held that Mr Riordan's present case was an abuse of process, since it was the type of litigation that could confer no benefit on a plaintiff but which would undoubtedly cause detriment to a defendant.

The defeats which Mr Riordan suffered in the High Court decision of 26 June and the Supreme Court decision of 29 June would have deterred most

DENIS RIORDAN'S LITANY OF LITIGATION

- *Riordan v An Tánaiste Dick Spring* ([1996] 2 ILRM 107): Riordan unsuccessfully argues that it was unconstitutional for both taoiseach and tánaiste to be absent from the state at the same time
- *Riordan v An Taoiseach John Bruton and Others* ([1999] 4 IR 321, High Court, 1997 and Supreme Court, 1998): Riordan unsuccessfully challenges the constitutional validity of both the *15th Amendment to the Constitution Act, 1995* and the *Family Law (Divorce) Act, 1996*, as well as the right of High Court judges to hold office outside the High Court
- *Riordan v An Taoiseach Bertie Ahern and Others* ([1999] 4 IR 343, High Court, 1998 and Supreme Court, 1998 and 1999): Riordan unsuccessfully challenges the holding of the *Good Friday agreement* referendum and the constitutionality of the proposed amendment
- *Riordan v An Taoiseach and Others* (unreported, High Court, 12 June 2000): Riordan unsuccessfully challenges the nomination by the government of Hugh O'Flaherty to the European Investment Bank
- *Riordan v Chief Justice Hamilton and Others* (unreported, High Court, 26 June 2000): Riordan unsuccessfully takes proceedings against the entire Supreme Court, attacking them personally
- *Riordan v An Taoiseach and Others* (unreported, Supreme Court, 29 June 2000): Riordan unsuccessfully contends that the judiciary was 'corrupt' in rendering corrupt judgments and had acted with *mala fides*
- *Riordan v An Taoiseach* (unreported, High Court, 11 May 2001): Riordan unsuccessfully challenges the membership of the Supreme Court which heard one of his earlier appeals.

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'serial' litigators from again personally attacking the integrity of judges in the exercise of their judicial functions. But Mr Riordan was to take it one step further. On 5 October 2001, in an application for a stay on a costs order resulting from his unsuccessful challenge to the *Good Friday agreement* referendum, he made the 'corruption' allegation already referred to against the three members of the Supreme Court constituting the court on that day. Notably, this was not Mr Riordan's first serious step over the line with the Supreme Court. He had previously been escorted from the Supreme Court on 19 November 1998 during his substantive appeal on the *Good Friday agreement* referendum after he had told the then chief justice, Liam Hamilton: 'You are a disgrace to your country. You are a traitor to the constitution'.

Isaac Wunder orders

Mr Riordan has now had two *Isaac Wunder* orders granted against him – in respect of proceedings against the government and its members on 25 March 1999 by O'Sullivan J and (as referred to above) in respect of members of the High and Supreme courts by Smyth J on 26 June 2000. His appeals to the Supreme Court against those orders have since been dismissed. The effect that these orders are likely to have on his future capacity to bring proceedings against those parties was illustrated by the High Court (O'Caoimh J) decision in *Riordan v An Taoiseach* (unreported, High Court, 11 May 2001). There, the *Isaac Wunder* order previously granted by O'Sullivan J in March 1999 came into operation.

The most stark of Mr Riordan's proposed proceedings in his May 2001 application were a challenge to the constitution of a previous Supreme Court which had heard one of his numerous appeals (one of the judges who had sat on that court ordinarily being a member of the High Court) and a challenge to the constitutionality of the provisions of the *Courts (Establishment and Constitution) Act, 1961*, in particular sections 1(3) and 1(4), which permit a High Court judge to sit, where necessary, as part of a Supreme Court.

In light of the previous decision in *Cahill v Sutton* ([1980] IR 269), O'Caoimh J did not accept that Mr Riordan had any *locus standi* to challenge sections 1(3) and 1(4) of the 1961 act. Further, since article 36 of the constitution permitted the constitution of the Supreme Court to be regulated by law, Mr Riordan's action could not succeed, O'Caoimh J stating: 'I believe that the action can lead to no possible good and that no reasonable person could reasonably expect to obtain relief. I am further of the view that the purpose for which this proposed action is sought to be brought is an improper purpose, namely, the harassment and oppression of the various parties referred to in the proceedings already determined by the Supreme Court and that the proposed action is other than the assertion of a legitimate right'.

For similar reasons, the judge refused Mr Riordan consent to issue proceedings to challenge to the constitution of the previously sitting Supreme Court or to challenge other sections of the 1961 act or to challenge the appointment of Bobby Molloy as a minister of state to the government or to challenge the validity of the special savings scheme established by the government under section 33 of the *Finance Act, 2001*.

The significance for Mr Riordan of that High Court decision on 11 May 2001 is that it marked an end to Mr Riordan's proposed proceedings before they got off the ground. The value of the operation of the *Isaac Wunder* order was that the court was only interested in whether a viable cause of action existed, not in the merits of any contentions which might be made in support of such a cause of action at trial.

The granting of an *Isaac Wunder* order against Mr Riordan in *Riordan v Chief Justice Hamilton and Others* (unreported, High Court, 26 June 2000) in respect of all members of the High and Supreme courts will likewise mean that Mr Riordan will not be freely able to launch challenges to the judiciary who hear his cases in the future, but will similarly have to first apply for court consent to issue proceedings and in so doing demonstrate that a viable cause of action exists.

Where does he go from here?

For the moment, at least, it is difficult to predict where Mr Riordan's legal challenges may take him next. Until now, no number of legal setbacks seemed to have stemmed his willingness to bring or seek to bring more and more proceedings to challenge the state or the judiciary who ruled on his challenges. However, the enforcement by the state of various costs orders made against him may affect his litigious capacity, as will the effect of the *Isaac Wunder* orders made against him. His recent seven-day period of imprisonment for contempt will also surely deter him.

Who knows? A European challenge may be next. G

Dessie Shiels is a solicitor with the Dublin law firm McCann FitzGerald and is the author of a forthcoming book on the law of abuse of process to be published by Inns Quay Publishing in January 2002.

WHAT IS AN *ISAAC WUNDER* ORDER?

Essentially, an *Isaac Wunder* order (the name comes from the case of *Wunder v Hospitals Trust*, unreported, Supreme Court, 24 January 1967) obliges a litigant who is found to have instituted proceedings which are an abuse of process against another party to apply to court for its prior consent before that litigant can issue fresh proceedings against that same party. Usually, such a litigant will either have persistently brought proceedings which are an abuse of process against a particular defendant or defendants or have intimated that he intends to do so. In effect, it is an 'anti-harassment' filtering device whose aim is to ensure insofar as is possible that only proceedings with a legitimate place before the courts find their way there.

In discussing the basis for granting such an order against Mr Riordan, the High Court (on 11 May 2001) referred to the earlier decision in *O'Malley v Irish Nationwide* (unreported, High Court, 21 January 1994), where the High Court had stated: 'Such an order is made in very rare circumstances but it is one which the court should make when it comes to the conclusion that its processes are being abused'.

During his substantive appeal on the Good Friday agreement referendum, he told the then chief justice, Liam Hamilton: 'You are a disgrace to your country. You are a traitor to the constitution'

Bridge over troubled waters

The Cork Solicitors' Helpline recently hosted a seminar on different ways to help solicitors cope with the stress in their lives. Lucia Fielding finds inner peace and meditates on what was discussed

Michael Houlihan began proceedings with an informative contribution in which he emphasised the importance of our colleagues in our professional lives, quoting a past-president of the Law Society: 'Your colleagues are your colleagues for life, and your clients are your clients for today'. He coupled this with a warning to younger members of the profession who may be vulnerable to 'clients of prey', and stressed the absolute necessity of being able to say 'no'. He observed: 'If you smell a rat, it is a rat'.

He acknowledged the stress caused by the increase in the pace of professional practice and its associated pressures, but added that he had found team support to be the answer. While he did not wish to sound negative about the efforts of single practitioners, Houlihan believed that they needed the rapport, the sharing and the support of colleagues.

It is one of the helpline's aims to encourage this understanding and co-operation among practitioners.

Failure or delay in reporting possible claims to the SMDF exacerbated the stress involved for a practitioner, he said. Warning that many practitioners find themselves under-insured, he urged solicitors to concentrate on their cover needs rather than relying on the minimum cover level required.

He concluded with a malpractice prevention checklist, which was both helpful and constructive.

Judge James McNulty reflected on his life as a private practitioner for 21 years and gave some practical tips on dealing with stress and improving the quality of life (**see panel**). He alerted practitioners to the early warning signs of increasing stress levels, such as persistent headaches, sleeplessness, irritability, short-temper and poor concentration, and advised that you should treat any of these warning signs as a wake-up-call, and do something about it.

While life cannot and should not be stress free, he said, practitioners should try to achieve a balance in life between the core areas of home, relationships, friendships, recreation and work.

Muriel Wall's presentation concentrated on the difficulties encountered by women in the profession, and she made some very practical suggestions. She noted that there is no gender obstacle on entering the profession or in the immediate post-qualification period. However, family commitments, excessive working hours and the lack of a network are some of the obstacles faced when women seek promotion.

She noted that the average age at qualification is now 24 years or older, resulting in long-term relationships being avoided, or deferred, and families being delayed. As a result, promotion, long-term relationships, marriage and children tend to collide. Outlining the strains of arranging family life and childcare in a dual-career family, she said that in reality the burden of the children often still remains with the mother.

Women who do too much and try to be twice as good as their male counterparts were warned to look at the significant cost to their own personal needs. Walls advised women who find it difficult to juggle the roles of solicitor and mother – and the associated guilt at not succeeding at either – to focus on work while at work and on the family while at home.

She concluded with a reflection on living in the present. 'Yesterday is a cancelled cheque; tomorrow is a promissory note', she said. 'Today is cash in hand: spend it wisely'. G

Lucia Fielding is a partner in the Cork law firm MJ Horgan and Sons.

SPEAKERS AT THE CORK HELPLINE CONFERENCE

- Ennis-based solicitor Michael Houlihan, past-president of the Law Society and a board member of the Solicitors' Mutual Defence Fund
- Judge James McNulty, recently appointed to the District Court and formerly a solicitor in private practice in Cork for 21 years
- Muriel Walls, partner with McCann Fitzgerald and head of that firm's private client group

TOP TIPS FOR RELIEVING STRESS

- Take no calls before 10.30am, to ensure a minimum of two hours' daily quality time for desk work
- Take no appointments before lunchtime, to leave mornings free for court, desks and phones
- Pay attention to diet and exercise and consider meditation
- Add an extra day to every bank-holiday weekend
- Switch to Lyric FM for journeys to and from work
- Above all, be good to yourself!

MAIN POINTS

- **Importance of support among colleagues**
- **Tips for relieving stress at work**
- **Challenges facing women in the workplace**

CORK SOLICITORS' HELPLINE

The Cork Solicitors' Helpline is totally independent of the Law Society and the Southern Law Association. It aims to provide support for solicitors who, for whatever reason, are finding it difficult to cope. All matters are treated sensitively and with the utmost confidentiality. For helpline numbers, contact Colette Curtin, SLA law library, tel: 021 427 5341.

FLAC's Catherine Hickey

Flying the FLAC

The Law Society's decision to add FLAC as a beneficiary on the practising certificate application form has given a big boost to FLAC's resources. But support from members is still required, writes Catherine Hickey

MAIN POINTS

- What services does FLAC provide?
- Urgent need for more volunteer solicitors
- FLAC's policy of taking test cases

The Free Legal Advice Centres (FLAC) were set up in 1969 to campaign for a comprehensive scheme of legal aid and advice. FLAC is a company limited by guarantee and without share capital. It is registered with the Revenue Commissioners as a charity, and is an independent non-governmental organisation committed to meeting the legal needs of people living in poverty. It aims to bring about law reform, in particular in the areas of social welfare, employment and debt, and to secure effective and equitable access to the legal process for the socially and economically disadvantaged. Current research projects include:

- A comprehensive analysis of civil legal aid in Ireland
- An analysis of the scheme of direct provision in Ireland for asylum seekers
- A report on debt and the legal system in Ireland and the use of attachment of earnings for non-payment of civil debt.

Last November, the Law Society Council voted to add FLAC as a beneficiary on the practising certificate application form in the same way as the Solicitors' Benevolent Association. This generous gesture gives the society's members the option of contributing £10 to FLAC, and this has had a significant impact on our resources this year. We are indebted to the Council and to practitioners for the moral and practical support they have given to FLAC over the years and for the increased financial support in 2001 and into the future. This support will help to realise FLAC's objectives.

Many members of the Law Society not only make the voluntary contribution of £10 to FLAC but also volunteer to provide legal advice in our 42 voluntary advice centres to those who cannot afford legal services. Their commitment varies from two hours a week to two hours a month, depending on the needs of their local centre and the resources available. Many volunteers have remained with FLAC for years. Staff at one law firm, A&L Goodbody, service the Meath Street FLAC centre every week and operate a roster system whereby Goodbody staff attend on a bi-monthly or quarterly basis.

Situations vacant

Many FLAC centres have great difficulty attracting volunteers, either because they are in remote areas or are located in suburbs in disadvantaged

CALLING ALL APPRENTICES!

FLAC, in association with the law school of the University of Washington in Seattle, USA, is currently inviting applications for the Thomas Addis Emmet Fellowship in International Public Interest Law.

The university has one of the most prestigious law schools in the US and, in common with most major US schools, runs a legal aid clinic on campus, providing a variety of free services to disadvantaged members of the local community. This programme will send one Irish law student to Seattle for two months next summer to gain hands-on experience of human rights and public interest cases. The successful candidate will work in the campus clinic or an associated clinic providing public legal services. The fellowship will cover flights, accommodation and provide a subsistence allowance.

The selection of candidates for interview will be based on an application form. A shortlist of applicants will be selected for interview in February to determine the successful candidate.

The successful candidate in 2001, Maeve Ní Liatháin, worked in the domestic violence unit of the Northwest Immigrants Rights Project in Seattle for nine weeks. There, she helped women who had experienced domestic violence to make applications for legal residency in their own right. Maeve also worked in the Federal Public Defender's Office, where she reviewed cases of immigrants in Immigration and Naturalisation Service custody because of a new federal ruling which could assist their cases.

For an application form or further information, contact FLAC's head office on tel: 01 679 4239.

communities. To keep the service going, FLAC now needs to attract 100 volunteer solicitors in our centres nationwide. The areas of greatest need include:

- Co Wexford – Wexford town
- Co Leitrim – Carrick-on-Shannon
- Co Longford
- Co Clare – Ennis
- Co Limerick – Limerick city
- Co Donegal – Letterkenny
- Co Monaghan
- Co Kildare – Newbridge
- Co Dublin – Swords, Beaumont, Ballyfermot, Clondalkin, Tallaght, Dundrum, Stillorgan and Finglas.

WHAT SERVICES DO THE FLAC CENTRES PROVIDE?

Advisors provide 'first stop' instant access to free legal information and advice. The centres act as 'signposts', helping clients to decide if the law can help them solve their problems, suggesting the options open to them and advising them about where they can get further assistance. The centres are open to everybody and there is no application procedure.

While we are open to queries on every aspect of the law, we cannot guarantee that our advisors have expertise in all areas.

Testing the water

FLAC takes strategic test cases to the High Court. This strategy uses litigation as an adjunct, where appropriate, to the anti-poverty elements of our work. The main purpose of any individual test case is to develop new rights and/or to strengthen acknowledged rights among the class of people affected by the issue. FLAC gives priority to areas of legal aid, housing, social welfare, employment, debt and travellers' rights. We would like to hear from practitioners about likely case material which fits our test-case strategy.

FLAC would not survive without your support as volunteers and as financial contributors. We look forward to working together with you to promote access to justice for all and we welcome your ideas for cases which fit FLAC's test-case strategy. G

Catherine Hickey is the executive director of FLAC, 49 South William Street, Dublin 2 (tel: 01 679 4239, e-mail: flac@connect.ie).

Davy
STOCKBROKERS

The pension fun

If you plan your finances correctly, you should never need to spend the money accumulated in your pension fund, writes Tom Berrigan

Tom Berrigan: approved retirement funds (ARFs) provide a tax-exempt structure for retaining control of your pension capital

Most solicitors see their pension fund as a form of personal saving which just happens to be tax effective. They believe that at retirement they will take their 25% tax-free lump sum and use the balance to do whatever!

Will they buy a pension? Not necessarily. As a result of the introduction of approved retirement funds (ARFs), there is no longer a requirement to buy a pension. Instead, individuals at retirement can transfer the balance of their fund into an ARF. By doing so, they can both retain control of their capital and enjoy tax-free growth as long as the funds remain within the ARF structure. Income tax at the marginal rate will be levied on any withdrawals that they make from their ARF fund.

The important points to note are:

- Pension contributions, subject to certain limits (see **Table 1**), are deductible for income tax purposes
- 25% of the accumulated value of the pension fund can be taken tax free at any point between age 60 and age 75
- The remaining 75% can either be used to purchase an annuity or transferred to an ARF where it will continue to accumulate tax free. Tax is paid only on withdrawals
- On death, the capital value of the ARF can be transferred to a spouse without incurring any tax. However, any subsequent withdrawals by the spouse will be subject to income tax in the usual manner
- Where the capital value of an ARF is left to children who are over age 21, they will be subject to the basic rate of income tax (currently 20%) on the value of these funds. Importantly, however, they will have no further liability to inheritance tax on these monies.

Why you should not spend your pension fund

As you can see from this, ARFs provide a tax-exempt structure for retaining control of your pension capital and the means by which you can pass this capital tax effectively to your spouse or children. However, a lot of the tax efficiency is lost when either you or your spouse withdraw funds, as these withdrawals are subject to income tax at the marginal rate.

The ideal situation is to provide income from other resources and to leave intact the capital within the ARF.

Most people intend leaving something to their children and usually earmark assets for this purpose. These assets tend to consist of either cash or property. But, generally speaking, people tend to avoid using these funds in their own lifetimes, preferring to live off their pension fund and any rental income they can generate.

Yet both the rental income and withdrawals from the pension fund are subject to income tax rates of up to 42%. If these individuals had instead spent their cash resources, there would be no tax liability, or at worst they might pay 20% capital gains tax on any realised investment profits.

More importantly, instead of paying up to 42% tax on the withdrawals from their ARF, these sums would continue to enjoy the tax-free growth afforded to ARF funds. And, finally, their adult children would only be taxable at 20% on the ARF funds bequeathed by their parents.

d you'll never spend

A case study might illustrate matters more clearly.

John is a partner in a medium-sized law firm and has just turned 60. He would like to either retire or reduce his working week. He has the following assets: a private home (no mortgage), rental income from two investment properties of £19,000 a year, investment funds and equities (£300,000), and pension funds of £800,000. His current income (including profit share) totals £100,000 (or **£66,580 net of tax**).

He is told he can continue with the firm on an initial three-day basis with a view to reducing this to two days. Expected income would be in the order of £20,000 a year. John has three children; one married, one single and employed, and one at college.

Our advice in this example

John's initial income in retirement would be:

- Rental income – £19,000
- Practice income – £20,000
- Total – £39,000 (providing a net income of **£31,200**).

From his pension fund, he should withdraw £200,000 (25%) tax free and place the balance in an approved retirement fund.

His personal cash funds now consist of £500,000 (£200,000 plus £300,000 investments). This sum would generate a tax-free annual income of £15,000 and still provide for capital appreciation on the initial sum. John's total net income now amounts to **£46,200** a year.

He should continue to make pension contributions based on his practice income of £20,000 a year. This will allow him to offset £6,000 a year for tax purposes and provide a further tax-free lump sum at a future date.

John should earmark the money in his ARF for the children, as these funds will accumulate tax free and the proceeds will only be subject to 20% income tax in the hands of the children. If he makes withdrawals from the ARF or purchases an annuity, John would have to pay 42% tax on the value of the withdrawals.

As they grow older, both John and his wife will retain control over the money in the ARF. If circumstances dictate, they could make withdrawals from the growth of the fund to supplement their income requirements. However, the residual capital value would remain intact for the children.

As always, professional advice should be sought when assessing your retirement position – whether you are financially secure or have concerns over your ability to generate sufficient income in retirement. G

Tom Berrigan is a director of Davy Stockbrokers' private clients division. Davy has been appointed by the Solicitors' Retirement Fund Committee to provide professional services to members seeking advice in relation to their retirement benefit options.

APPROVED RETIREMENT FUNDS VERSUS ANNUITIES

In recent years, the downward trend in prevailing interest rates has led to a dramatic fall in annuity rates. Thankfully, individuals are no longer required to immediately purchase annuities on retirement and can opt instead to retain their pension capital in an approved retirement fund (ARF).

The individual can choose to make income withdrawals from their ARF or retain the capital intact with a view to purchasing an annuity at a later stage. In such cases, the annuity rate will invariably rise as the individual becomes older and they may also benefit from any alteration in prevailing interest rates.

Income derived from either an ARF or an annuity is subject to the individual's marginal rate of income tax. The downside with an ARF is that continuous withdrawals or bad investment management would deplete the capital and the individual would effectively run out of money. This cannot occur with the annuity structure, as the pension agreed at the outset is available for the individual's lifetime.

APPROVED RETIREMENT FUNDS	ANNUITY
Individual retains control of pension fund capital	Capital is relinquished for annuity
No defined level of income	Defined level of income agreed from outset
Ability to alter income withdrawals	Unless indexed-linked, no alteration facility
Capital can be left to spouse	Unless spouse's pension in place, annuity ceases
Capital can be left to children	Generally no provision for children
Risk of running out of capital / income	Guaranteed for individual's lifetime

TABLE 1: PERSONAL PENSION CONTRIBUTIONS: INCOME TAX RELIEF

(£200,000 ceiling for income tax purposes)

Age	%
30 and under	15%
31-39	20%
40-49	25%
50 and over	30%

Contract Law

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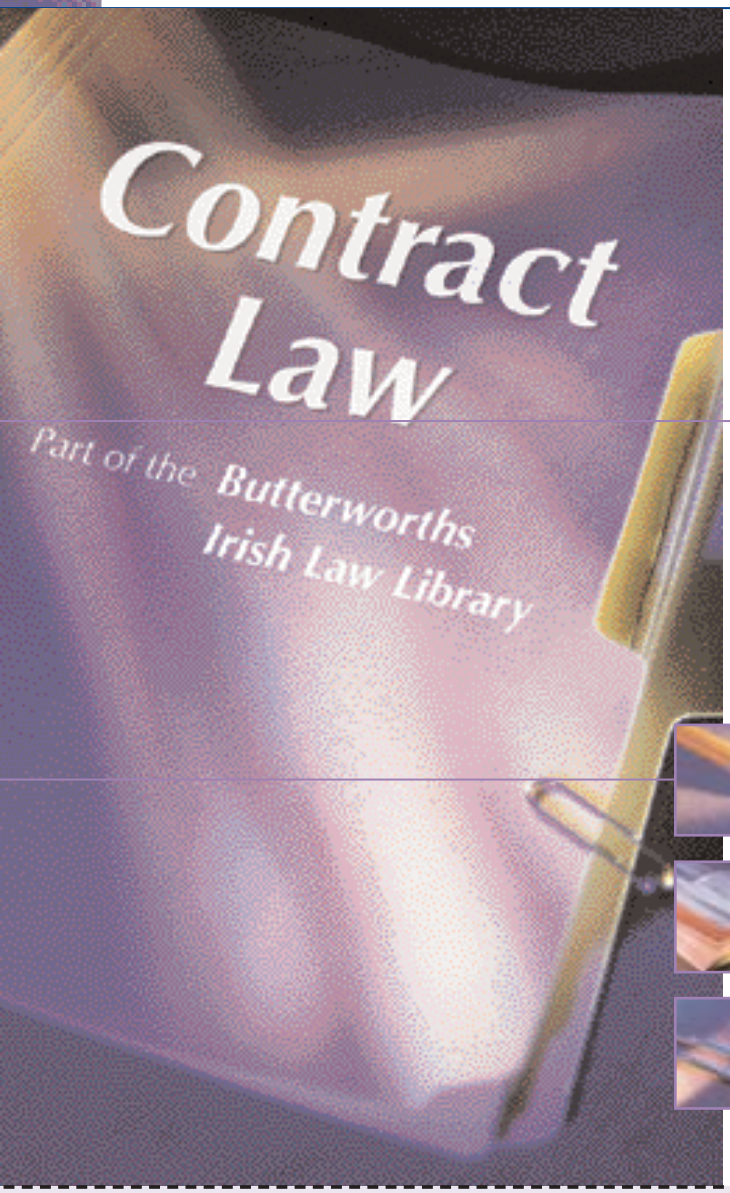

By Paul Anthony McDermott

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

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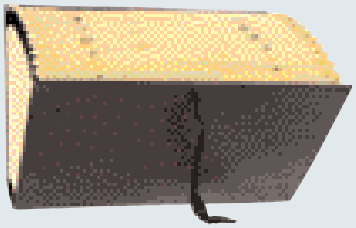


Committee reports

CONVEYANCING

Revised conveyancing documents

The Conveyancing Committee is in the final stages of revising and updating the following core documents:

- Contract for sale (incorporating new non-title information)
- Requisitions on title
- Building agreement (in conjunction with the CIF)
- Precedent transfer for building estate.

The documents have also been updated for the euro, where relevant.

It is proposed to have sufficient stocks of the first three revised documents printed and available for purchase by the profession by mid-December so that practitioners will have them on their desks for use from 2 January 2002 onward. **There will be a further announcement and an order form in the December issue of the *Gazette*. Please do not try to place orders for stocks of the revised documents until then.**

It is also proposed to circulate a copy of each of the four revised documents to each practising solicitor before Christmas so that practitioners can familiarise themselves with the new documents.

New pre-contract checklists

The conveyancing committees of the Law Society and the Dublin Solicitors' Bar Association have combined to produce new pre-contract questionnaires for both the sale and the purchase of property. They are designed to assist solicitors in obtaining comprehensive instructions from clients so that practitioners will be fully informed prior to the drafting of contracts or when advising clients on their execution.

These checklists are in the course of being printed and will be launched for sale to the profession in mid-December along with the Law Society's revised documents as mentioned above. **There will be an order form for the new documents in the December issue of the *Gazette* and practitioners are asked to hold off on ordering stocks until then.**

Conveyancing Committee

LITIGATION

Independent Insurance Company

The Litigation Committee has received a number of enquiries regarding the status of claims following the collapse of the Independent Insurance Company. It is understood that the UK Policyholders Protection Board will offer an indemnity of 90% of the Independent's liability in relation to any agreed claim in respect of policies held by individuals and partnerships comprised exclusively of individuals. There will be no indemnity whatever for commercial policyholders. Members who wish to make enquiries may contact Jim Collinson or Tim Smith at Independent Insurance, 8th Floor, No 2 Minster Court, Mincing Lane, London EC3R 7XD, England, tel: 0044 207 623 8877, fax: 0044 207 469 6290.

Litigation Committee

REVENUE COMMISSIONERS NOTICE

CHECKLIST OF DOCUMENTS SUBMITTED FOR STAMPING

To assist solicitors in correctly presenting documents for stamping, the Revenue has prepared the following checklist. By observing the points below, customers availing of our stamping services will benefit in that the number of cases rejected/queried will be minimised and we will maximise efficiencies in processing your deeds. With this in mind, please ensure that:

- The payment is properly completed and matches the amount of stamp duty chargeable. Please do not include cash
- All appropriate certificates are endorsed and the deeds are signed and dated. Please consult leaflet SD10 (on the Revenue website) as to the requirement and wording of relevant certificates
- Particulars delivered forms (ST21) are fully completed in a legible fashion. Personal public service numbers (PPSN) (formerly RSI numbers) must be included
- For new houses/apartments where relief is being claimed, other than floor area certificate relief, that the building agreement and contract for sale are enclosed
- Where drop-in stamping is sought (Dublin only), only documentation relating to stamping is included. Please do not include, for example, Land Registry papers and payments, non-Revenue memos and so on
- Where the parties to the deeds are related or associated in any way, the case is presented for adjudication. Please have the warrant for adjudication fully completed and enclose a copy of the deed
- In cases of non-quoted shares, form SD4 is properly completed
- In cases comprising a mix of residential and commercial property, the apportionment values are provided. Please see appendix 2, page 150, of the notes for guidance to the *Stamp Duties Consolidation Act, 1999* (on the Revenue website) for a suggested format for the furnishing of apportionment details
- In the case of young trained farmer exemption applications that the applicant does in fact meet the statutory requirements (section 81, *Stamp Duties Consolidation Act, 1999*). Please ensure that the application form SD2 is properly completed
- A letter/declaration from the relevant authority is enclosed where exemption under section 111 of the *Stamp Duties Consolidation Act, 1999* (Oireachtas funds) is requested
- In the case of a transfer to a registered charity that the Chy number (issued by Revenue, charities section, Nenagh) is quoted when claiming exemption under section 82 of the *Stamp Duties Consolidation Act, 1999*
- In cases where there is an 'assumption of liabilities' on property, appropriate documentary evidence is enclosed
- Your stamp duty practitioner reference number (for example, P1234), if known, is quoted
- Your client file is noted with the stamp duty document identification number after you receive the stamped deed from Revenue.

Revenue Commissioners

LEGISLATION UPDATE: 18 AUGUST – 15 OCTOBER 2001

SELECTED STATUTORY INSTRUMENTS

***Circuit Court Rules (No 1)* (Sex Offenders Act, 2001)**
Number: SI 433/2001
Contents note: Add a new order to the *Circuit Court Rules* to prescribe Circuit Court procedures in respect of applications under sections 11, 16 and 19 of the *Sex Offenders Act, 2001*
Commencement date: 27/9/2001

Companies Act, 1990 *(Section 34) Regulations 2001*
Number: SI 439/2001
Contents note: Set out the form of the report of the independent person which is required under section 34(4) of the *Companies Act, 1990*, as amended, to accompany a statutory declaration under section 34 of the *Companies Act, 1990*, as amended
Commencement date: 1/10/2001

Company Law Enforcement Act, 2001 *(Commencement) Order 2001*
Number: SI 391/2001
Contents note: Appoints 4/8/2001 as the commencement date for part 1 (sections 1-6) and section 111 of the *Company Law Enforcement Act, 2001*

Company Law Enforcement Act, 2001 *(Commencement) (No 2) Order 2001*
Number: SI 438/2001
Contents note: Appoints 1/10/2001 as the commencement date for sections 47, 62, 66 to 71, 75 to 79, 80 to 83, 85 to 87, 89, 90, 91(b), 92, 93 (except insofar as it inserts subparagraph (ii) of paragraph (fa) into section 213 of the *Companies Act, 1963*), 94, 95, 98, 100, 102 to 106, 108 and 114; appoints 26/10/2001 as the commencement date for sections 63(1)(b), 64 and 99; appoints 1/3/2002 as the commencement date for sections 59, 60, 61, 63(1)(a), 63(2), 65 and 84(a)

Criminal Justice (Legal Aid) (Amendment) (No 2) Regulations 2001
Number: SI 427/2001
Contents note: Provide for an increase of 5.5 % with effect from 1/10/2001 in the fees payable under the criminal legal aid scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and to solicitors and counsel in respect of essential visits to prisons and other custodial centres (other than Garda stations) and for certain bail applications

District Court (Criminal Justice) (No 2) Rules 2001
Number: SI 448/2001
Contents note: Provide for the addition of forms 17.8 and 17.9 to schedule 4 of the *District Court (Criminal Justice) Rules 2001* (SI 194/2001). These forms were omitted from SI 194/2001

European Communities (Protection of Consumers' Collective Interests) Regulations 2001
Number: SI 449/2001
Contents note: Implement directive 98/27/EC on injunctions for the protection of consumers' interests. Under the regulations, qualified entities will be entitled to apply to the Circuit Court for an order requiring the cessation or prohibition of an infringement of the national law implementing specified directives on misleading advertising, contracts negotiated away from business premises, consumer credit, television broadcasting activities, package travel, advertising of medicinal products, unfair terms in consumer contracts, timeshare, distance contracts
Commencement date: 3/10/2001

European Communities (Requirements to Indicate Product Prices) Regulations 2001
Number: SI 422/2001
Contents note: Implement directive 98/6/EC on consumer protection in the indication of the prices offered to consumers
Commencement date: 1/10/2001

European Communities (Single-Member Private Limited Companies) Regulations 1994 *(Amendment) Regulations 2001*
Number: SI 437/2001
Contents note: Amend the *European Communities (Single-Member Private Limited Companies) Regulations 1994* (SI 275/1994) by the deletion of regulation 12 (connected person)
Commencement date: 1/10/2001

Finance Act, 1999 *(Commencement of Certain Provisions of Chapter 1 of Part 2) Order 2001*
Number: SI 412/2001
Contents note: Appoints 1/10/2001 as the commencement date for chapter 1 of part 2 (except section 94) of the *Finance Act, 1999* (mineral oil tax)

Finance Act, 2001 *(Commencement of Part 2) Order 2001*
Number: SI 413/2001
Contents note: Appoints 1/10/2001 as the commencement date for part 2 of the *Finance Act, 2001* (sections 96 to 153) (excise law)

Horse and Greyhound Racing Act, 2001 *(Section 19) (Commencement) Order 2001*
Number: SI 363/2001
Contents note: Appoints 29/7/2001 as the commencement date for section 19 of the *Horse and Greyhound Racing Act, 2001* (zero rating of turnover charge on off-course betting)

Qualifications (Education and Training) Act, 1999 *(Commencement) (No 2) Order 2001*
Number: SI 418/2001
Contents note: Appoints 11/6/2001 as the commencement date for parts III, IV, V, VI, and VII of the *Qualifications (Education and Training) Act, 1999* and part VIII and the first, second and third schedules of the act insofar as they are not already in operation (see first commencement order, SI 57/2001)

Sex Offenders Act, 2001 *(Commencement) Order 2001*
Number: SI 426/2001
Contents note: Appoints 27/9/2001 as the commencement date for the *Sex Offenders Act, 2001*

Social Welfare Act, 1998 *(Section 17) (Commencement) Order 2001*
Number: SI 361/2001
Contents note: Appoints 27/07/2001 as the commencement date for section 17 of the *Social Welfare Act, 1998* (actuarial reviews of the social insurance fund on a five-yearly basis)

Social Welfare Act, 2001 *(Sections 13(1)(a)(iii), (2)(a)(iii), (3)(b) and (4)(b)) (Commencement) Order 2001*
Number: SI 407/2001
Contents note: Provides for the disregard of maintenance grants received under certain educational schemes in the assessment of means for certain schemes with effect from the first week in September 2001

Social Welfare Act, 2001 *(Section 25) (Commencement) Order 2001*
Number: SI 360/2001
Contents note: Appoints 27/7/2001 as the commencement date for section 25 of the *Social Welfare Act, 2001* (signature of certificate of debt where collector general initiates a prosecution for offences under the income tax and social welfare codes)

Solicitors' Accounts Regulations 2001
Number: SI 421/2001
Contents note: Set out the accounting records and proce-

dures which solicitors in practice are required to maintain
Commencement date: 1/1/2002, with saver for continuation in force of *Solicitors' Accounts Regulations No 2 of 1984* (SI 304/1984) in certain circumstances (see reg 1 of the regulations)

Solicitors Acts, 1954 to 1994 *(Euro Changeover) Regulations 2001*
Number: SI 460/2001
Contents note: Provide for the substitution of payments expressed in euro (€) for amounts expressed in Irish pounds in regulations made under the *Solicitors Acts, 1954 to 1994*
Commencement date: 15/10/2001

Taxes (Offset of Repayments) Regulations 2001
Number: SI 399/2001
Contents note: Set out an order of priority for offsets of repayments due to a person against outstanding liabilities of the person under the *Taxes Consolidation Act, 1977*, section 1006A(4) (inserted by the *Finance Act, 2000* and amended by the *Finance Act, 2001*)
Commencement date: 14/9/2001

Waste Management (Collection Permit) Regulations 2001
Number: SI 402/2001
Contents note: Provide for the operation of a system of permitting of waste collection activities under the *Waste Management Act, 1996* on or after 30/11/2001

Waste Management (Licensing) (Amendment) Regulations 2001
Number: SI 397/2001
Contents note: Amend article 23(1) of the *Waste Management (Licensing) Regulations 2000* (SI 185/2000) to provide that an application for the grant or review of a waste licence may be withdrawn only where the said application concerns a proposed waste activity
Commencement date: 23/8/2001

Wildlife (Amendment) Act, 2000 *(Commencement) (No 2) Order 2001*
Number: SI 371/2001
Contents note: Appoints 31/7/2001 as the commencement date for all sections of the *Wildlife (Amendment) Act, 2000* insofar as they are not already in operation, other than section 36 of the act (see first commencement order, SI 71/2001)

FOOT AND MOUTH DISEASE REGULATIONS
Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Control on Artificial Insemination and Embryo Transfer in Sheep) Order 2001*
Number: SI 381/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Exhibition, Sale and Transport of Animals) (Amendment) Order 2001*
Number: SI 420/2001

Diseases of Animals Act, 1966 *(Restriction on Movement of Cattle) Order 2001*
Number: SI 383/2001

Diseases of Animals Act, 1966 *(Restriction on Movement of Certain Animals) (No 2) (Third Amendment) Order 2001*
Number: SI 382/2001

Diseases of Animals Acts, 1966 to 2001 *(Approval and Registration of Dealers and Dealers' Premises) (Amendment) Order 2001*
Number: SI 352/2001

Prepared by the Law Society Library

PRACTICE NOTES

Conveyancing in euro

In order to assist conveyancing practitioners with the conversion to euro on 1 January 2002, the Conveyancing Committee would like to publish the following information on how some frequently used 'tables' will be treated for euro purposes. This synopsis has been extracted from the *Euro Changeover (Amounts) Act, 2001* and the *Finance Act, 2001,* section 240 (2)(h) and schedule 5, part 6, and has been assembled as a guideline only for practitioners. It is not, and was not intended to be, a statutory table or a statutory or other interpretation of the relevant legislation. If in doubt about a euro amount or about what is covered under any particular heading in this practice note, please ensure that you consult the relevant legislation.

LAND REGISTRY FEES

1. Fee scale for transfers on sale:

Value			Fee
€1	–	€13,000	€125
€13,001	–	€26,000	€190
€26,001	–	€51,000	€250
€51,001	–	€255,000	€375
€255,001	–	€385,000	€500
€385,001	–		€625

2. Other registrations affecting registered land

a) Voluntary transfer	€85
b) Opening of a new folio on subdivision of parent folio	€60
c) Charge	€125
d) Transfer order	€85
e) Registration of a lease as a burden and opening new leasehold folio	€85
f) Transmission on death	€85
g) Section 49 application	€85
h) First registration	€85
i) All other registrations	€25

3. Other services

a) Certified copy map with rights of way or other special features	€60
b) Copy folio with file plan (sealed and certified)	€25
c) Copy folio (sealed and certified)	€6
d) Copy instrument, affidavit, order or ruling	€25
e) Land certificate	€25
f) Certificate of charge (item 21)	€6
g) Official search (rule 190)	€6
h) Priority search (rule 191)	€6
i) Telephone search (rule 196)	€6
j) Names index search	€2.50
k) Lands index search	€2.50
l) Inspection of each folio, map, instrument or record	€2.50
m) Approval of scheme map	€310
n) Approval of revision of scheme map not exceeding 20 sites in scheme	€625
o) Approval of revision of scheme map exceeding 20 sites in scheme	€1,250
p) Attendance of officer to produce document in court	€60 per day + expenses

4. Miscellaneous

a) Administration fee on refused, abandoned, withdrawn dealings	€60 or lesser fee lodged
b) Administration fee on refund of excess fees	€25 or lesser excess
c) Fee for making any note or entry or providing any service where no fee is prescribed	€6

5. Notes

a) Fees are charged on a per item basis, no maximum fee.
b) This summary is merely a guideline and does not purport to be a legal interpretation.

REGISTRY OF DEEDS FEES

1. Registration of memorials

In respect of every memorial registered	€44

2. Comparison

a) In respect of first submission of deed and memorial for comparison	Nil
b) In respect of each subsequent submission of deed and memorial for comparison	€12

3. Certificates of registration

a) In respect of every certificate of registration beyond the first or special certificate of registration if presented with original memorial	€12
b) In respect of every certificate of registration beyond the first or special certificate of registration if presented subsequent to registration of original memorial	€44

4. Common search

In respect of a common search upon names made by office under a requisition in respect of each name, for each county, for each period of ten years or part thereof	€6

5. Continuation of a common search

Continuation of a common search, in respect of each name, for each county, for each period of ten years or part thereof	€6

6. Negative search

Negative search upon names made by office under a requisition in respect of each name, for each county in respect of each period of ten years or part thereof	€12

7. Continuation or closing of negative search

In respect of the continuation or closing of a negative search for each name, for each county, for each period of ten years or part thereof	€12

8. Search by members of public

Search by members of the public in respect of each name, for each county, for each period of ten years or part thereof	€1.25

9. Copies

For every certified copy of a memorial	€12
Plain copy of microfilm of a memorial	€0.60 per page

10. Entry of satisfaction of mortgage

a) In respect of entry of certificate of satisfaction of a judgment mortgage	€12
b) In respect of entering satisfaction of mortgage on record and granting certificate to like effect pursuant to section 84 of the *Building Societies Act, 1976* (no 38 of 1976), or section 18 of the *Housing Act, 1988* (no 28 of 1988)	€12

11. Inspection of original memorial or affidavit

For every original memorial or affidavit produced for inspection in the office	

12. For attendance of officer to produce memorial or other document in court

For attendance of officer to produce memorial or other document in court *(per day + expenses)*	€60*

13. General search

General search without limitation, each day, by each member of the public against all indexes prior to 1950	€6

14. Other services

Providing any service for which no other fee is prescribed.	€6

LANDLORD & TENANT (GROUND RENTS) (AMENDMENT) ACT, 1984

1. Issuing of a vesting certificate (in occupation)	€30
2. Arbitration (in occupation).	€75

***LANDLORD AND TENANT (GROUND RENTS) (NO 2) ACT, 1978* (FEES) ORDER 1984**

1. Inspection of a register	60c
2. Copy of an entry in a register	€3
3. Issuing of a vesting certificate (not in occupation)	€65
4. Arbitration (not in occupation)	€130

STAMP DUTIES

RESIDENTIAL PROPERTY:

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

These rates are progressive, not cumulative.

* For instruments executed on/after 27.02.01

NON-RESIDENTIAL PROPERTY:

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

These rates are progressive, not cumulative.

Note:

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

Conveyancing Committee

Transfer of conveyancing file to new solicitor where client's title is not yet registered

An increasing number of queries are being received by the Conveyancing Committee as to what practitioners should do where they are instructed by clients who wish to mortgage or otherwise deal with their property where the client is not yet registered as owner and another solicitor is entitled to return of the title deeds after registration by virtue of being the solicitor who lodged them for registration. In the experience of the committee to date, these queries arise mostly in relation to Land Registry title and particularly in relation to transfers of part of a folio where the client has purchased a newly-constructed house within the past two to three years. Typically, the client wishes to sell on or to take out a top-up loan and also wishes to instruct a different solicitor to the one who acted in the original transaction. In the vast majority of cases, the first solicitor will have given the standard form of undertaking to a lending institution to register title and lodge the registered deeds and mortgage with the lender.

It is the view of the committee that a prudent solicitor instructed in the second transaction should not take over responsibility for the registration of the client's title where that solicitor has not examined the title and satisfied him/herself that same is in order and that the transfer and mortgage documentation, family law declarations, mapping of documents, rights of way and so on, and fees lodged, including mapping fees, will lead to registration of the client as owner of the property without any Land Registry requisitions. Because inspection of the Land Registry dealing will be impractical in most cases, it is the view of the committee that the new solicitor should await completion of the client's registration before commencing the second transaction. The new solicitor should therefore not give an undertaking to a lender to take over the registration of the client's title and the lender's first mortgage.

Under no circumstances should the file or authority to take up the dealing be handed over by the first solicitor to a new solicitor without the consent of any lending institution involved and without the first solicitor securing a discharge of any undertaking given to the lender.

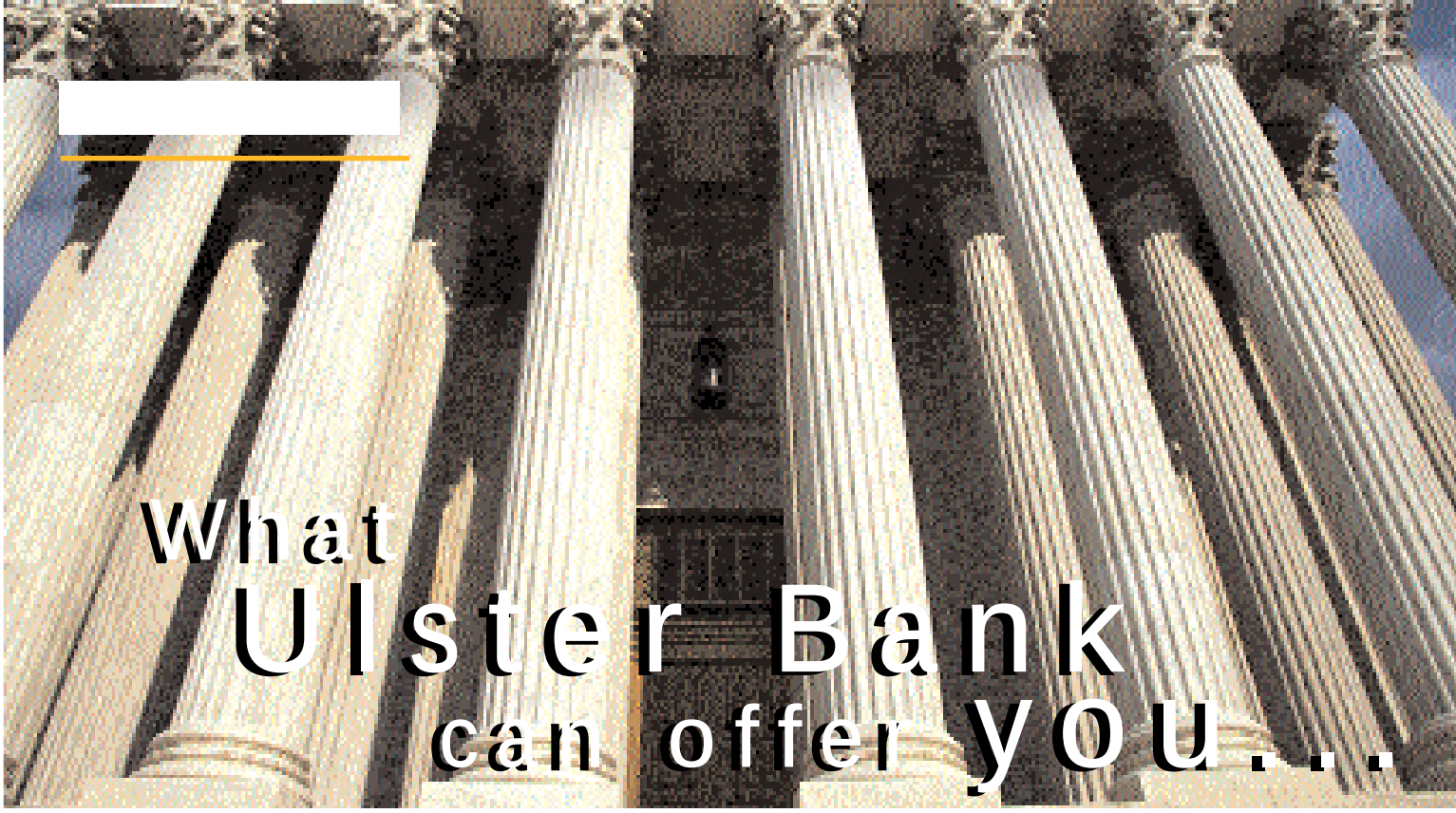
A request for the application for registration to be expedited should be lodged immediately with the Land Registry by any one of the first solicitor, the client or the new solicitor. It has been confirmed by the Land Registry that requests for expedition will be treated with urgency where:

1. There is a sale or other dealing with the property
2. There is a top-up or new loan
3. The power of sale under the mortgage is being exercised
4. There is a change of solicitor.

The completed dealing will be returned to the first (lodging) solicitor who can then discharge his/her undertaking to the lender by lodging the deeds in the usual way with the lending institution and obtaining a discharge of the undertaking. The deeds can then be taken up in the usual way from the lender by the new solicitor for the purpose of completing the second transaction.

The Land Registry has asked practitioners generally to use requests for expedites sparingly.

Conveyancing Committee



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Conditions in planning permissions re sight lines: new problem for conveyancers

A number of local authorities are imposing conditions in planning permissions requiring the applicant to secure sight lines at the entrance to a house site from the public road.

The following is an example of a condition imposed by a planning authority as a general condition:

'Prior to commencement of development, vision lines of 68 metres shall be provided in each direction, at a point 3.05 metres back from the road edge at location of vehicular entrance. Said vision lines should be based on eye object height equal to 1.06 metres over height of 1.06 metres. Documentary evidence of consent for location of vision lines over third party lands shall be submitted to the planning authority for written agreement prior to commencement of development'.

Clearly, planning authorities are entitled to take into account the need for traffic exiting a site to have an acceptable view of traffic approaching and the need for that traffic approaching to have an adequate opportunity of seeing a car which might exit into its path.

The committee has seen a number of different conditions. It has also been informed that in some cases applicants anticipating the requirement have offered to provide the necessary sight lines in the application so that there was nothing on the face of the planning permission to alert anyone of the requirement.

In at least one case, the applicant had offered to reduce the height of a hedge (with the permission of a neighbour who owned the land in question) and no thought seemed to have been given to what was to happen when the hedge grew again. In another case, the applicant (again with the permission of a neighbour) confirmed that an arrangement had been made with a neighbour to provide an appropriate sight line. In that case, the neighbour did not really understand what was required of him and the planning authority in question did not clarify the position. It is not satisfactory that planning authorities in some cases do not deal with the long-term implications.

It seems clear that conditions like this are going to cause problems for architects and engineers who may be asked to certify compliance. They will also clearly cause problems for solicitors. Solicitors who are advising clients in relation to the purchase of a property subject to such a condition will have to advise their client very carefully, particularly if the condition is not going to be properly dealt with. In such circumstances, solicitors should point out that they are likely to have a problem in certifying title and that there is a clear risk that there will be problems on re-selling. The committee advises that such advice should be confirmed in writing. In addition, when acting for a client purchasing a site with the benefit of a planning permission, it is yet another reason to advise clients to have the position regarding the planning permission checked out by a competent person. The committee doubts that it is wise for solicitors to brief an architect or engineer on behalf of their clients in such situations but recognises that from time to time solicitors will find that they have to do this. The committee feels that such briefing should be in general terms rather than trying to anticipate all the issues that could arise. However, the issue of sight lines and other easements could be addressed by asking the surveyor to review whether the house, its access and any facilities such as a septic tank or percolation area or water supply can be provided without passing over or acquiring rights over land in the ownership of any third party.

The practical problem is that an applicant who already owns a site and who has received a grant of planning permission subject to such a condition might not realise the full implications of such a condition and might have the house half built before realising that there may be a problem. Compliance with the condition may be impossible because it would require the applicant to acquire land perhaps from both adjoining owners to provide the necessary lines of sight. Arguably, the planning authority should not grant permission until the applicant satisfies it that the applicant has such legal rights or perhaps ownership necessary to enable it to comply with any such condition. Planning authorities already do this routinely in relation to easements for drainage if a site cannot be drained without a grant of easements over property in the ownership of third parties.

Solicitors faced with such a situation should give the following advice. The best solution is for the client to buy the necessary land so as to put himself in a position of being able to comply with the planning condition and to provide a sight line in a permanent way. If this is not possible or practicable, the client should acquire a grant of easements which will enable him to comply properly with the condition. Any grant of easements should be registered on the title of the grantor. If none of this is possible, solicitors should advise clients that they will have to qualify their certificate of title in a manner which may not be acceptable to a lender and that the property may not be re-saleable without the problem being regularised. The law agent of one of the main lenders for housing has indicated that a qualification of a certificate of title would not be acceptable if it indicated that a condition about the provision of sight lines in a planning permission had not been complied with. The committee suspects other lenders will take a similar position. Informal arrangements or letters from friendly neighbours are simply not sufficient

The purpose of this note is to alert solicitors to the need for care in relation to these matters. The Conveyancing Committee intends to make representations to all relevant authorities to try to have a more consistent and reasonable practice applied.

Conveyancing Committee

Warning: IEI/ACEI certificate of compliance

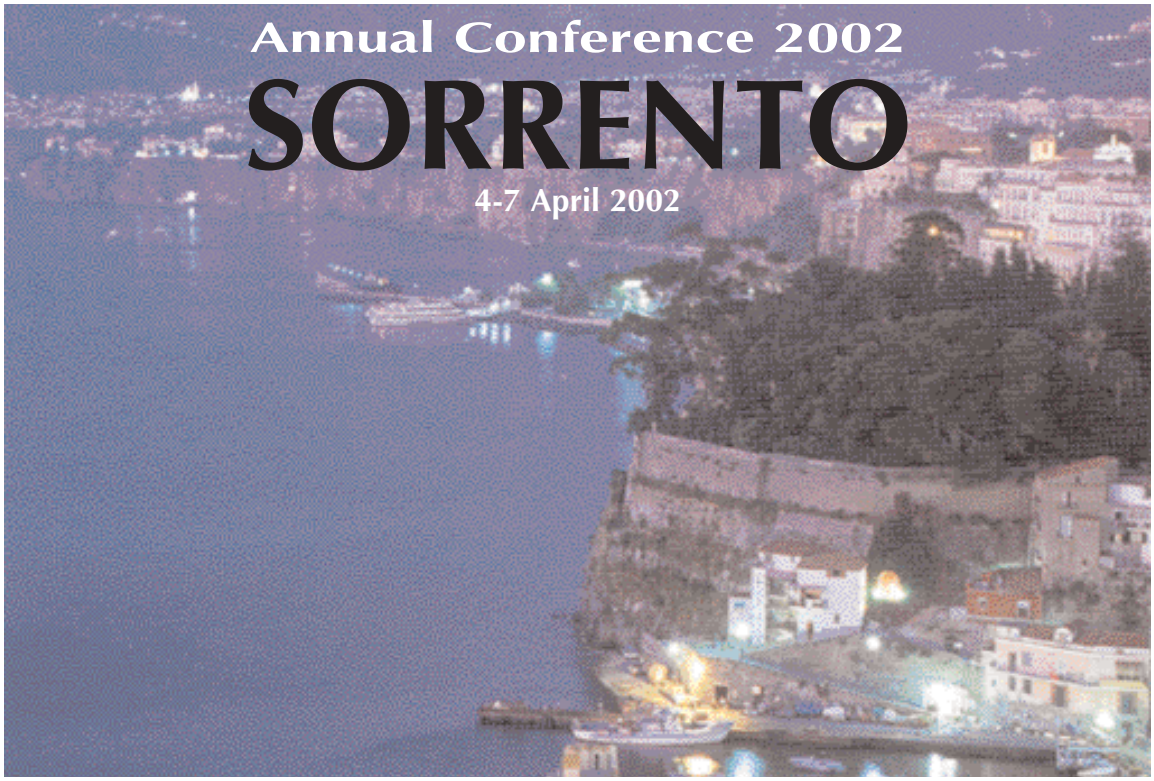
The Conveyancing Committee agreed with the Institution of Engineers of Ireland and with the Association of Consulting Engineers of Ireland on the format of a certificate of compliance with building regulations for completion by a structural/civil chartered engineer in cases where a lead architect is appointed to the project. This format of certificate was published in the recent update to the *Conveyancing handbook* in appendix 8 at pages A8.1 to A8.5 (form BR SE 9101).

A prominent warning was published in the handbook on the front page of the specimen certificate of compliance to the effect that this form was intended for use by a consulting engineer *only* in a situation where a lead architect has also been appointed to the project. Despite this warning, it has come to the attention of the Conveyancing Committee that form BR SE 9101 is being offered by some vendors in relation to projects where no architect has been involved as the sole evidence of compliance with both planning and building regulations. The form has not been designed to meet this type of situation and under normal circumstances should not be used or accepted in connection therewith. The committee confirms that form BR SE 9101 relates only to compliance with building regulations and that a further certificate of compliance with planning should always be obtained from the lead architect appointed to the project.

It is suggested that, in projects where the consulting engineer leads the project, one or other of the specimen forms of certificate of compliance at pages 7.41 to 7.52 of the *Conveyancing handbook* be utilised with appropriate adaptations.

Conveyancing Committee

Law Society of Ireland



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COMPANY

Planning and development

Contempt of court – corporate liability – construction – whether failure to comply with terms of court order – whether order of sequestration should be granted – Rules of the Superior Courts 1986, *order 42, rule 32* – Local Government (Planning And Development) Act, 1976, *section 27*

The applicant brought the present proceedings seeking an order of attachment and sequestration against the respondents. The applicant submitted that there had been a failure by the first-named respondent (Cartron Bay) and the second- and third-named respondents (who were directors of Cartron Bay) to complete certain works on a housing estate as had been ordered in the High Court by Mr Justice Barrington. The complaints related to works such as footpaths, sewers, roads and waterworks. The directors of Cartron Bay denied that they had disobeyed the court order and contended that Cartron Bay was insolvent and had ceased trading. Mr Justice Ó Caoimh was satisfied that no clear distinction had been maintained between the directors and Cartron Bay. The company had been operated as a vehicle to avoid liability without the essential requirements of company law being observed by the two directors. There had been a failure to comply with the terms of the court order. In addition, the directors had failed in their duties to maintain proper books of account. The court would make the required order of sequestration against the directors and the court would discharge same in the event of the directors paying £120,000 to the applicant.

***Sligo Corporation v Cartron Bay Construction*, High Court, Mr Justice Ó Caoimh, 25/05/2001** [FL4293]

COSTS

Payment of interest

Practice and procedure – costs – taxation of costs – payment of interest – equity – case stated – date of settlement – allocatur *rule* – incipitur *rule – statutory interpretation – whether interest on costs payable from date of judgment or order awarding them or from date of taxation* – Courts of Justice Act, 1947, *section 16* – Debtors (Ireland) Act 1840 – Courts Act, 1981, *section 21* – Rules of the Superior Courts 1986, *order 42, rule 13*

The plaintiffs had initiated proceedings claiming damages and costs. A settlement had been reached and, although the point was not clear, the court assumed that the settlement had been made a rule of court and that an order of taxation of costs was made. The plaintiffs sought the payment of interest on the costs from the date of judgment. The defendants' principal argument was that interest should run only from the date or dates upon which the successful party had discharged the costs in respect of which he sought interest. A case stated was set down for a decision by the Supreme Court. Mr Justice Fennelly, delivering judgment, held that the point at issue was the extent of the right to interest on costs awarded by an order of the court, not the exercise of discretion to provide for interest. The law was far from clear and the authorities were in a state of some confusion. The matter should be decided on the basis of the interpretation of sections 26 and 27 of the *Debtors (Ireland) Act 1840*. Costs constituted the liability of the unsuccessful party from the moment of the decree or judgment. They were not payable until quantified but, when quantified, the debt related back to the date of the judgment, with interest running from that earlier date. These views were consistent with the wording of sections 26 and 27 of the *Debtors (Ireland) Act*. Section 26 gave the right to interest from the date of entering judgments. The case stated was answered: yes. Interest was payable on costs from the date of the judgment which awarded them.

***Clarke and McCarthy v Garda Commissioner*, Supreme Court, 31/07/2001** [FL4228]

CRIMINAL

Statutory interpretation

Judicial review – prohibition – retrospective legislation – statutory interpretation – construction of penal statutes – offence of assault – separation of powers – applicant charged with assault contrary to common law and s47 of the Offences Against the Person Act 1861 – *common-law offence of assault and assault contrary to s47 of 1861 act subsequently abolished by* Non-Fatal Offences Against the Person Act, 1997 – *whether 1997 act contained saving provisions for abolished offences – whether saving provisions of* Interpretation Act, 1937 *and* Interpretation (Amendment) Act, 1997 *applied to abolished offences – whether prosecutions for offences could continue – whether courts being asked to perform legislative function*

The proceedings involved two cases where prosecutions had been brought in respect of offences which had subsequently been abolished. The offences in question were those of assault contrary to the common law and assault contrary to the *Offences Against the Person Act 1861*. Orders of prohibition had been sought to prevent the prosecutions from proceeding. In *Grealis*, O'Donovan J in the High Court had held that the prosecution for assault contrary to common law could not be proceeded with, but the prosecution for assault contrary to s47 of the *Offences Against the Person Act 1861* was saved by the provisions of the *Interpretation Act, 1937*. In *Corbett*, Mrs Justice McGuinness refused the order of prohibition sought, holding that the prosecution of the offence alleged against the applicant was governed by the *Interpretation (Amendment) Act, 1997* and that the provisions of that act did not offend against the constitution. In the Supreme Court, the chief justice, Ronan Keane, held that common-sense dictated that where a common-law offence was repealed by statute, in the absence of any saving provision, it ceased to exist for all purposes and no prosecution could take place after the repealing statute had taken effect. The appeal of the DPP in *Grealis* in relation to the common-law offence should be dismissed. However, the cross-appeal by the applicant against the finding that the prosecution in respect of the statutory offence could proceed should be dismissed. In *Corbett*, the appeal of the applicant should be allowed. Mrs Justice Denham (with Murray J agreeing) was satisfied that an offence of assault contrary to section 47 of the *Offences Against the Person Act 1861* was

COURTS SERVICE
An tSeirbhís Chúirteanna

NOTIFICATION OF CHANGES TO DISTRICT COURT SITTINGS IN COUNTIES LONGFORD, OFFALY AND WESTMEATH (DISTRICT NUMBER 9)

The Courts Service wishes to inform practitioners that with effect from the 1st of September 2001, the following changes have been made to District Court Areas and District Court sittings in counties Longford, Offaly and Westmeath.

(1) Amalgamations of District Court Areas

(a) The District Court Area of ***Edgeworthstown*** has been amalgamated with the District Court Area of ***Longford***. From September 2001, all District Court sittings in the enlarged District Court Area of Longford will take place in ***Longford District Court***.

(b) The District Court Areas of ***Kilbeggan and Daingean,*** have been amalgamated with the District Court Area of ***Tullamore***. From September 2001, all District Court sittings in the enlarged District Court Area of Tullamore will take place in ***Tullamore District Court***.

(c) The District Court Area of ***Delvin*** has been amalgamated with the District Court Area of ***Castlepollard***. From September 2001, all District Court sittings in the enlarged District Court Area of Castlepollard will take place in ***Castlepollard District Court***.

(d) The District Court Area of ***Ballynacargy*** has been amalgamated with the District Court Area of ***Mullingar***. From September 2001, all District Court sittings in the enlarged District Court Area of Mullingar will take place in ***Mullingar District Court***.

(2) Revised Schedule of District Court Sittings from 1st of September, 2001. As a result of the above changes, court sitting days have also changed and the new schedule of court sittings is set out below.

New District Court Sittings in Longford, Offaly and Westmeath
(District Number 9)
With effect from 1st of September, 2001
All courts will commence at 10.30 a.m.

Day of week on which court will sit	Tuesday	Wednesday	Thursday	Friday
1st in each month	Longford	Tullamore	Mullingar	Edenderry
2nd in each month	Longford	Tullamore Family law day	Mullingar	Killucan
3rd in each month	Longford	Tullamore	Mullingar	Granard
4th in each month	Longford	Tullamore	Mullingar Family law day	Castlepollard

a common-law offence and thus a prosecution in respect of either offence could not be brought. In *Grealis*, the appeal of the DPP regarding the order of prohibition would be dismissed and the cross-appeal of the applicant would be allowed and an order prohibiting the prosecution of the offence of assault contrary to section 47 would be issued. In *Corbett*, the appeal of the applicant should be allowed. Mr Justice Hardiman (with Murphy J agreeing) agreed with the judgment of the chief justice in all respects, save that he would allow the cross-appeal of the applicant in *Grealis* in respect of the prosecution of the statutory offence.

***Grealis & Corbett v DPP*, Supreme Court, 31/05/2001** [FL4345]

Evidence, sexual offences

Appeal – sexual offences – rape – evidence – mens rea – *meaning of consent – whether applicant received fair trial – whether statements voluntary and admissible – whether corroboration warning necessary – whether* mens rea *of offence properly explained to jury* – Criminal Law (Rape) Act, 1981, *section 2* – Criminal Law (Rape) (Amendment) Act, 1990, *section 7* – Criminal Law Amendment Act 1885

The applicant had been convicted of rape and sought leave to appeal against conviction. The applicant set forth a number of grounds for appeal. It was contended that the statements of the accused while in custody were not made in accordance with the principles of constitutional fairness. In addition, it was argued that the trial judge had failed to adequately charge the jury in relation to the facts of the case and in particular to certain conflicts of evidence. Furthermore, it was said that the trial judge had erred in law in refusing to warn the jury about the need for corroboration. Mr Justice Murray, delivering judgment, held that the trial judge had correctly admitted the statements of the accused. The fact that conflicts may have arisen in evidence did not require the trial judge to direct the jury to accept one version over another. The trial judge had directed the jury correctly with regard to the *mens rea* of the offence. In addition, the trial judge had acted correctly and within his discretion not to give a warning with regard to corroboration. Leave to appeal was refused.

***DPP v C*, Court of Criminal Appeal, 31/07/2001** [FL4272]

Identification evidence

Appeal – visual identification evidence – alibi – whether arrest lawful – whether convictions supported by weight of evidence – whether adequate directions given by trial judge to jury – whether appeal should be allowed – whether verdict of jury safe – Offences Against the State Act, 1939, *section 30(1)* – Criminal Justice Act, 1984, *section 20(1)*

The applicants had been convicted of firearms and robbery offences and sought leave to appeal against their convictions. The applicants submitted that the evidence adduced by the prosecution did not support their convictions. In particular, the applicants contended that the trial judge had given an inadequate warning in relation to the visual identification evidence adduced. Keane CJ, delivering judgment, held that the directions given by the trial judge in relation to visual identification were careful and comprehensive. However, the purported identifications by witnesses of the first applicant at Galway District Court were of negligible value and the case against the first applicant should have been withdrawn. Furthermore, the trial judge should not have permitted the prosecution to lead evidence regarding the second applicant's alibi when he did. The trial judge's charge to the jury regarding circumstantial evidence may have given an erroneous impression. The appeal would be allowed. In the case of the first applicant, the conviction would be quashed. In the case of the second applicant, the conviction would be quashed and a re-trial ordered.

***DPP v Cahill and Costello*, Court of Criminal Appeal, 31/07/2001** [FL4275]

FAMILY

Divorce, property

Division of assets – concept of matrimonial property – Judicial Separation and Family Law Reform Act, 1989 – Family Law Act, 1995 – Family Law (Divorce) Act, 1996

The judgment in the case dealt with the division of property in a family law case. In particular, the judgment concerned the extent to which the applicant was entitled to a share in the proceeds of sale of a substantial piece of agricultural property which had been inherited by the respondent and had been licensed out for farming purposes during the marriage. It had been submitted by counsel on behalf of the respondent that the respondent should be entitled to retain the entire of the proceeds of sale of the rural property on the grounds that these proceeds did not form part of the 'matrimonial property'. Judge Buckley held that there was no concept of matrimonial property in Irish law as there was in other legal systems. In addition, there was nothing in the applicable legislation which put any limit on the extent of the assets of the spouses to which the court could have recourse when making orders. The respondent had been awarded custody of the two children and would need a substantial sum to purchase suitable accommodation. In the circumstances an equal division of the proceeds of sale would not be equitable. The applicant would be awarded 25% of the proceeds of sale. In addition, the applicant would receive the entire sale price of the family home of which she was the 50% owner.

***M v M*, Circuit Court, Judge Buckley, 18/06/2001** [FL4240]

Jurisdiction of Supreme Court

Practice and procedure – bias – jurisdiction of High Court – jurisdiction of Supreme Court – jurisdiction of court to amend final order – finality of litigation – application to disqualify judge – whether comments of trial judge had demonstrated bias or pre-judgment – whether appeal in High Court had been properly determined – whether Supreme Court possessed necessary jurisdiction to hear matter – Courts of Justice Act, 1936, *section 38* – Courts (Supplemental Provisions) Act, 1961

Family law proceedings had been initiated between the applicant and respondent. Orders had been made in the Circuit Court dealing with the issues and the applicant had brought an appeal to the High Court regarding some of those issues. However, during the hearing of the appeal, following comments made by the High Court judge, the applicant's counsel asked the judge to disqualify himself from hearing the appeal regarding maintenance issues. The judge refused and the applicant declined to continue his appeal regarding maintenance. The applicant now sought to appeal the order of the High Court on the grounds that he had not been afforded a fair hearing in that there had been a reasonable apprehension of bias. The applicant contended that the Supreme Court had an inherent jurisdiction to hear the appeal despite legislative provisions providing that decisions of the High Court on appeals from the Circuit Court were final and unappealable. Murray J held that the courts had an inherent jurisdiction to amend a final order where there had been a denial of justice. The case had been opened in the High Court and the decision by the appli-

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NOTIFICATION OF CHANGES TO DISTRICT COURT SITTINGS IN CORK CITY AND COUNTY

The Courts Service wishes to inform practitioners that with effect from the 1st September 2001, the following changes have been made to District Court Areas and District Court sittings in Cork City and County.

1. **Amalgamations of District Court Areas**
   The District Court Areas of **Blarney**, **Carrigaline** and the **old District Court Area of Riverstown**, have been amalgamated with the **District Court Area of Cork City**. From September 2001, all District Court sittings in the enlarged District Court Area of Cork City will take place in the **District Courts situated in Anglesea Street, Cork.**

2. **Revised Schedule of District Court sittings in Cork County**
   As a result of the above changes, court sittings and days in Cork County (District Number 20) have also changed and the new schedule of court sittings is set out below.

New District Court Sittings in Cork County
(District Number 20).
With effect from 1st of September, 2001
All courts will commence at 10.30 a.m.

Day of week on which court will sit	Tuesday	Wednesday	Thursday	Friday
1st in each month	Mallow	Kanturk	Midleton	Mitchelstown
2nd in each month	Mallow	Cobh	Midleton	Fermoy
3rd in each month	Mallow	Cobh	Midleton	Mitchelstown
4th in each month	Mallow	Cobh	Fermoy	Fermoy

cant not to call evidence did not deprive the hearing of its character as an appeal. The Supreme Court was a court of appeal and did not, save for limited exceptions, possess an original jurisdiction. The appropriate procedure in this instance might involve bringing substantive proceedings in the High Court or to return to the Circuit Court to seek a variation of the original order. The appeal would be dismissed.

***P v P*, Supreme Court, 31/07/2001** [FL4233]

Land, property

Equity – proprietary or promissory estoppel – part performance – whether relative entitled to land on basis of promise – whether plaintiff had acted to his detriment – whether sufficient evidence of promise

The plaintiff had instituted proceedings seeking the ownership of a farm owned by the defendant. The plaintiff had claimed he had moved to Ireland on the basis of a promise by the defendant that he would get the farm. In the event, the plaintiff built a house on the defendant's lands and the defendant transferred some of the lands to the plaintiff. However, the defendant told the plaintiff that the rest of the farm was being left to someone else. The defendant denied at all times that he had promised to give the plaintiff the farm. Mr Justice Murphy held that one could not convert charity into the right to receive property. To claim a particular asset on the basis of a promise would require very clear evidence of the promise, of acceptance and a detriment of such a nature that a court would be outraged if the promise was not honoured. The situation of the building of the house by the plaintiff was one which gave rise to promissory estoppel. However, the claim for the rest of the farm was based on a very vague promise and on minimal detriment to the plaintiff and there was no evidence for a finding of promissory estoppel. The claim would be dismissed.

***Carter v Ross*, High Court, Mr Justice Murphy, 08/12/2000** [FL4300]

Nullity petition

Nullity – consent – costs – standard of proof in nullity proceedings – standard to be applied in examining nature of consent – whether consent of petitioner to marriage full, free and informed – whether evidence of affair nullified consent to marriage

The petitioner had sought a decree of nullity in respect of a marriage entered into with the respondent. The petitioner contended that the respondent had an affair with a third party both before and during the marriage and that, had he known of this, he would not have married the respondent and thus his consent to the marriage was not full, free and informed. In the High Court, Mr Justice O'Higgins held that while it was accepted that the petitioner would not have married the respondent had he known of her affair with another man, the evidence did not go so far as to establish that his consent to marriage was not full, free and informed. The petitioner appealed to the Supreme Court. Mrs Justice McGuinness, delivering judgment, held that adultery, being misconduct during the course of marriage, was a ground for judicial separation but not grounds for nullity. The formulation of an informed consent put forward by the petitioner would appear to cover almost any situation involving a lack of relevant information at the time of the marriage concerning the conduct, character or circumstances of the respondent. The grounds for a grant of nullity could not be extended to cover concealed misconduct and other forms of misrepresentation. The appeal would be dismissed. The High Court order making no order as to costs would be upheld.

***PF v GO'M*, Supreme Court, 28/11/2000** [FL4334]

Wards of court

Wardship proceedings – practice and procedure – committee of person and estate of ward of court – obligations of health board to provide care – function of general solicitor of wards of court – right of access to courts – whether appellant should bring proceedings in her own name – whether legal proceedings should be brought by committee of estate or committee of person – Courts (Supplemental Provisions) Act, 1961, *section 9*

The appellant was a sister of a ward of court and was also a member of the committee of the person of the ward of court. The appellant had brought proceedings attempting to establish that the relevant health board was liable to provide care and assistance for the ward of court in his own home. The appellant had already obtained leave to bring judicial review proceedings. However, the litigation had got into procedural difficulties and it was unclear as to who was the correct person or body to bring legal proceedings. In addition, there was an alleged conflict of interest in that the appellant resided with the ward. The president of the High Court had refused an application by the appellant on the basis that the approved procedure had not been followed. The appellant had appealed to the Supreme Court. Mrs Justice Denham (with McGuinness J concurring) held that it was entirely inappropriate that the case had been caught in a sea of procedural argument. Much of the law quoted to the court was antiquated and reflected a different era. The committee of the person of the ward had the right to bring litigation on behalf of the ward. The matter should be brought before the president of the High Court as soon as possible and he should determine what form the proceedings should take. Mr Justice Geoghegan stated that he would allow the appeal and the matter should be remitted to the president of the High Court.

***Application of CK*, Supreme Court, 19/01/2001** [FL4243]

IMMIGRATION AND REFUGEES

Jurisdiction of High Court

Judicial review – immigration – asylum – refugee status – practice and procedure – jurisdiction of High Court – leave to apply for judicial review already granted – application by respondent to discharge original order – refugee status granted to some of applicants – inherent jurisdiction of court – separation of powers – whether order granting leave to apply for judicial review should be discharged – whether original application premature – Rules of the Superior Courts 1986, *order 19*, *rule 28* – European convention on human rights, 1951 – Refugee Act, 1996 – Bunreacht na hÉireann 1937, *articles 29.3*, *29.4 and 40.3*

The applicants, a group of Romanian nationals, had been granted leave to apply for judicial review in respect of their applications for refugee status. The minister for justice sought to have the order granting leave discharged. On behalf of the minister, it was claimed that some of the applicants had already been granted refugee status. In addition, it was contended that there was no evidence that the applications for asylum had been dealt with unfairly. In the High Court, O'Donovan J in the *Adam* proceedings held that due to the differing nature of the cases of the applicants it had been inappropriate to include them in one set of proceedings. The respondent was not obliged to take account of the *European convention of human rights* in assessing applications for asylum but was bound to comply with the principles of natural and constitutional justice and the relevant provisions of the *Refugee Act*, *1996*. There was no evidence before the court which would warrant interfering with the decision-making process in

question. Pursuant to the inherent jurisdiction of the court, the original order granting the applicants leave would be discharged. Mr Justice Morris subsequently dismissed the *Iordache* proceedings. The applicants appealed to the Supreme Court on the basis that the High Court did not have the inherent jurisdiction to set aside the grant of leave to seek judicial review. It was argued that in the case of judicial review, a filtering process was already in existence in that leave to seek judicial review was not granted if the proceedings were frivolous. Mrs Justice McGuinness held that the High Court had the jurisdiction to set aside an order granting leave, which should only be exercised sparingly. If leave to seek judicial review were discharged, then an appeal would lie to the Supreme Court. There was no evidence that the appropriate procedures regarding the applications for asylum had not been complied with and the appeals would be dismissed. Mr Justice Hardiman held that the applicants' proceedings were vexatious and doomed to failure. There was no jurisdiction to grant an order compelling the Irish state to institute proceedings against Romania as external relations were governed by the executive. It was improper to have joined such a large number of applicants in the proceedings with an attempt to distinguish their individual circumstances. The appeals should be dismissed. Mr Justice Murray concurred with both judgments.

***Adam & Iordache v Minister for Justice*, Supreme Court, 05/04/2001** [FL4321]

Judicial review

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

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

***P, L & B v Minister for Justice*, Supreme Court, 30/07/2001** [FL4202]

JUDICIAL REVIEW

Jurisdiction of District Court

Practice and procedure – jurisdiction of District Court – conduct of preliminary examination – whether applicant properly before court – whether leave to seek judicial review should be granted – whether applicant received fair hearing

The applicant sought leave to bring judicial review proceedings. The applicant complained about the manner in which a District Court judge had carried out his preliminary investigation of an offence. The High Court had refused leave and the applicant appealed. Mr Justice Geoghegan held that judicial review did not lie in respect of any and every complaint concerning a District Court judge. A District Court judge was entitled to make rulings while exercising his jurisdiction. Leave to seek judicial review could only be granted if there was an arguable case that the District Court judge acted without or in excess of jurisdiction. Once the applicant was before the District Court, the judge had jurisdiction to conduct the preliminary investigation. The applicant's complaints had been given a full hearing by the District Court judge and the appeal would be dismissed.

***Molloy v Judge O'Donnell, the DPP and Others*, Supreme Court, 13/07/2001** [FL4294]

JUDICIARY

Bias, practice and procedure

Mental health – bias – judiciary – practice and procedure – administration of justice – application that judge disqualify himself – objective test – whether detention of applicant unlawful – whether judge hearing case should disqualify himself – whether issue on appeal prejudged – Mental Treatment Act, 1945, *section 260*

The proceedings arose out an application by the applicant to challenge his detention in St John of God's Hospital. Accordingly, leave to institute proceedings was required from the High Court pursuant to section 260 of the *Mental Treatment Act, 1945*. O'Sullivan J refused the leave in a judgment delivered on 6 July 2000, and the applicant appealed. As part of the proceedings, the applicant sought to have Mr Justice Murphy excused from the proceedings on the grounds that the judge had participated in the hearing of a related matter (*Blehein v Murphy & Ors*, unreported, 13 July 2000). Mrs Justice Denham held that it was the duty of all judges to uphold the law. The exercise of jurisdiction pursuant to the *Mental Treatment Act, 1945* on a previous occasion by Mr Justice Murphy was not a reason to disqualify him. The application was refused and the case itself should proceed to hearing. Mr Justice Murphy, delivering judgment, held that it was not correct to say that a judge who had previously refused an application pursuant to section 260 of the *Mental Treatment Act, 1945* had, in effect, prejudged an issue on appeal. Mr Justice Murphy held that he would not be justified in disqualifying himself.

***Blehein v St John of God's Hospital*, Supreme Court, 31/07/2001** [FL4227]

LANDLORD AND TENANT

Property

Whether tenant had established bona fide *business use – whether landlord entitled to order for possession* – Landlord and Tenant Act, 1980

The plaintiff landlord had in these proceedings brought an action seeking an order for possession in respect of two properties. The defendant had entered into a tenancy agreement with the plaintiff in respect of one property and with the plaintiff's brother (who was since deceased) in respect of the other property. It had been argued that the defendant's wife had taken over the tenancy of one of the properties and had engaged in an antique restoration business from there. Judge Buckley was satisfied that the defendant had been treated as his brother's successor to the tenancy in respect of the second property. Both properties were tenements within the meaning

of the *Landlord and Tenant Act, 1980* and businesses were carried out from both. However, there was a restriction in each tenancy agreement that each premises be used for residential purposes only. The court could not accept that a tenant who was restricted to using the tenement for private residential purposes could *bona fide* use those premises for the purpose of carrying on a business. Accordingly, the defendant was not entitled to a new tenancy in either premises and the plaintiff was entitled to possession of both premises.

***M50 Motors v O'Byrne*, Circuit Court, Judge Buckley, 03/05/2001** [FL4358]

Statutory interpretation

Application for new business tenancy – business equity – three-year qualifying period – meaning of phrase 'at any time' – literal rule – case stated – whether time in question referred to expiration of lease – whether rights of tenant crystallised once term fulfilled – Landlord and Tenant (Amendment) Act, 1980, *sections 5, 13, 20, 21 and 28* – Landlord and Tenant Act, 1931, *section 19* – Court of Justice Act, 1947, *section 16*

The proceedings were in the form of a case stated, referred to the Supreme Court, relating to the application for a new business tenancy under the *Landlord and Tenant (Amendment) Act, 1980*. The applicant had been served with a notice of termination by the landlord and the applicant had in turn served a notice of intention to claim relief. The case stated centred on the interpretation of the phrase 'at any time' relating to the three-year qualifying period (subsequently changed to five years but applicable here) of business use contained in section 13 of the 1980 act. The applicant contended that once the tenant had at any stage during its occupancy of the premises satisfied the qualifying period of three years' business use the relevant provisions of the 1980 act applied. In addition, issues were raised as to whether continuous occupation by a sub-tenant would entitle the main tenant to relief. Fennelly J held that to allow a tenant to 'crystallise' his rights at any time would run counter to the nature and purpose of business equity. The phrase 'at any time' was intended to relate to an inquiry as to whether a tenant had satisfied the requirements of the 1980 act to the termination of the tenancy. The relevant date was the date of the expiry of the lease. The tenant seeking relief must be the same tenant that has occupied the premises for the entire period and did not include subtenants. Mr Justice Murphy delivered a judgment in which he held that the relevant date was the expiry of the lease. Attention was also drawn by Murphy J to the deficiencies in the current legislation.

***Twil Limited v Kearney*, Supreme Court, 28/06/2001** [FL4235] G

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General scheme of the *Competition Bill* published

The competition policy section of the Department of Enterprise, Trade and Employment published in July 2001 the general scheme ('heads of bill') of the *Competition Bill*, which is designed significantly to overhaul the existing Irish competition legislation and at least in part to implement some of the recommendations of the Competition and Merger Review Group (CMRG) report of May 2000.

The heads of bill are designed to replace the *Competition Acts, 1991-1996* and the *Mergers, Takeovers and Monopolies (Control) Act, 1978*. The heads of bill contain a number of features which if enacted will mark a significant departure from the existing competition law regime in Ireland. Below, I summarise a number of the key features of the heads of bill.

1) The heads of bill would abolish the existing system for the grant of licences by the Competition Authority (CA) under section 4(2) of the *Competition Act, 1991* under which the CA exempts an agreement, decision or concerted practice which falls within the prohibition in section 4(1) of the 1991 act. The heads of bill provide a similar gateway as is provided for in the 1991 act and specify that an agreement, decision or concerted practice which satisfies certain conditions which are identical to those contained in the 1991 act will fall outside the scope of the prohibition. As a result, it will no longer be necessary to invoke the exclusive jurisdiction of the CA in order to obtain a license and it will be up to the parties to satisfy themselves that the conditions specified in the exemption to the prohibition are properly satisfied.

It should be noted that the heads of bill effectively retain the current system for the grant by the CA of category licences under which the CA specifies that a defined category of agreements, decisions or concerted practices satisfy the conditions for an exemption. Similarly, the heads of bill also provide for the issue by the CA of category certificates which apply to a defined category of agreements, decisions or concerted practice and which specify that an agreement, decision or concerted practice which falls within the terms of a category license is not in breach of the prohibition at all.

2) The heads of bill specifically provide that a merger or acquisition which is notifiable under the merger control provisions of the heads of bill is not (together with any agreements which are ancillary to the merger or acquisition) caught by the provisions dealing with the prohibition on restrictive agreements, decisions and concerted practices or the provisions governing the abuse of a dominant position. This provision finally removes the anomaly which exists in Irish competition law resulting from the CA decision in the *Woodchester Bank Limited/UDT Bank Limited* case (decision no 6, 4 August 1992) in which it was held that a merger which is notified and approved under section 5 of the *Mergers Act* may be subject to review under section 4(1) of the 1991 act. As a result, there will be a single system of merger control in Ireland separate from the general provisions of competition law similar to that existing under EU law.

It should be noted that mergers and acquisitions which do not exceed the thresholds will still be subject to review under the provisions prohibiting restrictive agreements, decisions and concerted practices and abuse of a dominant position. The heads of bill specifically provide that in the case of a merger or acquisition which does not exceed the thresholds, any of the undertakings involved in the merger or acquisition may on a voluntary basis notify the CA of the sub-threshold merger or acquisition. The notification of a sub-threshold merger or acquisition under the voluntary system would specifically exclude the merger or acquisition from the provisions governing restrictive agreements, decisions and concerted practices and abuse of a dominant position. As a result, I believe that if there is any doubt whether or not a transaction is caught by the prohibition on restrictive agreements, decisions and concerted practices or the prohibition on abuse of dominant position, the notifying parties will be advised to notify the transaction under the voluntary system. This will create a rather anomalous position under which mergers or acquisitions which do not exceed the above thresholds will be subject to the general system of competition law which is designed to control the behavioural activities of undertakings in the market, whereas mergers and acquisitions which exceed the relevant thresholds will be subject to a merger control system which is designed to regulate the structure of the relevant market.

3) The heads of bill will make it an offence under Irish law to enter into or implement an agreement or implement a decision or engage in a concerted practice which is prohibited by article 81(1) of the *EC treaty* and an offence to abuse a dominant position contrary to article 82 of the *EC treaty*.

4) With regard to the criminal regime for competition law offences, the heads of bill provide for the introduction of two categories of restrictive agreements, decisions and concerted practices which are referred to in the explanatory notes to the heads of bill as 'hardcore' offences and non-hardcore offences. Hardcore offences are agreements, decisions or concerted practices which:

- Directly or indirectly fix purchase or selling prices or any other trading conditions
- Limit or control production, markets, technical development or investment
- Share markets or sources of supply, and
- Fall within the equivalent provisions in article 81(1) of the *EC treaty*.

Non-hardcore offences are those involving agreements, decisions or concerted practices caught by the prohibition but which do not fall within the category of agreements, decisions or concerted practices giving rise to hardcore offences.

A number of significant changes are proposed for hardcore offences. First, there is a rebuttable presumption that an agreement, decision or practice has as its object or effect the pre-

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vention, restriction or distortion of competition in trade in goods or services in Ireland or in a part of Ireland for the purposes of the Irish legislation and has its object or effect the prevention, restriction or distortion of competition within the common market in the context of article 81(1) of the *EC treaty*. Second, one of the defences – known as the 'ignorance' defence – which currently exists under the *Competition Acts* will be removed for hardcore offences and will be retained only for non-hardcore offences: namely, that it is a good defence to prove that the defendant did not know nor in all the circumstances of the case the defendant could not reasonably be expected to have known that the effect of the agreement, decision or concerted practice would be the prevention, restriction or distortion of competition in trade. Third, the heads of bill increases the possible jail term for hardcore offences from two years under the existing system under the *Competition Acts* to five years for convictions on indictment. The reason behind this is in part to make the offence an 'arrestable offence' for the purposes of section 4 of the *Criminal Justice Act, 1984*, which allows a member of the Garda Síochána to make an arrest without a warrant under certain circumstances and for the person to be detained for an initial period of six hours, which can be extended for a further period of six hours. The explanatory notes to the heads of bill specify that the 'strong penalties' are warranted by the fact that the department and the CA believe that these offences are analogous to serious fraud.

The heads of bill removes the provisions allowing for the imposition of jail sentences for non-hardcore offences.

5) Similar to the *Competition Acts*, the heads of bill would provide the CA with extensive powers of investigation, including the power to make dawn raids. A very significant feature of the heads of bill is that it would confer on the CA the additional power to enter any premises including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, in so far as it may be suspected that business records are being kept there. This provision is in line with the EU Commission's suggestion in the context of the EU competition rules as set out in the draft council regulation on the implementation of the rules on competition laid down in articles 81 and 82 of the treaty and amending regulations (EEC) no 1017/68, (EEC) no 2988/74, (EEC) no 4056/86 and (EEC) no 3975/87. The constitutionality of this provision will need to be examined in the light of article 40.5 of the Irish constitution, which specifies that the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

6) The heads of bill introduce a number of presumptions regarding the production and sending of documents, namely:

- A document which appears on its face to have been created by a person is presumed, unless the contrary is proved, that the document was in fact created by that person
- A document which appears on its face to have been created by a person and addressed to a second person is presumed, unless the contrary is proved, that the document was in fact created and sent by the first person and received by the second person
- A document which is retrieved from an electronic storage and retrieval system is presumed, unless the contrary is proved, to have been written by the person who ordinarily uses that electronic storage and retrieval system, and
- An authorised officer who removes one or more documents from any place and gives evidence in proceedings that to the best of his knowledge and belief the material is the property of any person, the material is presumed, unless the contrary has proved, to be the property of that person and if the authorised officer gives evidence that to the best of his knowledge and belief the material is material which relates to any trade, profession or any other activity carried on by the person, the material is presumed, unless the contrary is proved, to be material which relates to that trade, profession or other activity carried on by that person.

7) Provision is made for the initiation of proceedings by an aggrieved person in the Circuit Court or the High Court. Under the current system, such proceedings can only be initiated before the High Court in respect of cases involving abuse of a dominant position.

8) The existing legislation provides the minister with the right of action before the courts. This function will be transferred to the CA.

9) The courts will have the power to require the adjustment of a dominant position in the manner and within a period specified in the order by the sale of assets or otherwise as the court may specify. In other words, the courts will have the power to apply structural remedies in abuse of dominant position cases.

10) The heads of bill provide protection for certain categories of whistleblowers. The protection applies to employees or subcontractors and specifies that an employer cannot penalise such a person who *bona fide* and in good faith makes a complaint or furnishes information to the CA. The heads of bill further provide that in any proceedings before a rights commissioner or the Employment Appeals Tribunal in relation to a complaint or the furnishing of information, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned. The explanatory notes to the heads of bill also make reference to the fact that a general *Whistleblowers Bill* is being prepared. It is not at all apparent why a whistleblowers' regime should be separated in this way.

11) The heads of bill introduce significant changes to the Irish system of merger control. The key features are as follows:

- The substantive test for examining a merger or acquisition would be whether or not 'the result of the merger or acqui-

sition will be to substantially lessen competition in markets for goods or services in the state'. The department has chosen the test adopted in the US of substantially lessening competition as opposed to the EU test, which is whether or not the merger will create or strengthen a dominant position as a result of which competition will be significantly impeded in the common market or a substantial part of the common market. The reason given by the department for using the US as opposed to the EU test is that most practitioners regard it as a 'superior test' and it is used in a number of other countries such as Australia and Canada. The latter EU test was that recommended by the CMRG report and is the one familiar to practitioners in the EU

- The thresholds for notifying a merger will be that in the most recent financial year the worldwide turnover of each of at least two of the undertakings involved must not be less than £40,000,000 and the turnover in Ireland of at least one of the undertakings involved must be not less than £40,000,000. The asset-based test would be dropped. Under the existing system, a merger or takeover is notifiable if in the most recent financial year each of at least two of the enterprises involved in the proposal has a turnover not less than £20,000,000 of gross assets not less than £10,000,000
- The turnover of the vendor would be excluded from the calculation of the turnover on the vendor's side – in other words, it is only the turnover derived from the target as opposed to the vendor's retained business that is counted on the vendor's side
- The CA will have one month in the first phase examination to decide whether or not to approve the merger or to carry out a full investigation into the merger in a second phase examination, which must be completed within a period of four months from the date of receipt of the notification. The above parallels the procedure under the EU merger regulation and follows the recommendation of the CMRG report. A practical downside of this is that the CA will have one month within which to make a decision on the most straightforward of cases. At present, the minister is obliged to respond in such cases 'as soon as practicable' which often means a period of between one and two weeks
- The notification must be lodged to the CA as opposed to the minister for enterprise, trade and employment, and it is the CA that will effectively become the competent body regarding mergers. It should be noted that under the heads of bill, the minister will retain jurisdiction in relation to 'media mergers', which are defined as mergers or acquisitions in which at least one of the undertakings involved carries on a business of the production of newspapers or magazines or a business of radio or television broadcasting in the state. The heads of bill specifically provide that the minister may take a different decision to that of the CA, taking account only of the 'relevant criteria' which are defined as follows:
  - The strength and competitiveness of the indigenous media industry
  - The plurality of ownership
  - The plurality of titles
  - The diversity of views in Irish society
  - The maintenance of cultural diversity, and
  - The position in the media market generally of any of the undertakings involved in the merger or acquisition or of any undertakings with an interest in any such undertakings.

- The definition of merger or acquisition will reflect the definition of concentration in council regulation 4064/89 on the control of concentrations between undertakings (OJ 1990 L857/4). The heads of bill would specifically bring joint ventures, which perform, on a lasting basis all the function of an autonomous economic entity, within the ambit of the merger control system. This parallels the EU model under the EU merger regulation
- Under the existing system, an exemption is provided for corporate group situations, but is very limited in that it only applies to transactions between two or more bodies corporate, each of which is a wholly-owned subsidiary of the same body corporate. The heads of bill specifically exclude from the definition of merger or acquisition transactions where all the undertakings involved are under the control, directly or indirectly, of the same undertaking. As a result, transactions between companies within a corporate group will not be notifiable. Clearly, the proposed exemption in the heads of bill will be much wider than that provided for in the *Mergers Act*. However, the issue of control will need clarification
- The notification must be lodged within seven days of the conclusion of the agreement. The existing *Mergers Act* requires that a notification be made within one month of an offer capable of acceptance having been made, and
- The CA will be obliged to publish a notice of the notification within seven days of receiving the notification. The fact that a notification has been made is not published under the current system.

12) Below, I make a number of observations on the heads of bill:

- It does not address the issue of whether or not the prohibition on restrictive agreements, decisions or concerted practices is applicable to an agreement, decision or concerted practice that benefits from an EU block exemption regulation. Although there has not been any decision on this matter by the European Court of Justice or the European Court at First Instance, the EU Commission is clearly of the view that such agreements, decisions and concerted practices should not be subject to national competition law. The heads of bill does not address this issue
- The existing *Mergers Act* specifies that title to the shares and/or assets in the context of merger or takeover will not pass in the event that the parties fail to notify the minister of a notifiable transaction. The heads of bill specifies that a merger or acquisition cannot be put into effect without being notified to the CA and provides for the imposition of fines on persons who are in control of an undertaking and who fail to notify the CA of a notifiable transaction or who fail to supply supplementary information requested within the period stated by the CA. The absence of a transfer of title to shares and/or assets may be implied under the heads of bill, but it is by no means clear
- The heads of bill does not mention the concept of agreements of minor or *de minimis* importance. The CMRG report recommended that the CA adopt a category certificate defining the circumstances in which the concept of agreements of minor or *de minimis* importance would be applicable. However, the CA, from its first decision under the 1991 act, has confirmed that in its opinion there is no concept of agreements of minor importance in this context. As a result, the question arises as to whether or not a *de minimis* exception should be provided for in the forthcoming competition legislation as opposed to waiting for its introduction by the courts in the context of litigation. G

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

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COMPETITION

Legal fees

Case C-35/99 *Manuele Arduino*, opinion of Advocate General Léger, 10 July 2001. At the end of criminal proceedings concerning a motoring offence, Mr Arduino was ordered to pay the legal costs of the other party. A point arose in the proceedings about a scale of fees laid down by the state for lawyers' services. The Italian court asked the ECJ to determine whether a scale of lawyers' fees is compatible with EU competition law. The advocate general pointed out that while competition law is concerned with the conduct of undertakings rather than state measures, member states must refrain from adopting measures that may render ineffective the competition law rules which apply to undertakings. Lawyers in Italy practice in the market for legal services with a view to making a profit and thus must be regarded as undertakings. The body which proposed the fees is composed exclusively of lawyers. This body is an association of undertakings. It is not required to take its decisions in the public interest. Thus, its decisions, in particular those proposing a fee scale, are decisions of associations of undertakings. However, any proposal required adoption as law by the government. Thus, the proposals for fees were preparatory acts in the Italian legislative procedure. The advocate general then considered whether the adoption of a ministerial decree approving the fee scale reinforced the effects of a decision of undertakings. He said that the decree restricts competition, and Italy must justify its conduct under EU law. The decree denies consumers the opportunity to acquire the goods or services concerned at the best price. It is for the national court to examine whether the restriction of competition is justified. In examining this, the national court should ascertain whether there is effective control by the public authorities, whether the measure pursues an aim in the public interest and whether the measure is proportionate to the aim pursued.

FINANCIAL SERVICES

Case C-28/99 *Jean Verdonck, Ronald Evereart, Édith de Baedts*, judgment of 3 May 2001. Criminal proceedings were brought against the applicants under Belgian laws on insider dealing. They argued that the Belgian law was inconsistent with directive 89/592 on insider dealing as Belgian law lays down a more stringent test of insider dealing than the directive. Article 6 of the directive allows member states to adopt more stringent provisions than those of the directive but only if such provisions are applied generally. The applicants argued that while Belgian law imposed a more stringent test, it also provided that information in the possession of holding companies does not amount to inside information for the purposes of the offence of insider dealing. The ECJ held that article 6 does not preclude a state from applying more stringent provisions than those laid down in the directive, provided that such provisions are applied generally. It is for the Belgian court to determine whether the more stringent test has been applied generally. If the more stringent provisions are not applied generally, they are inconsistent with the directive and must not be applied to any individual.

FREE MOVEMENT OF GOODS

Case C-84/00 *Commission of the European Communities v French Republic*, judgment of 14 June 2001. The commission sought a declaration that France had failed to comply with its requirements under article 28. France fails to allow marketing of articles of precious metals from other member states and which purport to have a standard of fineness of 999 parts per thousand. This standard is commonly used in commercial practice. The commission argued that obstacles to free movement of goods such as rules laying down requirements to be met by such goods are measures having equivalent effect. They may be justified by a public-interest objective. In this case the French government did not put forward any reason in the public interest to justify the impediment. The ECJ held that the French rule was inconsistent with article 28.

FREEDOM TO PROVIDE SERVICES

Health care

Case C-157/99 *BSM Geraets-Smits v Stichting Ziekenfonds* and *HTM Peerbooms v Stichting Z Groep Zorgverzekeringen*, judgment of 12 July 2001. Ms Geraets-Smits is a Dutch national. She suffers from Parkinson's disease. She was treated in a specialist German clinic without prior authorisation from her Dutch sickness insurance fund. When she sought reimbursement of the costs incurred, her fund refused to pay because satisfactory and adequate treatment for the disease was available in the Netherlands and her German treatment conferred no additional advantage. Peerbooms is a Dutch national who fell into a coma following a road accident. He received special intensive therapy in an Austrian clinic, which proved beneficial. This technique was only available in the Netherlands to people under 25 years. His Dutch sickness insurance fund also refused to reimburse him as the Austrian treatment had no advantage over the treatment available in the Netherlands. The Dutch court referred the matter to the ECJ, seeking guidance on whether the Dutch legislation is compatible with the principle of freedom to provide services. The court held that member states are free to organise their own social security systems. However, they must comply with EU law and in particular the principle of freedom to provide services. Medical activities fall within the scope of this principle. By subjecting reimbursement of costs to authorisation (granted only where certain conditions are met), the rules are an obstacle to freedom to provide services. The court then examined whether there was a justification for such an obstacle. A risk of seriously undermining a social system's financial balance is capable of justifying such an obstacle. The system of prior authorisation makes it possible to ensure that there is sufficient and permanent access to a range of high quality hospital treatment, to ensure that costs are controlled and to prevent wastage of financial, technical and human resources. Any conditions to be satisfied to obtain prior authorisation must be justified and satisfy the principle of proportionality. The first condition was that the proposed medical treatment must be normal in the professional circles concerned. The court held that this condition is acceptable only in so far as it refers to what it sufficiently tried and tested by international medical science. The second condition is that the treatment in the foreign state must be necessary owing to the medical condition. The court held that this condition must be interpreted so that authorisation can only be refused if the patient can receive the same or equally effective treatment without undue delay from an establishment with which his sickness insurance fund has contractual arrangements. G

JUDGE JOHN BUCKLEY: AN APPRECIATION ON HIS RETIREMENT

Mr Justice John Buckley has retired as a judge of the Circuit Court. His last sitting on the Circuit bench was on Friday 5 October 2001, two days before his 70th birthday.

Court No 30, Dublin Family Circuit Court, Riverbank, was full to capacity on the morning of 5 October for the valedictory addresses. Sitting on the bench with Judge Buckley were the President of the Circuit Court, Mr Justice Esmond Smyth, Judge Kevin Haugh, Judge Frank O'Donnell, Judge Michael White and Judge Yvonne Murphy.

Many tributes were paid to Judge Buckley. Mr Justice Esmond Smith spoke on behalf of the Circuit bench and former Law Society president Michael O'Mahony of McCann FitzGerald spoke on behalf of the society. Catherine Forde BL paid tribute on behalf of the Family Bar. The County Registrar, Susan Ryan, and the President of the Dublin Solicitors' Bar Association, David Martin, also paid tribute. The President of the Law Society, Ward McEllin, the Senior Vice-President, Elma Lynch, and Ken Murphy, director general of the society, also attended.

Judge Buckley was the first solicitor to be appointed to the Circuit bench and was sworn in on 25 July 1996 in the Supreme Court. He subsequently sat for almost two years on the Circuit bench in Cork, dealing with family law and civil cases. He then moved to the Dublin Circuit Court, where he sat in the family law courts and also heard landlord and tenant cases.

Born in Dublin in 1931, educated at CBS Synge Street, Dublin, and University College Dublin, John Buckley graduated with the degrees of BA and LLB. Admitted as a solicitor in Trinity term 1956, he subsequently worked as an assistant solicitor for the firm of CBW Boyle & Son and George J Colley & Co in Dublin, RA Osborne & Co in Athy, and Hickey & O'Reilly in Dublin. He became a partner in Hickey & O'Reilly in 1968 and a partner in the new firm of Hickey Beauchamp Kirwan & O'Reilly in 1973 (subsequently Beauchamps).

Mr Justice John Buckley: his judgments were models of lucidity

Judge Buckley has had a lifelong interest in legal education. He was the Law Society's lecturer in conveyancing and land law from 1962 to 1972 and was chairman of the Education Committee from 1974 to 1976 and 1978 to 1980. He was also chairman of the committee on legal education and continuing legal education of the International Bar Association from 1981 to 1985. He has been associated with the society's Publications Committee since its inception in 1969.

He was the Dublin Solicitors' Bar Association nominee on the Law Society Council for 1972/1973 and 1973/1974, before being elected directly to the Council in 1974/1975. He topped the poll in 1985/1986 and 1986/1987, his last year on the Council.

In 1991, John Buckley received the Francis Rawle award of the American Law Institute, American Bar Association Committee on Continuing Professional Education, for services to legal education. He was the first non-North-American to receive the award.

John Buckley was a member of the *Gazette* editorial board for almost 20 years and resigned on his appointment to the bench. He was also for many years a member of the Incorporated Council of Law Reporting for Ireland and contributed significantly to its work.

Significant judgments

A lasting contribution of a judge is often the written word – his or her exposition of the law in the form of a written judgment. During his time on the bench, Judge Buckley delivered several written judgments of significance, some of which have been recorded in a formal series of law reports. In the case of *Daly v McMullan* (11 April 1997, [1997] 2 ILRM 232), Judge Buckley considered the extent of a duty of care in the context of the slippage of an embankment causing hazard to a house.

In Prendeville v Gable Holdings Ltd (12 February 1998, reported in ILT, no 6 of 1999, p94), he considered the contentious issue of the sale of land, specific performance, an oral agreement and whether it would be inequitable for the defendants to rely on the *Statute of Frauds 1695*. Both students of the law and practitioners would benefit from the study of the *Prendeville* judgment.

Issues relating to slander in the context of practice and procedure in the Circuit Court jurisdiction were considered by Judge Buckley in the written judgment *of Ahern v O'Brien* (11 December 2000, FL 3316).

In *Gunne Estate Agents v Pembroke Estates Management Limited* (15 May 2000), he considered legal issues relating to a guarantee in the context of landlord and tenant law.

MG v MG (25 July 2000, reported in the *Irish Times* law report) is an important contribution to family law, where the judge considered the issue of the extent that it is legally permissible to make alterations to the financial provisions of separation agreements in the context of a subsequent divorce and in the context of section 20 of the *Family Law (Divorce) Act, 1996*.

In *Flynn v McMahon* (3 May 2001, FL 3675), he considered issues relating to the definition of a 'tenement' in the context of the *Landlord and Tenant Acts*.

Judge Buckley's written judgments are models of lucidity, are short and to the point, with minimal quotations from correspondence between the parties and law reports, but with due deference to the doctrine of precedent and the decisions of the High and Supreme courts of Ireland, as well as cognisant, where appropriate, of judgments of international courts and other jurisdictions.

He has no intention of resting on his laurels. He was recently appointed general editor of the *Irish conveyancing precedents*, published by Butterworths, and is writing two chapters – one on the education of solicitors and another on legal publications – for the forthcoming *History of the Law Society*. G

Dr Eamonn Hall

Reforming spirit
Solicitor Patricia Rickard-Clarke has been appointed a full-time member of the Law Reform Commission. She has been a commissioner with the LRC since 1997 and is a partner in the Dublin law firm McCann FitzGerald. She is also the chair of the Law Society's Taxation Committee and a member of the Society of Trust and Estate Practitioners

The winning team
The Black and Company soccer team, pictured after their recent 5-1 demolition of Mason Hayes & Curran in the finals of the *George Overend Memorial Trophy*

Injury time
At the recent CLE seminar on damages in personal injuries actions were *(from left to right)* James Nugent SC, Mr Justice Kevin Lynch, CLE co-ordinator Barbara Joyce, and Neil Matthews of solicitors Branigan & Matthews

Compulsory attendance
Pictured at a recent seminar on compulsory purchase orders, hosted by the Sligo Bar Association, were property arbitrator John Shackleton, Michele O'Boyle, the bar association's CLE co-ordinator, and Eamon Galligan SC

The 19th hole
At the September outing of the Lady Solicitors' Golf Society at Tulfarris were *(left to right)* incoming captain Muriel Walls, outgoing captain Geraldine Lynch Burke, golf society president Moya Quinlan, Petria McDonnell, winner of the captain's prize, and Sean Kavanagh of Company Formations International. The golf society has two main outings a year, and those interested in joining should contact Muriel Walls on tel: 01 829 0000

Contracting party
Contract law in an e-commerce age, written by Simon Haigh of solicitors McCann FitzGerald, highlights the impact of new technology on traditional rules of contract law. Pictured at the book's recent launch were *(left to right)* Eleanor McGarry, managing director of publishers Round Hall, Simon Haigh, and guest speaker Henry Murdoch, author of *Murdoch's dictionary of Irish law*

SADSI
Solicitors Apprentices Debating Society of Ireland

All change on the PPC2

For those of you who began life in Blackhall Place as the PPC1 of October 2000, the confirmed start date for your PPC2 is 15 April 2002. The director of education, TP Kennedy, has informed us that the first three weeks will be devoted to a mix of solicitors' accounts, professional conduct and management. This will be assessed by a single exam. The rest of the course is composed of electives. These are divided into three streams: business, land and private client.

Students have to choose six electives: one from each stream and then three other choices. The range of electives is currently under review by the Curriculum Development Unit. When it is finished, Law School staff will circulate a booklet to the October 2000 PPC1 with a detailed syllabus and method of assessment for each subject, whereupon students will be asked to make initial choices.

Students will be given credit for a single elective if they:

a) represent the Law School in an external moot court competition;
b) complete a course of academic study before the PPC2, such as a diploma offered by the society or a university; or
c) publish an article of 6,000 words or more in a refereed legal journal. Applications for such credit must be made in writing to the director of education at least two months before the start of the course.

The electives will be continuously assessed. The various methods used will be detailed in advance. Unlike this year, there will be no breaks of more than a day or two in the course.

TP Kennedy will write to all students on the October 2000 PPC1 later this month with more details.

Ballroom blitz

Those who made the pilgrimage to the Talbot Hotel in Wexford for the 2001 SADSI Ball were not disappointed. Apprentices came from as far afield as Mayo, Galway, Limerick, Cork and Dublin.

The event kicked off at 7pm with a gin and tonic and Heineken reception, followed by a sumptuous meal with free wine on every table. Boogie duties were ably undertaken by Hard to Touch, whose eclectic performance kept the crowd hopping all night. The party then spilled over into the resident's lounge and stayed going until the early hours. The night produced a few surprises, so be sure to log on to our website's photo gallery, where all will be revealed ...

We salute the continued support and enthusiasm of the apprentices who made the trip to Wexford. We would also like to express our appreciation for the generosity of our sponsors: Hays ZMB Legal Recruitment, Ulster Bank, Murphy's/Heineken, Irish Distillers, Benson and Associates, Snap Printing, City Tailors, A&L Goodbody, Beauchamps, Mason Hayes & Curran, McCann FitzGerald, and William Fry.

Details of our Christmas party will be posted on our website shortly.

Having a ball
Pictured at the recent SADSI ball in Wexford are *(above, from left to right)* Lisa Chambers, Amanda Lafferty, Thelma Ryan, Hillary McGrath, Ciara O'Kennedy, Fiona O'Brien and Elaine McCormac. Also enjoying the night are *(right, from left to right)* Dermot Murphy, Kelly McNamara, Mark Bairead and Garret Doorley

A MOOT POINT

Those interested in the Apprentice Moot Court Competition should contact Geoff Shannon at the Law School. The Law School's Bríd Moriarty is also looking for volunteers for the European Law Moot Court Competition.

Anyone interested in becoming involved in debating should contact SADSI's debating co-ordinator Louise Rouse on tel: 01 618 0000.

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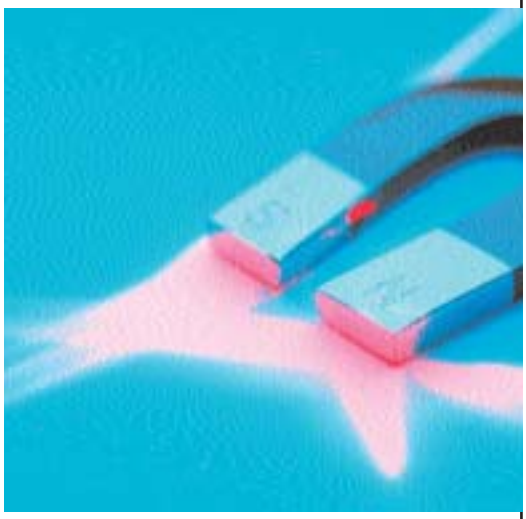

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LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 2 November 2001)

Regd owner: John William James; Folio: 7971F; Lands: Tankardstown and Barony of Rathvilly; **Co Carlow**

Regd owner: Bridget John Edward and Patrick Joseph Cullen; Folio: 20723; Lands: Lackan Lower; Area: 2.8125 acres; **Co Cavan**

Regd owner: Connabride Developments (Ireland) Limited; Folio: 27976F; Lands: known as the townland of Conna and situate in the Barony of Kinnatalloon; **Co Cork**

Regd owner: William Breen and Margaret Breen; Folio: 30635; Lands: Townland of Curragh and Barony of Duhallow; **Co Cork**

Regd owner: William Daunt; Folio: 30478F; Lands: Townland of Killahora (ED Carrigtohill) and situate in the Barony of Barrymore; **Co Cork**

Regd owner: Noel Walsh; Folio: 23138F; Lands: known as the townland of Ballyandreen and situate in the Barony of Imokilly; **Co Cork**

Regd owner: Alexandra M Hickey; Folio: 29231; Lands: known as the townland of Dunnamark Mill-Lot and situate in the Barony of Bantry; **Co Cork**

Regd owner: Patrick Friel; Folio: 17656; Lands: Losset (together with commonage); **Co Donegal**

Regd owner: Patrick and Annie Black; Folio: DN9776; Lands: property situate in the townland of Farranboley and Barony of Rathdown; **Co Dublin**

Regd owner: George Dunne; Folio: DN26266F; Lands: property known as 15 Monck Place situate on the north side of Monck Place in the parish of Grangegorman and district of North Central; **Co Dublin**

Regd owner: Liam and Rita Mahon, 203 Bangor Road, Kimmage, Dublin 12; Folio: 64864L; **Co Dublin**

Regd owner: John and Rosemary Molloy, 2 Brookeville Park, Coolock, Dublin; Folio: 6141F; Lands: Kilmoon; Area: 1.298 acres; **Co Dublin**

Regd owner: Patrick Smith; Folio: DN14819; Lands: property known as 14 Corduff Cottages situate in the townland of Corduff and Barony of Castleknock; **Co Dublin**

Regd owner: George Wellington Tracey; Folio: 149; Lands: Townland of Cornelscourt and Barony of Rathdown; **Co Dublin**

Regd owner: Thomas and Mary McDonnell; Folio: DN1577F; Lands: a plot of ground situate on the north side of Crumlin Road in the parish and district of Crumlin and city of Dublin; **Co Dublin**

Regd owner: Charles Patrick O'Reilly; Folio: DN77846F; Lands: property situate to the south of Crumlin road in the parish and district of Crumlin; **Co Dublin**

Regd owner: Anne Simpson; Folio: 6835F; Lands: Derryinver and Barony of Ballynahinch; Area: 0.0404 hectares; **Co Galway**

Regd owner: Catherin and Martin Lydon; Folio: 1831F; Lands: Townland of Corcullen and Barony of Moycullen; Area: 0.3161 hectares; **Co Galway**

Regd owner: Keith Tuffey; Folio: 11348F; Lands: Townsland of Dromluska and Barony of Dunkerron North; **Co Kerry**

Regd owner: Margaret-Erika Schelden-Peterssen; Folio: 1285; Lands: Colllinstown, Carbury; **Co Kildare**

Regd owner: Patrick O'Connor; Folio: 4013 and 4014; Lands: Muck and Kilballykeefe and Barony of Crannagh; **Co Kilkenny**

Regd owner: Robert Guthrie and Breda O'Donnell; Folio: 14210F; Lands: Luffany and Barony of Iverk; **Co Kilkenny**

Regd owner: Joseph J O'Dwyer, Patrick Butler (deceased), William Bolton, Raymond Cribbin, Patrick Finlay, Bernard Hunt, Patrick Donegan, Sean Ramsbottom and John Dowling; Folio: 7111; Lands: Cooltedery and Barony of Portnahinch; **Co Laois**

Regd owner: John Joseph McCartin and Francis McCartin, Mullaster, Newtowngore, Co Leitrim; Folio: 1042; Lands: Miskaun Glebe; Area: 18.268 acres; **Co Leitrim**

Regd owner: Clare O'Mahony; Folio: 22326; Lands: Townland of Stradbally North and Barony of Clanwilliam; **Co Limerick**

Regd owner: Joan Cross; Folio: 24761F; Lands: a plot of ground situate at Shannon View Terrace on the north side of the Dublin Road in the parish of St Patrick of Limerick; **Co Limerick**

Regd owner: Dorothy Hogan (deceased); Folio: 3521F; Lands: Townland of Loughgur and Barony of Smallcounty; **Co Limerick**

Regd owner: Richard O'Regan (deceased); Folio: 1323; Lands: Townland of Rathcannon and Barony of Coshma; **Co Limerick**

Regd owner: Texaco (Ireland) Ltd; Folio: 25490; Lands: Townland of Ballinacurra (Weston) and Barony of Pubblebrien; **Co Limerick**

Regd owner: Bridget Bourke; Folio: 34885; Lands: Castlereagh and Barony of Atirawley; Area: 15A 3R 22P; **Co Mayo**

Regd owner: Michael and Eileen Heraty; Folio: 7967F; Lands: Townland of Cuiltrean and Barony of Burrishoole; Area: 0.7409 hectares; **Co Mayo**

Regd owner: Thomas Hickey; Folio: 13803; Lands: Summerhill Upper and Clonbartan; Area: 49.9125 acres and 0.5375 acres; **Co Meath**

Regd owner: Joseph Moore; Folio: 15892f; Lands: Mooretown; Area: 0.460 acres; **Co Meath**

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

Regd owner: Michael Fogarty (deceased); Folio: 2836; Lands: Townland of Derrinlaur Lower and Barony of Upperthird; **Co Waterford**

Regd owner: Esther and Patrick Burke; Folio: 145R; Lands: Clonmines and Barony of Shelburne; **Co Wexford**

Regd owner: William Hanton; Folio: 685L; Lands: west side of William Street and Barony of parish of St Michael's of Feagh; **Co Wexford**

Regd owner: Ann Murphy (deceased); Folio: 20196; Lands: Cullenstown and Barony of Shelmaliere West; **Co Wexford**

Regd owner: Paul and Marie Phillips; Folio: 19130F; Lands: Rathdown upper and Barony of Rathdown; **Co Wicklow**

WILLS

Corry, Dr Patrick J (deceased), late of 2 Sussex Terrace, Mespil Road, Dublin 4. Would any person having knowledge of a will being made by the above named deceased who died on 9 June 2001, please contact McArdle & Company, Solicitors, 12 Upper Mount Street, Dublin 2, tel: 01 662 2422

Desmond, Dr Mary Ellen (Moira) (deceased), late of 'Moiraville', Donovan's Road, Cork. Would any person having knowledge of a will executed by the above named deceased who died on 15 September 2001, please contact Colm Burke & Co, Solicitors, Washington House, 33, Washington Street, Cork

Dunne, Celine (deceased), late of Cappa Roe, Adare, Co Limerick. Would any person having knowledge of the

whereabouts of a will of the above named deceased who died on 15 February 1998, please contact McMahon O'Brien Downes, Solicitors, Mount Kennett House, Henry Street, Limerick, Reference DI'B, tel: 061 315100, fax: 061 313547

Fitzpatrick, John (deceased), late of 31 Dublin Road, Renmore, Galway and 356, Orwell Park, Dublin 6W. Would any person having knowledge of a will made by the above named deceased who died on 30 July 2001, please contact Kay Cogan-Daly of Cogan-Daly & Co, Solicitors, Brighton House, 50 Terenure Road, East, Rathgar, Dublin 6, tel: 01 490 3394 or fax: 01 490 3190

Kearns, Sadie (deceased), late of 24 Carragh Road, Dublin 7. Would any person having knowledge of a will executed by the above named deceased who died on 25 July 2001, please contact Sean O'Ceallaigh & Co, Solicitors, 363 North Circular Road, Phibsboro, Dublin 7

Kelly, Mary (deceased), late of 14 Blacquiere Villas, Phibsboro, Dublin 7. Would any person having knowledge of a will executed by the above named deceased, who died on 6 August 2001, please contact Mason Hayes & Curran, Solicitors, 6 Fitzwilliam Square, Dublin 2, tel: 01 614 5000, fax: 01 614 5001, Ref: NL

McCormack, James (deceased), late of Volerstown, Kells, Co Meath. Would any person having knowledge of a will made by the above named deceased who died on 17 July 2001, please contact Murphy Coady & Co, Solicitors, Commons Road, Navan, County Meath, tel: 046 75630, fax: 046 75632

O'Rourke, Mary Margaret (deceased), late of Weston House, Main Street, Newcastle, Co Dublin, who died on 25 September 2001. Would any person having knowledge of a will executed by the above named deceased, please contact Tom Collins & Co, Solicitors, 6 Charlemount Street, Dublin 2

Spence, Alexander D (deceased), late of 43 Waterloo Road, Ballsbridge, Dublin 4. Would any person having knowledge of a will of the above named deceased who died on 21 August 2001, please contact Margaret Roche, Solicitor, The Bridge, Enniskerry, County Wicklow, tel: 01 286 4044, fax: 01 286 5266

EMPLOYMENT

Solicitor with PQE, practising certificate and savvy, seeks locum – Dublin area. Successful practice preferred, tel: 01 660 5893, tel: 074 58274 or mobile: 087 671 3671

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Assistant solicitor required for busy expanding practice. One to three years' PQE. The successful candidate would be expected to have good academic standards, proven ability to handle a wide ranging and demanding workload, an ability to work on their own initiative, good communication skills and an ability to relate well to clients. Apply in writing with CV to Bill Holohan & Associates, Solicitors and Notary Public, Riversdale House, 38 Sundays Well Road, Cork, e-mail: holohanb@indigo.ie

Part-time locum required for approx 12 weeks commencing early to mid-January on two-day week basis (must include Wednesdays). Experience in District Court, general litigation and conveyancing required. Reply in writing to Patricia Holohan & Co, 5 The Steeples, Timmons Hill, Dublin Road, Navan, Co Meath

Experienced litigation solicitor to deal with District Court and Circuit Court work. Salary commensurate with experience. Reply to PV Boland & Son, Solicitors, Main Street, Newbridge, Co Kildare. **Reply to Box no 90**

Solicitor required for progressive medium-sized practice in Mullingar. Two to three years' PQE desirable in conveyancing, District Court work and family law. **Reply to Box no 91**

Locum solicitor required for conveyancing work in County Monaghan for a period of three months. Immediate start. Excellent terms and conditions. Position may be permanent. **Reply to Box no 92**

Solicitor required for conveyancing and probate work in County Monaghan. Two to three years' PQE. Excellent terms and conditions for the right applicant. **Reply to Box no 93**

Solicitor required. Midlands office. Two to four years' general experience. **Reply to Box no 94**

North Cork, Mid-Cork, South Kerry, Tralee solicitor with six years' PQE in general private practice seeks part-time position. Excellent experience and knowledge in all areas of general practice to include conveyancing, criminal and family law. **Reply to Box no 84**

Dublin-based solicitor in process of setting up own practice available for locum work. **Replies to Box no 95**

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

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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

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Solicitor's practice for sale. Practice for sale in Donegal. Interested parties **reply to Box no 96**

LANDS AT GORTLECK, BUNCRANA, CO DONEGAL

We are looking for the solicitor/solicitors who is/are the successors of the firm of Longfield, Jameson and Hamilton, Solicitors, who dealt with the Courtney Newton estate in or about 1932. Would anyone who has any information in relation to the said solicitors, their successors in title or any solicitor who dealt with the estate of Courtney Newton, please contact the following:

Ruth McGartoll,
Michael D White & Co,
Solicitors,
Carndonagh,
Co Donegal,
Tel: (077) 74102

TITLE DEEDS

William Joseph Flood (deceased). Would any solicitors holding any deeds to the premises at 18 Lower Fairview Avenue, Fairview, Dublin 3, please contact Alphonsus Grogan & Company, Solicitors, 33 Lower Ormond Quay, Dublin 1, tel: 01 872 6066 or fax: 01 873 0295

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 – 1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Noelle Roche and Patrick Roche

Take notice that any person having any interest in the freehold estate of the following property: 99 Terenure Road North, Dublin 6.

Take notice that Noelle Roche and Patrick Roche 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 person 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, Noelle Roche and Patrick Roche intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion, are unknown or unascertained.

Date: 5 October 2001
Signed: Cusack McTiernan (solicitors for the applicant), 6 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 – 1994* and in the matter of the *Landlord and Tenant (Ground Rents)*

***(No 2) Act, 1978* and in the matter of the purchase of the freehold estate of property situate at 35 Montpelier Hill, Dublin 7: an application by Timothy Martin**

Take notice that any person having any interest in the freehold estate of the property known as 35 Montpelier Hill, Dublin 7, held under an indenture of lease dated 9 January 1883 and made between Edward Golding Elwes of the one part and Hastings McAllister of the other part and supplemental lease dated 23 October 1889 between Edward Golding Elwes of the one part and James Crozier of the other part for a term of 150 years from 29 September 1882 subject to the yearly rent of £4 thereby reserved and the covenants under the part of the lessee and the conditions in the said indenture of lease and the indenture of supplemental lease. Which said premises is described in the aforesaid recited indenture of lease as being 'part of the lands of Grangegorman lying on the north side of Montpelier Hill situate in the parish of St Paul, City of Dublin'.

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

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

Date: 19 October 2001

Signed: Peter Morrissey & Company (solicitors for the applicant), Merrion Building, Lower Merrion Street, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967 and 1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Sean Fitzgerald of 40 Sandford Avenue, South Circular Road, Dublin 8

To any person having any interest in the freehold estate or any leasehold estate in the following property, namely all that piece or plot of ground situate on the north side of Sandford Avenue in the Parish of St Catherine, the city of Dublin, with the dwellinghouse and premises thereon known as 40 Sandford Avenue, South Circular Road, Dublin 8, held under an indenture of lease dated 19 May 1926 and made between Joseph P Somers of the one part and John Campbell of the other part for a term of 120 years from 1 November 1925 at the yearly rent of £5.

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

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

Date: 17 October 2001

Signed: Patrick Morrissey & Co (solicitor for the applicant), 1a Lower George's Street, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant (Ground Rents) Act, 1967 – 1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the purchase of the freehold estate of property situate at 97 Terenure Road North, Terenure, in the city of Dublin: an application by Brendan T Moran

Take notice that any person having any interest in the freehold estate of the property known as 97 Terenure Road North, Terenure, in the city of Dublin, being portion of the premises demised by an indenture of lease or reversionary lease dated 25 July 1890 and made between Charles Robert Whitton of the one part and Anne Teresa Cahill of the other part for the term of 200 years from 29 September 1904 primarily liable only to the annual sum of £12 and subject to the covenants and conditions therein contained.

Take notice that Brendan T Moran 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 that any party ascertaining that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the said property to the below-named solicitors within 21 days from the date of this notice.

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

Signed: Maurice E Veale & Co (solicitors for the applicant), 6 Lower Baggot Street, Dublin 2