Law Society Gazette

Regulars

Cover Story

ORDER YOUR GAZETTE DIARY NOW!
SEE INSERT IN THIS ISSUE

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

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

Volume 95, number 8
Subscriptions: £45

At last, a car for heavyweights that isn't overweight.

Alfa 166 Sportivo.

The Alfa 166 ‘Sportivo’ comes with a six-speed gearbox, ‘Momo’ leather upholstery, climate control, ABS and EBD (electronic brake force distribution), 5 spoke 17” alloy wheels, integrated phone system and boot mounted CD changer. Yet despite these and other features the car’s performance, agility and handling remain uncompromised. Which is no surprise. For beneath that luxurious, executive exterior beats a very, very passionate heart - Cuore Sportivo.

The Alfa 166 ‘Sportivo’. Luxury, passion, performance.

ALFA ROMEO

Cuore Sportivo

Legal & General Software

BE READY FOR THE EURO

with

Lex Solicitor Accounting Software

Why?

Imagine having to convert Manual Accounts to Euros in Year 2002

NOW IS THE TIME TO PREPARE

Make life easy

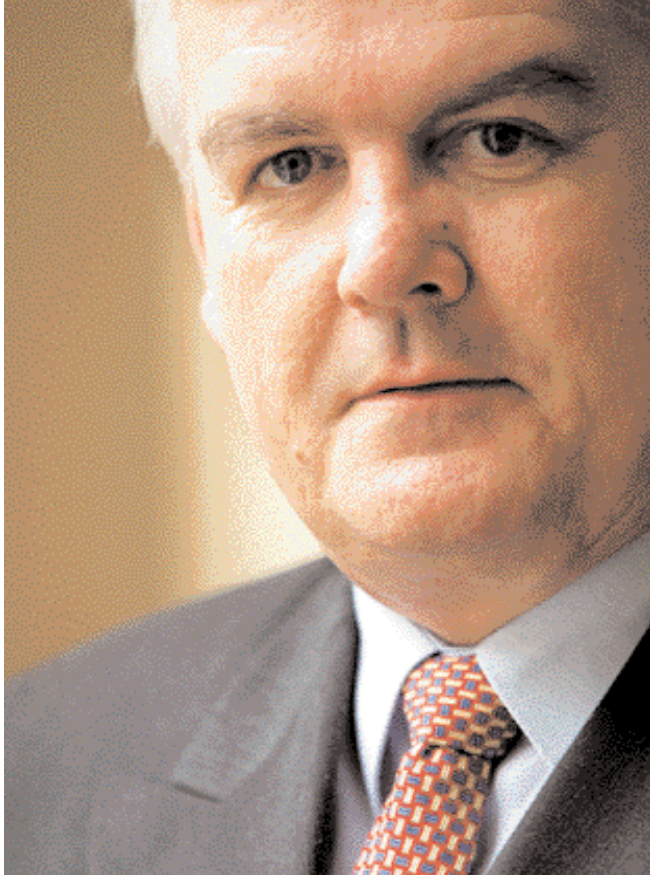
Put your Punts into **Lex**
and
Lex will **convert** to Euro

Sorry - almost forgot!
software price:
£950.00+VAT
€1,200.00+VAT

Call Michael Gilmartin
01-872 5522
E-Mail: Legal@iol.ie

Legal & General Software
13 Upper Ormond Quay, Dublin 7

First principles



By now you will know that both myself and the president of the High Court have signed the new *Solicitors' accounts regulations* into force. Elsewhere in this magazine, you will find an article explaining what the main changes are and how they are likely to affect your practices (page 11). That deals with the 'how?' – I want to talk about the 'why?'.

This is important, and I hope you'll forgive me if it seems like I'm preaching to the converted here. However, the fact of the matter is that despite the extensive consultations we carried out with bar associations around the country, there still appears to be a very small minority of solicitors who don't quite grasp the nature of a self-regulated profession. They have been quite vocal – if one can be both 'vocal' and anonymous – in complaining to some newspapers and magazines about the 'draconian' powers that the Law Society has granted itself. They have mischievously tried to link the introduction of the new regulations to any number of unrelated matters. They have deliberately muddied the waters and tried to confuse the general public and some particularly gullible journalists about what the new regulations are intended to achieve.

So, for them, if for no-one else, let me go back to first principles.

Fighting the good fight

The Law Society of Ireland is both your representative body and your regulatory authority. As your representatives, we fight the good fight on your behalf. When the solicitors' profession is maligned and ridiculed as 'ambulance chasers' and 'fat cats' in the media, we put the record straight. We defend your integrity as a profession and challenge the lazy assumptions made about you. We highlight your long and honourable tradition of vindicating your clients' rights and point to the many, many cases where we have changed the law of the land for the better. Many of the advances in civil rights that we now take for granted were won by solicitors working long hours, often on a *pro bono* basis, because it was the right thing to do. That's our profession, and we're proud to represent you.

But any profession is simply a collection of people, and people are fallible. Even the greatest legal thinkers in the country can be slipshod in the way they manage their paperwork. And some few, in every profession, will never live up to the ideals and standards that profession has set itself. That applies to doctors, architects, engineers, accountants and, unfortunately, solicitors.

And that's why the general public – our clients – rely on us and the other professional bodies to regulate and monitor the way our members conduct their affairs. It's a matter of public trust. We are called 'professions' and given this privilege of self-regulation because we work in a specialist area. No-one understands the complexities of this specialism better than those who work in it. Not the government, not IBEC, not the Irish Insurance Federation, no-one. We recognise when work is done well, we know when it is done badly. That is why we get to regulate ourselves.

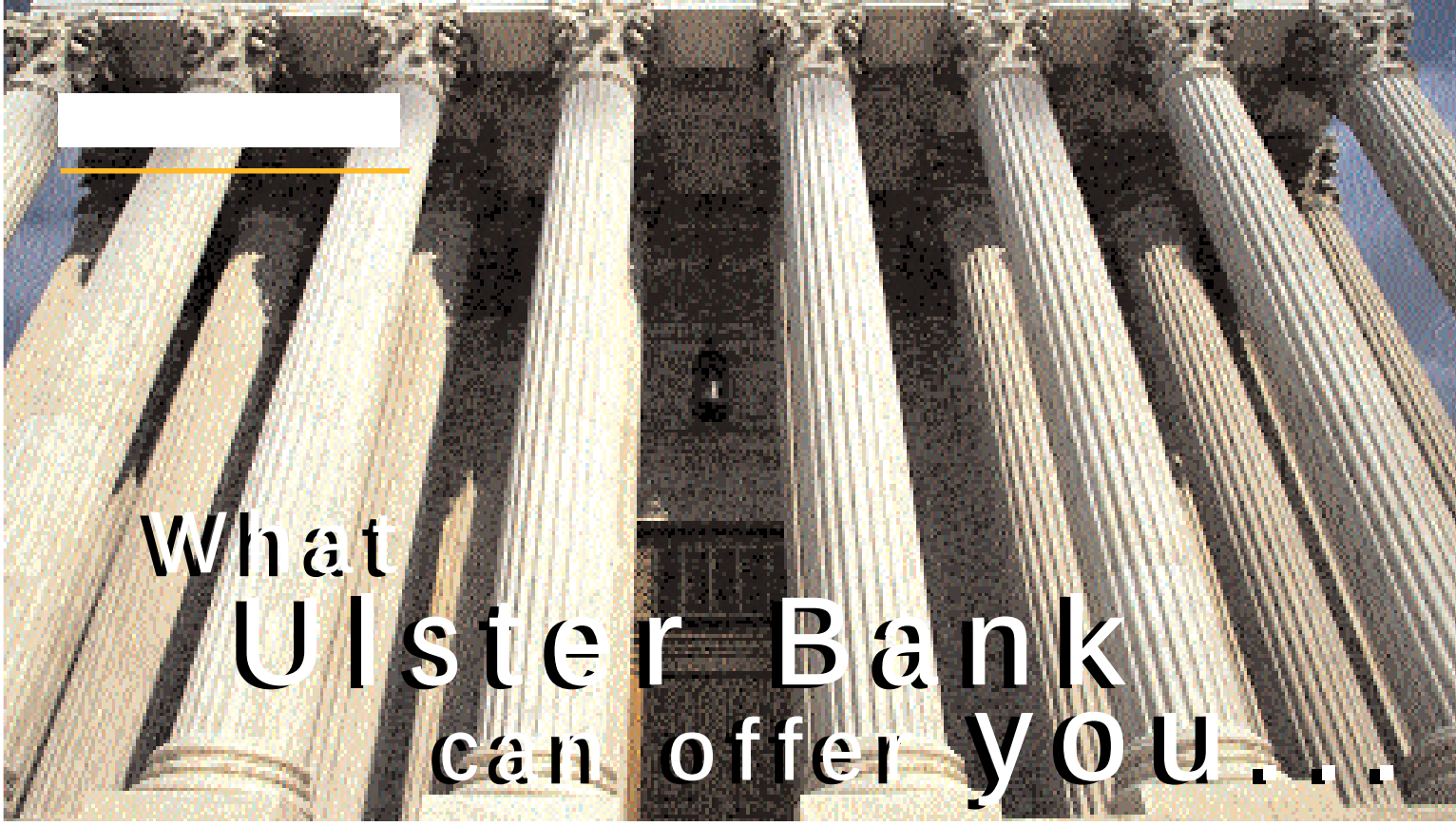
And the Law Society would be absolutely and disgracefully abdicating its responsibilities if it did not try to live up to this trust. That is why we introduced new *Solicitors' accounts regulations*. Things have changed in the last 17 years and our regulations need to reflect this.

We all remember the bad old days of the early 1990s when our compensation fund was almost wiped out through the actions of a few rogue solicitors. You remember, because you paid for it. You built the compensation fund back up with money out of your own pockets. The Law Society is determined that such a situation will never arise again. These new regulations will help make sure of that.

You may find the new accounting regime a little more onerous than before. I'm sorry. You'll get over it. You owe it to your clients and to your profession. And as for the Law Society? Well, it's our job.

Ward McEllin,
President

'We recognise when work is done well, we know when it is done badly. That is why we get to regulate ourselves'



What Ulster Bank can offer you...

So you are going to be a Solicitor?
You've probably enough studying to do without feeling stressed out about your finances. So let Ulster Bank help.
Our Professional Student Package is specially tailored for Trainee Solicitors by giving you the chance to borrow additional money (and at a special low rate) as you complete each stage of your studies. Not only that but you can choose to delay repaying your study loan until you've had a chance to build up a decent income.

- *Current Account*
  Servicecard or Cashcard and Chequebook.

- *Overdrafts*
  Overdrafts with up to £1,500 interest-free.
  No account maintenance fee and transaction charges within agreed overdraft limit.
  No arrangement fee.

- *Commission Free Travel Facilities*

- *Credit Card*
  Available on application.

- *Anytime Banking*
  Free Registration with Ulster Bank Anytime
  Access to your account 24 hours a day, 7 days a week, via telephone or the internet.

- *Professional Student Loan Scheme*
  Study and maintenance loans up to £15,000 (maximum of £10,000 per annum).
  Preferential Interest Rate.
  Capital repayment holiday for the duration of your study period and up to a maximum of six months after your final exam.
  No arrangement fee.

- *Holiday Loan Scheme*
  Travel loan of up to £1,500 if you need to take a break from your studies.
  Preferential Interest Rate.
  No arrangement fee.

- *Commission Free Irish Drafts & Money Orders*

FOR FURTHER DETAILS
CONTACT YOUR NEAREST
ULSTER BANK BRANCH

OR

FREEFONE 1800 70 70 70

Ulster Bank

We have a legal obligation to ask all new account holders for acceptable identification e.g. current full local passport, full driving licence or a student identity card bearing a sealed photograph and signature. In addition we require separate verification of your current permanent address before opening an account e.g. utility bill, bank or building society statements (originals). If you are unable to provide any of the above, please speak to a member of staff.
The Bank reserves the right to refuse a deposit, decline to open an Account or, on reasonable notice to require an Account to be closed without giving a reason for such a decision. We may close the account immediately on notice to you if you materially or persistently breach this agreement or if it is necessary to protect you or us.
Services which involve borrowing are applicable to customers aged 18 or over. Loans are granted subject to status and conditions. Security may be required. This package is only applicable to Trainee Solicitors. Written quotations are available on request from Ulster Bank Limited, Sales & Marketing PO Box 145, 33 College Green, Dublin 2 or from any Ulster Bank branch.
Telephone calls with Ulster Bank will be monitored/recorded to maintain and improve our services.

Society defends integrity of complaints system

Law Society Director General Ken Murphy robustly defended the self-regulation of the solicitors' profession in a lengthy interview on RTE radio with broadcaster Pat Kenny recently.

Kenny gave more than half an hour of airtime firstly to a complainant named Mary McDonnell and then to Murphy. McDonnell had complained in the media that she had been unable to find a solicitor to represent her at a hearing of the Disciplinary Tribunal in relation to a complaint she had against a solicitor. At the tribunal, the solicitor was represented by a full legal team, including senior counsel.

In the *Sunday Independent*, she had accused the solicitors' profession of operating a 'closed shop'. Murphy had written to the paper to suggest that an alternative, and far more likely, reason why a solicitor generally cannot be found to take a case is that the case has no realistic prospect of success. He denied that there was any question of the operation of a closed shop.

'Nothing could be further from the truth', he told Kenny.

Talking heads: Pat Kenny and Ken Murphy

'On a constant basis actions are brought by solicitors against other solicitors on behalf of former clients for negligence and other reasons. There is no valid basis for saying that solicitors are not prepared to act against other solicitors.'

Murphy accepted that it 'looked unbalanced' that McDonnell had been unrepresented while the solicitor complained of had a full team of solicitors and counsel to represent him. However, the society had supplied McDonnell with the names of many firms of solicitors who had indicated they were prepared to act in such cases and, if none of them were prepared to act in this one, he could only conclude it was because she could not get a solicitor to believe that her case had merit. He pointed out that it was not Mrs McDonnell whose conduct was being examined by the tribunal. 'The tribunal operates under the procedures of the High Court. It sought to help her at every stage. It is not a forum for legal argument but a fact-finding tribunal, where all that was required of her was that she told her story'.

He pointed out that McDonnell's complaint was brought initially to the Law

CONTD ON PAGE 9 ➜

COMPENSATION FUND PAYOUTS

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in September: Michael P McMahon, 5/6 Upper O'Connell Street, Dublin 1 – £150,068.

BANK LAUNCHES ACCOUNTS GEARED TO SOLICITORS

Anglo Irish Bank has launched a new range of bank accounts specifically designed for solicitors. The new 'Bona Fide' accounts have reduced charges for everyday transactions such as bank drafts, statements, and certificates of interest. The new accounts also offer same-day interest. For further information, contact Fiona Donovan on tel: 01 6162682.

CRIMINAL PROCEDURES CHANGED IN DISTRICT COURT

Part 3 of the *Criminal Justice Act, 1999*, which abolishes preliminary examinations, came into force on 1 October. According to the Department of Justice, the net effect of these provisions is that in cases to be tried on indictment, the District Court will no longer have a role in deciding whether there is 'a case to answer' before sending a person forward to trial.

ONE TO WATCH: NEW LEGISLATION

Carer's Leave Act, 2001

The *Carer's Leave Act* was enacted and came into effect on 2 July and joins the series of enactments providing for leave in special circumstances, including maternity leave (1994), adoptive leave (1995) and parental leave (1998). Carer's leave is unpaid. It complements an insurance-based carer's allowance, for which workers with sufficient contributions qualify, which was introduced on 26 October 2000 and is worth £96.50 a week plus an allowance of £13.50 per dependent, not means tested. The two schemes are designed to be complementary, but can be availed of independently. The same medical test for the person to be cared for is used. If you qualify under this act for carer's leave, you are not necessarily entitled to benefit, but you can decide to take the leave at your own cost. If you qualify for the benefit, you are not necessarily entitled to the leave, for example because you have not been with your employer for the minimum time of a year. You may still decide to leave your job and avail of the benefit.

Separate legislation provides for a carer's allowance, availed of by 16,000 people, which is means-tested.

The act seeks to strike a balance between the demands on the carer and the realities of business life.

- The total duration for which someone can take leave is 65 weeks (15 months), which may be split over different periods
- There are rules for giving notice, taking leave and returning to work, and a procedure is set out in the act which seeks to provide for the orderly planning of leave, and which also imposes on the employer a duty to keep full records
- If any period is less than 13 weeks, the employer may reasonably object, giving reasons for this in writing
- Once returned to work, a carer must remain there six weeks before taking another period of leave
- A second 65 weeks may be taken to care for another person after a return to work of six months, with an exception where the requirements of care for the second person overlaps with the first
- If the person being cared for dies, the entitlement to leave continues for a further six weeks. Otherwise, there is a duty on the carer to notify the employer if the person being cared for no longer qualifies as a 'relevant person' and to return to work
- While on leave, the carer can undertake work or training for up

CONTD ON PAGE 9 ➜

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 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 this area will take place in Longford District Court.

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

(d) The District Court Area of Ballinacargy has been amalgamated with the District Court Area of Mullingar. From September 2001, all District Court sittings in this area 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 sittings 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 September, 2001
All courts will commence at 10.30 am

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

→ CONTD ON PAGE 7

Society, then brought in respect of the society's handing of it to the Independent Adjudicator and finally to the Disciplinary Tribunal appointed by the president of the High Court. On both the relevant Law Society committee and the Disciplinary Tribunal, non-lawyer members sit. At each stage, the complaint was examined thoroughly and objectively but was rejected.

Pressed by Kenny on the independence and integrity of the system for dealing with complaints against solicitors, Murphy pointed to the extent to which the system is subject to outside controls and oversight. It operates under statute. At the apex of the system is the president of the High Court and it is he, not the Law Society, who appoints the members of the Disciplinary Tribunal. There is an Independent Adjudicator to assess the fairness and objectivity of the way the society handles complaints and there are representatives of the public – people nominated by the director of consumer affairs, by IBEC, by the ICTU and by the minister for justice – who sit as full members of the committees in question. 'These people would not allow an unfair system to operate', said Murphy.

New CRO registration of charges form

The Companies Registration Office is to introduce a new form for the registration of charges created by companies. Although no date has been fixed yet, Form C1 is expected to replace Form 47 by the end of this month. Copies of the new form will be available from the CRO and may also be downloaded from its website, www.cro.ie, before the form is introduced. The CRO also warns that after Form C1 has been introduced, Form 47 will no longer be accepted

All CRO account holders will be able to complete the new form electronically via the CRO website. Where the form is completed and delivered electronically, the CRO says that it guarantees to issue the certificate of registration within ten days of receipt of the signed hard copy of the form.

Any member who would like to receive a demonstration at the CRO on how to complete Form C1 electronically or who has queries about the electronic registration of charges can contact eamonn_gallagher@entemp.ie.

Gazette Yearbook and diary coming soon!

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

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

Order your copy now by filling out the form on page 32 or the loose-leaf insert enclosed with this magazine.

→ CONTD ON PAGE 7

to ten hours a week, without disqualifying
- The minister can make regulations in relation to periods of leave for classes of employees
- Most importantly, the act provides that the parties may agree to postpone, vary or curtail the leave at any time, thus encouraging flexibility to suit the circumstances.
- The person to be cared for is assessed by a deciding officer under the 1993 *Social Welfare Consolidation Act* as 'needing full-time care and attention'
- The legislation cannot be contracted out of, and the employee's rights are protected, other than the right to remuneration, annual leave and public holidays, pension and employment-related contributions. If the employment involves training, apprenticeship or probation, it may be suspended
- On return to work, the same job or a suitable equivalent must be provided by the employer
- There are provisions for dispute resolution by the rights commissioner and Employment Appeals Tribunal machinery. The maximum payment for redress is 26 weeks' salary
- The working of the act is to be reviewed by the minister two to three years from enactment, in consultation with employer and employee representatives.

Last February, when the legislation was being introduced into the Dáil, only slightly over 200 applications for the carer's benefit had been received. It is unlikely that this legislation will ever have wide-ranging impact. But for those who need it, it will make an important difference. G

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

REQUEST FOR PHOTOS AND MEMORABILIA

A Law Society working group is preparing a commemorative *History of the Law Society of Ireland* to be published in 2002 as part of the celebrations to mark the 150th anniversary of the society's charter. Unfortunately, the society holds very few photographs from the period prior to its move to Blackhall Place in 1978. The working group would be very grateful for the loan of photographs and any other memorabilia that members may have relating to Law Society events or to the solicitors' profession generally, dating from the earlier 20th century, or, indeed, the 19th century, which will be considered for inclusion in the work. Items should be sent as soon as possible to Law Society librarian Margaret Byrne at Blackhall Place, Dublin 7. They will be kept safely and returned in due course.

LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME

Unit prices: 1 September 2001
Managed fund: 354.626p
All-equity fund: 99.497p
Cash fund: 187.563p
Pension protector fund: –

PERSONAL INJURIES PUBLIC DEBATE

A public debate on the proposed Personal Injuries Assessment Board will be held on Wednesday 17 October from 6-8pm at the Royal College of Surgeons of Ireland. Among the speakers taking part are Bar Council chair Rory Brady, Insurance Industry Federation chief executive Mike Kemp, Fergus Whelan of the ICTU, and Ann Troy from the Department of Enterprise, Trade and Employment. All are welcome to attend. For further information, contact Ray O'Doherty on tel: 01 478 2000.

AIB SECURITIES RELOCATES

From 1 October, the new address for AIB Bank's Dublin securities unit will be 7th Floor, 1 Adelaide Road, Dublin 2, tel: 01 475 3555, fax: 475 4259.

COURTS SERVICE
An tSeirbhís Chúirteanna

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

New regulations 'demonstrate the profession's commitment'

Thursday 13 September 2001 marked the end of a lengthy process, when the *Solicitors' accounts regulations, 2001* were signed by the president of the Law Society and the president of the High Court, writes Gerard Doherty

The regulations have been germinating since the enactment of the *Solicitors (Amendment) Act, 1994*, but received an added impetus this year as a stated aim of the president, Ward McEllin, for his year of office. He asked the Compensation Fund Committee to prioritise its preparation and the committee's efforts bore fruit last month, following adoption of the regulations by the society's Council.

A particular strength of the regulations lies in the adjustments made following consultation with the local bar associations and the accountancy bodies, and the end product is a testament to the benefits of that consultative process. At its September meeting, the Council was informed that the councils of both the DSBA and the SLA unanimously approved the adoption of the regulations and were satisfied with the outcome of the consultation process. Other bar associations have expressed similar sentiments at meetings and in correspondence.

A copy of the final regulations will be issued to every practising solicitor in the near future. The regulations will come into effect on 1 January 2002. They will not apply to accounting periods commencing during 2001 – these will continue to be subject to the 1984 regulations – and will only affect accounting periods commencing on or after 1 January 2002. It is intended that a series of seminars will be held in various centres around the country later in the year and in early 2002 in order to familiarise solicitors with the content of the regulations. It is also intended to develop guidelines over that period, in order to clarify any issues arising in relation to the scope and application of individual provisions.

Law Society President Ward McEllin signs the new *Solicitors' accounts regulations*, flanked by Registrar of Solicitors PJ Connolly, Compensation Fund Committee chairman Gerard Doherty and Deputy Director General Mary Keane

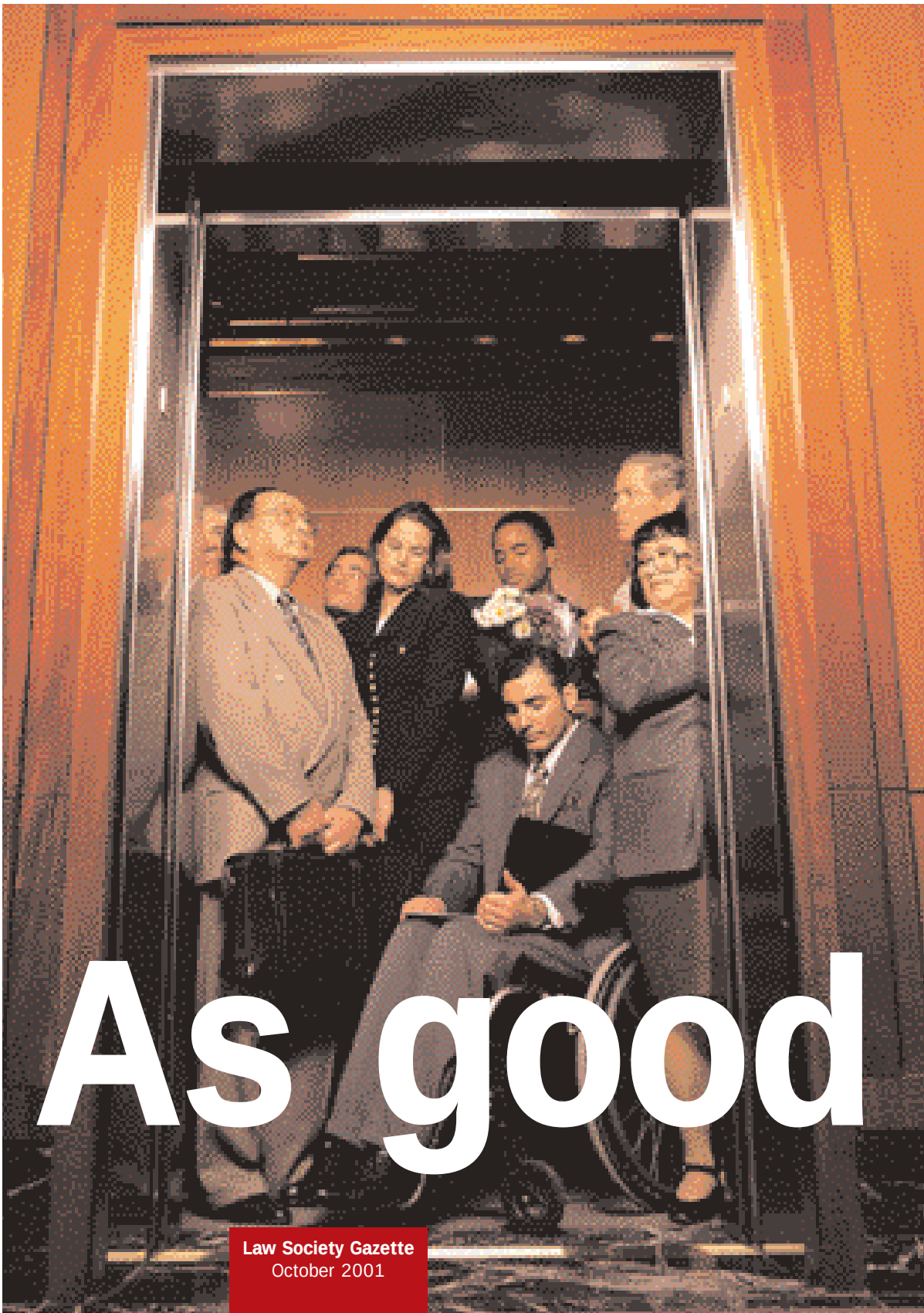
Many of the amendments contained in the new regulations merely reflect changes introduced by the *Solicitors (Amendment) Act, 1994*, or are designed to ensure consistency in drafting style and format. The principal policy and operational changes are:

- A solicitor cannot keep his own money in a client account and must transfer it to the office account within three months of becoming beneficially entitled to it
- Monies cannot be 'split' between office and client accounts on receipt. All 'mixed' monies must first be lodged to the client account, with a transfer of the relevant portion to the office account within three months
- All monies must be lodged either to the client account or to the office account – there is an exemption for cheques/drafts made out to a purchaser's solicitor or endorsed by the client, where the monies are required to be paid without delay to a vendor in respect of the balance of the purchase price of a property. The fact that this has occurred must be reflected on the client's file
- Interest arising generally on clients' monies is not regarded as clients' monies, except where it either (a) arises on monies held in a specific client account for a specific client or (b) is specifically calculated and credited to individual clients. In all other circumstances, interest must be transferred from the client account to the office account either within three months of the date on which it is credited by the bank or before the end of the accounting period. This does not affect the separate obligation to account to a client for interest, contained in the 1995 *Interest on clients' monies regulations*
- A solicitor cannot allow a credit balance to arise on the office side of a client's ledger account, as this would represent undischarged outlays due to a third party, for example, counsels' fees or stamp duty. If such a credit balance arises, the solicitor must correct the position without delay. A reconciliation exercise must be conducted twice yearly to evidence compliance.

It is 17 years since the 1984 *Solicitors' accounts regulations* were placed on the statute book. It may be another 17 before the 2001 regulations require updating. In the interim, it is hoped that the regulations will demonstrate the commitment of the profession to rigorous, but fair, self-regulation to the mutual benefit of our members and the clients we serve. G

Gerard Doherty is chairman of the Law Society's Compensation Fund Committee.

The recent Supreme Court decision in the Jamie Sinnott case has focused attention on the constitutional rights of people with disabilities. Henry Murdoch reviews the legislative framework and asks whether the disabled really have rights or just privileges



As good

MAIN POINTS

- Recent legislation and judicial decisions
- Main organisations responsible for people with disabilities
- Does the legislation go far enough?

as it gets?

There has been a raft of important legislation recently which could have a significant impact on people with disabilities and their rights. The legislation has addressed issues such as direct access to mainstream services, access to buildings, airports and public transport, access to education and access to information. It also refers to the right not to be discriminated against in relation to employment and in relation to goods and services.

Access to education

Under the constitution, the state recognises the family as the primary and natural educator of the child. The state, however, has the duty to provide for free primary education.

Up to 1996, it was not clear how far this duty extended. In *O'Donoghue v Minister for Health* ([1996] 2 IR20), the High Court accepted that it had been established around the world that children suffering from profound mental handicap would benefit from formal education. Accordingly, there was a constitutional obligation on the state to provide for free primary education for profoundly handicapped children. In a subsequent case, *Comerford v Minister for Education* ([1997] 2 ILRM 134), the High Court held that where a child has special educational needs which cannot be provided by the parents, the state is obliged by the constitution to cater for those special needs.

These judicial decisions were given statutory recognition in the *Education Act, 1998*, which required state-funded schools to use their available resources to ensure that the educational needs of all students, including those with a disability, are identified and provided for.

In July, in the landmark case *Sinnott v Minister for Education*, the Supreme Court held that the state's constitutional obligation to provide for free primary education stopped at the age of 18. The government has indicated its intention to provide primary education for people with disabilities beyond 18, but there is no right to such an education that can be enforced by a disabled person.

Nor do disabled people have a statutory or established constitutional right to a secondary or third-level education. Of course, under equality legislation an educational establishment must not discriminate against disabled students, but it has an escape clause: it can argue that it cannot cater for people with a disability because the cost is not a *nominal* cost.

Access to qualifications

A radical overhaul of the qualifications structure in Ireland has been provided for in the *Qualifications (Education and Training) Act, 1999*. Disabled people have not been forgotten in that legislation, as one of its aims is to facilitate lifelong learning through the promotion of access and opportunities for learners, including learners with a disability (sections 2(1) and 4(1)(e)).

On the road again

Ireland has a long way to go in improving mobility for people with a disability, but recent legislation is encouraging. For example, under section 19 of the

PROHIBITIONS ON DISCRIMINATION

Recent legislation prohibits discrimination with regard to employment and in relation to goods and services.

An employer is prohibited from discriminating against an employee or prospective employee on the grounds of disability under the terms of the *Employment Equality Act, 1998*. Treating one person less favourably than another because one has a disability and the other hasn't is discrimination. This relates to access to employment, conditions of employment, training or work experience, promotion or regrading, or classification of posts.

However, an employer is not required to recruit or retain any person who is not fully competent and capable of undertaking the duties of the job (section 16(1) of the act). A person with a disability is considered fully competent and capable if he or she could undertake the duties with the assistance of special treatment or facilities. Employers must do all that is reasonable to provide such special treatment or facilities, but only if the cost is *nominal* in nature (section 16(3)(b) and (c) of the act).

This limitation of nominal cost was required because a stronger provision in a previous bill was struck down as unconstitutional, as it was held to have imposed burdens on employers that amounted to an unjust attack on their property rights (*In the matter of art 26 of the constitution and the* Employment Equality Bill, 1996 [1997 SC] 2 IR 321). Interestingly, there is no definition of 'nominal' in the legislation.

Under the *Equal Status Act, 2000*, a person must not discriminate on disability grounds in disposing of goods or premises or in providing a service or accommodation. Treating one person less favourably than another person because one has a disability and the other hasn't is discrimination.

In addition, discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself of the service (section 4). It is not discrimination if the cost involved is more than nominal.

A 'service provider' is widely defined to include a person disposing of goods or an estate or interest in premises, a person responsible for the provision of accommodation, an educational establishment, and a club. Having a reasonable preferential charge for people with a disability does not constitute discrimination under the act.

Equal Status Act, *2000* road authorities now have to provide ramps, dished kerbs or other sloped areas when constructing or altering public footpaths or pavements. The act also empowers the minister for public enterprise to make regulations requiring road or rail passenger vehicles and bus stations to be readily accessible and usable by people with a disability. However, this has to be seen against a background of years of neglect in respect of investment in our public transport system.

On a more positive note, all airlines, service providers and other agencies doing business at Ireland's main airports are now required to accommodate the needs of disabled people by providing special treatment or facilities, if without such treatment or facilities it would be impossible or unduly difficult for those people to avail of the service (SI no 469 of 1999). New building regulations (contained in SIs no 497 of 1997 and 249 of 2000) on improving access to buildings will also, in time, have a profound effect on the environment for people with a disability.

SOURCES OF INFORMATION

Further information on the Equality Authority, Comhairle, FÁS and the National Disability Authority can be obtained from their respective websites: www.equality.ie, www.cidb.ie, www.fas.ie and www.nda.ie.

Access to information

Because of their disabilities, some people may not be in a position to exercise their rights under the *Freedom of Information Act*, *1997*. Consequently, section 6(2) of that act says that public bodies must give reasonable help to people with disabilities who are seeking the records of a public body.

Mainstream services

In 1998, the government took steps to integrate services for people with disabilities into the mainstream services for other people, and to give organisational teeth to new legislation prohibiting discrimination. It is now an offence to discriminate on the grounds of sex, sexual orientation, marital status, race, religion, age, family status, membership of the travelling community, victimisation and disability.

The *Employment Equality Act*, *1998* established a new **Equality Authority** to work towards the elimination of discrimination in employment, to promote equal opportunities, to provide information to the public on equality and to keep equality legislation under review. Its functions were expanded by the *Equal Status Act*, *2000* to cover equal status matters in relation to, for example, prohibited conduct (discrimination, harassment and so on). Following a decision by the director of equality investigations, the authority can apply to the courts for an injunction to prevent further occurrences of prohibited conduct.

As part of the mainstreaming of provisions for people with a disability, the National Rehabilitation Board (NRB) was dissolved in 2000 and its functions were taken over by existing bodies – FÁS and the health boards – and two new bodies, **Comhairle** and the **National Disability Authority**. The NRB previously advised the minister for health on rehabilitation services, co-ordinated the work of other bodies engaged in rehabilitation and provided direct services itself, such as vocational assessment.

Comhairle was established by the *Comhairle Act*, *2000*, merging the existing National Social Services Board and certain functions of the NRB. Its primary role is to ensure that individuals, including those with a disability, have access to accurate, comprehensive and clear information about social services. It also provides advice and advocacy services, but not legal representation.

In the first real attempt to mainstream vocational services for people with disabilities, last year FÁS, the national training and employment authority, took over responsibility for vocational training and employment placement of people with a disability. Previously, FÁS provided vocational training only for those disabled people who could be trained, without special assistance, on an integrated basis with those without a disability.

From all this organisational change came the only state body whose primary focus is on people with a disability, the new National Disability Authority. Its responsibilities include:

- Helping the minister for justice, equality and law reform co-ordinate and develop policy on people with disabilities
- Advising on appropriate standards for programmes and services provided to disabled people and monitoring codes of practice
- Recognising the achievement of good standards and quality, and
- Preparing strategic plans.

The authority is independent and can make recommendations to the minister about reviewing, reducing or withdrawing Oireachtas funding for any programme or service. This is an important power. It will be interesting to see the extent to which the authority uses it and how far the minister will act on its recommendations.

Towards equal treatment?

The law has an important role to play in creating a legal framework within which disabled people can be helped to obtain equality of treatment, whether in relation to employment, training, education, mobility or in relation to preventing discrimination.

There has been a great deal of legislation affecting these areas in recent times, although in many cases the approach has been cautious and minimalist, with plenty of opt-outs. On equality, discrimination and access to information, the law is written in terms of the rights of the individual and there are strong enforcement provisions. By contrast, on mobility and access to education, the law is either enabling or written in terms of the institutions rather than clearly spelling out the rights of the individual.

The law is one thing, but actions speak louder than words. For example, the legislation gives the minister for public enterprise the power to bring in regulations requiring public transport to be accessible, but will that power be exercised, and when? Currently, public transport is generally inaccessible. The National Disability Authority can recommend the withdrawal of public funds in respect of a programme or service which does not reach a particular standard, but will it do so? G

Henry Murdoch is a barrister and author of Murdoch's Irish legal companion.

Legal aid in Ireland

GREAT EXP

This month, the Legal Aid Board's annual report will paint a picture of falling waiting lists and better resources. Its management believes that other initiatives will bring even more improvements. But critics say that our legal aid system is still totally inadequate. Barry O'Halloran reports

MAIN POINTS

- Legal Aid Board to report a reduction in waiting lists for clients
- Means test for legal aid to be revised and streamlined
- Critics argue that board's remit should be widened

Under-resourced, under-staffed and under pressure, civil legal aid has been the justice system's poor relation since it was introduced here in the wake of the landmark European Court of Human Rights judgment in *Airey v Ireland* ([1979] 2 EHRR 305). But the picture appears to be changing. This month, the Civil Legal Aid Board, which administers our means-tested system, will produce its annual report. Statistics in the report, combined with a number of initiatives introduced over the last nine months, seem to indicate that legal aid has at last turned the corner. Or given that it's 21 years old, begun to come of age.

In recent years, one of the main problems facing the board has been waiting lists. The board's director of legal aid services, Frank Brady, blames the advent of divorce in 1997, since 90% of the board's work is in the family law area. 'When divorce was introduced, there was a significant increase in demand. Our Circuit Court work doubled from 1,300 cases a year to 2,500'.

The extra burden was worsened by a number of factors. In many cases, clients did not know where their spouses were living, so the board had to take steps to track them down – or at least satisfy the court that they had done everything in their power to find them. And because family homes were often part of the settlement, the board's lawyers were faced

ECTATIONS?

Please, sir, can I have some more? Critics argue that the Legal Aid Board needs more resources and a wider focus

with a lot more conveyancing work, which was not necessarily their area of expertise. This meant that valuable resources had to be diverted to training in order to develop the requisite skills.

But, according to Frank Brady, the outlook began to brighten last year. 'We got extra resources in early 2000 and the impact of that has been to reduce our waiting times significantly', he says. 'We have also improved our system for dealing with cases'.

The annual report will show that the waiting time experienced by clients fell in 18 centres last year. There have been further improvements since then, adds Brady. Overall, the number of clients on the waiting lists was reduced from 2,900 to 2,200. Now, the board maintains that very few people have to wait longer than three months before being granted legal aid. At the same time, some cases – normally those involving a fraught or dangerous domestic situation – are prioritised and dealt with straight away.

But the system is still criticised for the fact that people have to wait at all. After waiting three months to get legal aid, clients then face long proceedings, particularly in the Circuit Court. In Dublin, judicial separation and divorce cases take around nine months to go through the system. In Cork and other centres around the country, where there are no permanently-sitting family law courts, it can take well over a year. That is obviously beyond the board's control, but a wait of three months for legal aid, followed by 14 or 15 months for a hearing, means that the whole process might last up to a year and a half.

Ways and means

Solicitor Colm Burke, who in his other role as a Fine Gael member of Cork Corporation represents the ward from which Josephine Airey came, points out that if you have the means, you can begin proceedings straight away. If not, you have to wait. 'That defeats the whole principle of the Jo Airey case, which states that you are entitled to legal aid', he argues. 'At no stage does it say you are entitled to legal aid, but the state can decide when you are going to get it. If you have a situation where there are waiting lists for aid, then the state is falling down on its job'.

Roisín Webb, who is researching civil legal aid in this country for the Free Legal Advice Centres (FLAC), is also critical of waiting lists. 'That is the biggest problem for the board, and it can be very hard on the people who need legal aid in the first place', she says. She and Burke both welcome the fact that the board has begun contracting out some of its Circuit Court work to private practitioners. It has been using external solicitors for District Court proceedings since 1993, and decided to expand that approach this year.

Frank Brady says the board has allocated a total of £1 million to this scheme, which is still in its pilot stages. Half of that will go to solicitors and the other half to counsel. The solicitors themselves are authorised to engage counsel. 'It's been very successful and we will be expanding it', promises Brady.

But even though they support an expanded scheme, Webb and Burke argue that it should go further. 'They are paying solicitors £1,000 a case, so that works out at 500 cases, which is not a lot', Burke says. 'The other issue is that some solicitors might not necessarily want to take on legal aid work because family law cases do not always end after one hearing. You can find yourself going back to court the following year, so will there be extra payments for that?'.

Apart from delays, the other major issue is the entitlement to legal aid itself. Under the current criteria, only people with disposable incomes of less than £7,350 a year qualify for aid. As Burke points out, this effectively means that a widow with four children and a disposable income of £150 a week is not entitled to receive legal aid.

The good news is that the qualifying threshold is about to be increased to disposable income of £10,000 a year. This was agreed after discussions with the departments of finance and justice. Brady expects justice minister John O'Donoghue to publish the statutory instrument changing the criteria next month. That will also streamline the system for calculating disposable income, which Brady admits is administratively unwieldy.

The calculations are done by taking the individual's gross income and then subtracting various allowances, such as tax and social insurance, £3,802 for mortgage payments or £2,976 for rent

CIVIL LEGAL AID: THE *AIREY* CASE

The current system of civil legal aid in this country sprang from a David and Goliath battle that ended in the European Court of Human Rights. The 'David' in this case was Cork woman Josephine Airey. In the 1970s, she sought a judicial separation from her husband but could not afford a solicitor. At the time, only criminal defendants were entitled to legal aid from the state (granted to them under the *Criminal Justice (Legal Aid) Act, 1962*). After failing to get the Irish courts to vindicate her right to representation, she went to the ECHR in 1979.

The court found that Ireland was in breach of its obligations under articles 6(1) and 8 of the *European convention for the protection of human rights and fundamental freedoms* because it failed to provide Airey with free legal aid.

In December of that year, the government established the Legal Aid Board, which began operating the means-tested scheme that we have today. In 1996, this was put on a statutory footing, under the *Civil Legal Aid Act, 1995*, when the current income and means test criteria were established.

There are now 30 centres operating around the country. Most of their work involves giving advice and representation in family law, but there has been an increase in asylum-related work in the last three years.

In theory, legal aid can be granted for cases at all civil courts, except civil claims of less than £150, breach of promise of marriage, defamation and cases involving an interest in land. There are two other areas where it is not granted: social welfare and employment appeals tribunals (EAT). This is because proceedings in both these areas are intended to be informal and accessible to plaintiffs.

The board will provide aid to people appealing the findings of welfare hearings or the EAT to the courts. The voluntary Free Legal Advice Centres used to do some work in the welfare and employment law fields. FLAC refers clients to the board and Brady says that there is generally a high level of co-operation between the two organisations.

paid. What's left in the kitty after these subtractions is considered disposable income. For example, clients are entitled to an allowance of £1,388 a year if they are supporting a spouse, and £668 for each child. And there are a number of different allowances for accommodation, including mortgage, rent or payments to parents. These will all be rolled into one. Where the family home is likely to be an issue in the case (as it is in most judicial separations or divorces), it will not be included in the calculations.

Many people feel that such an improvement is long overdue. Colm Burke, who raised the issue in a recent article in the *Irish Examiner*, welcomes the changes, but believes the board will need extra resources to ensure that they work. 'If you raise the income threshold, that means that more people are entitled to legal aid, so the board's workload is likely to go up', he says.

Voluntary contributions

For her part, FLAC's Roisín Webb argues that in tandem with these changes the board needs to revise its system for calculating the contributions that clients have to make to the overall cost of their case. Assets such as houses are included in this calculation. 'These days, even a modest house can be quite valuable, so if somebody gets legal aid, they can still end up paying a lot of money', she says.

FLAC depends on volunteer solicitors and barristers to provide free advice through a network of clinics around the country. It also acts as a legal aid watchdog. Webb feels that the Legal Aid Board's remit should be expanded to cover cases where there is a genuine demand, but no service. 'Over 90% of the Legal Aid Board's work is family law – they do some asylum work, but that's really it', she says. 'There's no legal aid for disputes involving an interest over land, and that has been construed to include tenants, so if somebody is having problems with a landlord or with a local authority, they can't get legal aid'.

FLAC does little in the way of representation, but it does take on some cases for clients. Up until recently, it also provided representation for people at social welfare appeals and the employment appeals tribunal (EAT). These were originally designed to be informal hearings that would be accessible to plaintiffs – but the reality is somewhat different. Employers at these hearings always have representation, often both solicitors and counsel. If they can't afford it, organisations such as IBEC will provide legal back-up for them. 'That obviously makes it a lot harder for someone taking a case without representation', says Webb.

FLAC used to represent people at these hearings in order to demonstrate that there was a genuine need for legal aid in this area, but has since stopped because it discovered that its efforts changed nothing. Trade unions do give legal support to members, but this is not available to every worker, since only one third of Irish employees are

unionised. Many low-paid and part-time workers, the most vulnerable in the workforce, do not belong to any union. Not surprisingly, Webb believes that the government should provide legal aid cover for such people.

Taking over the asylum

One area into which the Legal Aid Board has expanded is asylum and refugee hearings. The number of cases in this field for which the board provided representation grew from 1,600 in 1999 to 3,500 last year. So far this year it has handled 2,500 cases, which means the caseload will be roughly on a par with last year. Frank Brady says that the board has a budget of £8 million specifically for asylum-related cases this year.

Many of those who seek asylum here are turned down by the courts. They have some rights of appeal, for which they are also entitled to aid. A high proportion of them are allowed to stay on humanitarian grounds, the most common reason being that they have a child or children here. The minister for justice, equality and law reform grants humanitarian leave to stay entirely at his own discretion. The board provides aid for people seeking this, and also to anyone seeking to appeal the minister's decision to the courts. The courts do not have the power to overturn his decision, but they can recommend that he reconsider his finding.

Getting into the asylum area meant that yet again the Legal Aid Board had to build up the necessary expertise. Its staff were trained by the United Nations High Commission for Refugees. Lawyers with a knowledge and interest in the area were recruited and trained.

Brady sounds more than happy with the way that the board was able to make its way through previously-uncharted territory. But there are many people out there who believe that the exercise should be repeated in other fields, and that the legislature should open them up to legal aid. G

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

Privileged

The recent High Court ruling in *Miley v Flood* has led to a number of important developments in the law relating to legal professional privilege. Eoin Dee discusses the implications of the decision for practising solicitors

MAIN POINTS

- Background to *Miley v Flood*
- Parameters of privilege
- Importance of the ruling for solicitors

The recent judgment by Kelly J in *Stephen Miley v Mr Justice Fergus Flood* (High Court, 24 January 2001) has important implications for the concept of legal professional privilege. The court held that a solicitor acting for a party before a tribunal does not have any rights over any other individual to be appraised of information known to that tribunal, where the tribunal's investigations are in their preliminary stages. It also held that a solicitor cannot maintain a claim of privilege in respect of the identities of people instructing him on behalf of his client company. This development is important, because it is an issue that has never before been adjudicated on in an Irish court.

The applicant, Stephen Miley, was a solicitor acting for a company called Jackson Way Properties. The respondent, Mr Justice Fergus Flood, was chairman of a tribunal established to investigate and report on any acts associated with the planning process which might, in its opinion, amount to corruption or involve attempts to influence the performance of public duties by public servants in the planning process. The Law Society had earlier been joined as a notice party in view of the potential importance of any decision on the matter where solicitors are concerned.

Mr Justice Flood had information to the effect that money was paid to politicians to secure the rezoning of certain lands at Carrickmines, County Dublin. These lands belonged to Jackson Way properties. The payments were allegedly made by or on behalf of the company and/or its predecessors. Jackson Way had acquired the lands from a company called Paisley Park Investments, to which a liquidator had been appointed in 1992. The company had been incorporated in the Isle of Man and its shareholders were bodies corporate registered in the Isle of Man, Panama and the British Virgin Islands. The lands had passed from Paisley to Jackson Way in 1994, but the tribunal believed that beneficial ownership of both companies was the same or largely the same and that the transfer of the lands was a ruse to convey the impression of change of ownership.

Miley was summonsed to appear before the Flood tribunal and asked to give evidence and to produce any documents in his possession concerning Jackson Way. On foot of the summons, he was asked for the names of individuals in Jackson Way who had passed instructions to him. Miley argued that this was confidential information. However, Mr Justice Flood ruled that legal professional privilege did not cover the identities of people providing instructions to the applicant.

The High Court case

Kelly J noted that there were two different challenges to the requirement that Miley disclose the identity of those who had instructed him. First, it was argued that he should not have been required

background

to do so unless he was fully appraised of the information the tribunal possessed which had led to the summons.

It was submitted that a solicitor was in a unique position, as opposed to other witnesses. Kelly J noted, however, that it was evident from examination of the correspondence between Miley and the tribunal that the applicant had been appraised of the information known to the respondent. The applicant maintained that, as a matter of law, he was entitled to know the facts known to the respondent, so that he might know whether the respondent's decision should be impugned. As Kelly J pointed out, however, the applicant had never sought to quash the summons.

Also, Miley sought to invoke a right to information in circumstances where the tribunal was only in the preliminary stages of its investigation. Such arguments had been advanced before the courts in earlier cases and had been rejected. Kelly J stated that there was no requirement on the tribunal to furnish to the applicant any more information than had already been made known to him. Furthermore, the mere fact that the witness was a solicitor did not give him any rights over and above those of other citizens to be appraised of information of the type sought at the investigative stage of the tribunal's work.

Parameters of privilege

Regarding the question of privilege, Kelly J noted that this was a fundamental condition upon which the administration of justice rested. It was noted that the concept is enshrined in article 6 of the *European convention on human rights*. It was further noted that the concept of privilege was different in this jurisdiction than in others and that any case law available from other jurisdictions was, therefore, of limited application. There is no Irish authority dealing exclusively with the question of client identity privilege. Reference was made to the decision in *Smurfit Paribas* ([1990] SC ILRM 588), where it was established that:

- Legal professional privilege can only be invoked in respect of legal advice and not legal assistance
- Where the claim of privilege is challenged, the onus of proving its application lies with the party claiming such privilege
- Privilege will generally apply where it is established that a communication has been made between a person and his lawyer for the purpose of obtaining legal advice
- The privileged item is the actual communication itself insofar as it seeks or contains legal advice.

The court noted that even the most confidential information will not attract privilege unless it comes within these parameters. In this regard, a solicitor is in no different a position than any other person who might be the recipient of confidential information.

In this particular case, the judge found that the applicant was not entitled as a matter of law to claim privilege in respect of the parties who had instructed him on behalf of Jackson Way. Any ruling to the contrary would not have accorded with the *Smurfit Paribas* ruling. The judge found that there was a strong body of authority in other jurisdictions which affirmed the general rule that a solicitor cannot claim such an identity-based privilege. It was noted, however, that there are some exceptions to this rule. Examples would be where naming a client would incriminate or where the identity of the client is so linked to the transaction that to name the client would have the effect of revealing the advice. Neither of these exceptions were found to apply here. Accordingly, the judge held that the applicant was not entitled to the declaration sought, that Mr Justice Flood was entitled to require the name of the individual in Jackson Way who instructed Stephen Miley and that this information must now be furnished to the tribunal.

This decision is obviously of critical importance to solicitors as it means that a solicitor cannot claim legal professional privilege in respect of the identity of an individual who instructs that solicitor, except in accordance with the qualifications outlined above. G

Mr Justice Fergus Flood: privilege doesn't protect the identities of those who instruct solicitors

Eoin Dee is a solicitor with the Waterford law firm Nolan Farrell & Goff.

Spam with

Fed up with getting e-mails offering you useless information supposed to drive your imagination? Wish you could do something about it? In the United States, they take this kind of thing seriously and have begun to develop legislation designed to control 'spamming' e-mails, as Paul Lambert explains

MAIN POINTS

- Problem of dealing with unsolicited communications
- Attempts at regulation
- Recent case law in the United States

Telecommunications companies are racing to provide third-generation (3G) mobile phone networks and user-friendly mobile applications and devices. One of the developing legal issues associated with this activity relates to privacy. 'Spam', or the mass sending of unsolicited commercial communications, is a large and growing problem. Many argue that the dangers of spamming include invasions of personal privacy and the clogging up of valuable network bandwidth. The European Commission has also pointed out that spam e-mails cost Internet users €10 billion a year.

It is clear that some existing legal frameworks apply to mobile spam communications. Examples in the EU context include the *Electronic commerce directive*, the 1997 *Telecommunications privacy directive*, the 1995 *Data protection directive* and the *Distance contracts directive*.

While informal 'netiquette' rules do exist, national legislatures are increasingly looking at regulatory solutions. One of the more forward-looking regulatory attempts to specifically deal with spamming is the *Commercial Electronic Mail Act* (RCW 19.190) in the state of Washington. Various other US states have likewise enacted spam laws.

The act prohibits the transmission of commercial electronic communications from a computer located in Washington or to an e-mail address of a Washington resident which a) uses a third-party Internet domain name without permission or misrepresents or obscures information identifying the point of origin of the communication, or b) contains false or misleading information in the subject line. It is also a violation to assist the transmission of a commercial electronic mail message in certain circumstances.

The act also provides for the award of civil damages. The person who receives a spam communication may sue for damages of $500 or for actual damages, whichever is greater (this appears to be 'per spam communication' and so spammers could potentially face very hefty bills, as it is technically possible for them to send up to half a million spam messages a day). Internet service providers (ISPs) can sue, as can the state's attorney general. The act also creates an immunity against lawsuits taken by spammers against ISPs who block their spam messages.

This act recently came under scrutiny in the case of *Washington v Heckel* in the Washington Supreme Court. The spammer (Heckel) sought to challenge the act, but the Washington Supreme Court on 7 June 2001 upheld its constitutionality. The spammer had been sending unsolicited commercial communications from as early as February 1996, and even wrote a book entitled *How to profit from the Internet*, which taught people how to use

everything

spamming techniques for marketing.

The Washington attorney general's office brought a case against Heckel after receiving numerous complaints from consumers. The spam contained misleading subject lines and false transmission paths, and even used the domain names of third parties. This was all done to disguise the identity of the person sending the spam communications. The misleading subject lines were deceptive insofar as they tricked recipients into opening the spam communications. Examples included 'did I get the right e-mail address?' and 'for review – hands off!', so that many recipients may have believed that a friend or colleague had sent the communications. The spammer would also cancel the e-mail accounts once each batch of the spam had been sent, thus preventing recipients from replying or contacting him directly.

In a previous case, *CompuServe Inc v Cyber Promotions Inc*, a preliminary injunction was granted against a spammer when the ISP rather creatively relied on the legal principle of trespass to chattels. In another case, *AOL v Christian Brothers*, the ISP successfully argued abuse of the *Federal Computer Fraud and Abuse Act*, while in the case of *Ontario Inc v NEXX Online* a website owner violated his ISP service agreement, which indicated that rules of netiquette would apply. The ISP was therefore able to argue that there had been a breach of contract.

In one instance (*AOL v IMS*, 1998), an ISP received 50,000 complaints in relation to spam communications. In this case, the court awarded damages on a per communication basis. However, the court in *Seidel v Green Tree Mortgage Company* pointed out that it is perhaps better to address the issue of spam through legislative solutions rather than relying on the courts to develop novel legal theories. Another example was the case of *Erie Net Inc v Velocity Net Inc*, which decided that the *Federal Telephone Consumer Privacy Act* was an inappropriate vehicle to mount a spam case.

However, the court in *Heckel* indicated that, despite the act, certain types of spam are permissible. Spammers must use accurate and non-misleading subject lines and must not manipulate the transmission path so as to disguise the origin of the commercial communication. In addition, the spammer must ensure that Washington residents do not receive offending spam communications.

After the *Heckel* case, Washington attorney general Christine Gregoire said that 'consumers and businesses pay a heavy price in money and lost time because of those who use the Internet to distribute deceptive commercial mailings to people who never asked for them'. However, Dale L Crandall, the attorney for Heckel, indicated that he expects the US Supreme Court to ultimately decide on the constitutionality of the act.

The decision of the Washington Supreme Court in this case will be seen by consumer groups and others as a welcome attempt to deal with unsolicited communications generally but also the growing volume of spam communications such as adverts, offers and other forms of direct mobile marketing. G

Paul Lambert is a solicitor in the information technology law group of Dublin law firm Matheson Ormsby Prentice.

A Butterworths Ireland Company Law Seminar

Structuring Company Lending after the Company Law Enforcement Act 2001

On 11 October 2001 at The Alexander Hotel Merrion Square, Dublin 2, from 2.15pm

Chaired by:

The Attorney General,
Mr Michael McDowell SC
Chairman of the Company Law Compliance And Enforcement Group

Speakers:

Thomas B. Courtney
Solicitor, Head of Legal ICS Building Society
Chairman of the Company Law Review Group

William Johnston
Partner, Arthur Cox

Butterworths™
A Member of the LexisNexis Group

For more details please call (01) 872 8523

Book review

Probate causes and related matters

Albert Keating. Roundhall Sweet and Maxwell, 43 Fitzwilliam Place, Dublin 2.
ISBN: 1-85800-190-0. Price: £78 (hardback).

In two-and-a-half years, Albert Keating (barrister and lecturer in Waterford Institute of Technology) has published three textbooks on probate law. His latest, *Probate causes and related matters*, covers many practical problems that arise in everyday probate practice. However, it is particularly relevant for probate litigation, as there are chapters on testamentary capacity and undue influence, section 27(4) applications, the spouse's legal right share and section 117 applications.

Each chapter on these topics deals with relevant case law up to the end of 1999. In addition, there is an excellent chapter on the issue of costs in probate actions. In deciding the issue of costs, Keating says that two questions must be answered before a court can decide the issue:

- Was there reasonable ground for litigation?
- Was it conducted *bona fide*?

With regard to section 117 applications, Keating notes that 'it is the relationship of the testator and child which creates the moral duty, but the misbehaviour of a child towards the testator during his lifetime could reduce that child's claim'. With regard to undue influence, he reminds us that 'if it is established in evidence that the testator was subject to undue influence, the will may be impugned or such parts affected by it'.

Keating also discusses the action of proprietary estoppel, which has the advantage that it is definite in subject matter and is not subject to the legal right share of a spouse or section 117, and the strict time limits for making such applications.

He re-iterates that the language used in a will by the testator 'will have primacy of place where the court is called upon to interpret a will and the legal interpretation may not always be followed'.

The book has a very interesting discussion on court decisions that have decided the meaning of 'money', 'property' and 'issue' in wills and includes a useful chapter on foreign wills and foreign grants. With regard to section 27(4) applications, it summarises the circumstances when the court can appoint an executor or administrator or revoke the appointment of such personal representatives.

This book is essential for both the general practitioner and the probate specialist and is most readable, with a very useful summary at the end of each chapter. Another publication by the prolific Mr Keating, *The construction of wills*, will be published shortly. G

John Costello is an associate with the Dublin law firm Eugene F Collins.

BOOKS PUBLISHED

Libel law: a journalist's handbook
Damien McHugh
Four Courts Press (2001), Fumbally Lane, Dublin 8.
ISBN 1-85182-640-8.
Price: £12.56

Employment law (2nd edition)
Michael Forde
Round Hall Sweet and Maxwell (2001), 43 Fitzwilliam Place, Dublin 2.
ISBN: 1-85800-188-9. Price: £68 (paperback), £108 (hardback)

“If golf was an accurate metaphor for business, the bunkers would be bigger and the holes would be smaller.”

Business isn’t one of the easiest forms of human endeavour.
But it is the one we’re best qualified to give you advice on.
See if we can help; get in touch soon.

IF YOU’RE IN BUSINESS, WE’RE IN BUSINESS

Visit any AIB branch | **www.aib.ie**

AIB

Personal injury judgments

Assault on garda in the course of duty – bruising and soft-tissue injury – nasal injury – anxiety – post-traumatic stress disorder – dermatological problems triggered by stress

CASE

***Finbar Brady v Minister for Finance* (*Garda Síochána Compensation Acts, 1941 and 1945*), High Court, judgment of Mr Justice Roderick Murphy of 26 March 2001.**

THE FACTS

Garda Finbar Brady was violently assaulted at 1.30am on Dame Court, Dublin 2, on 26 February 1994 by two drug dealers. He had attempted to arrest one of them and was thrown violently to the ground; he woke up in the Meath Hospital. He believed he was kicked and punched in the head by a number of people who came to the assistance of the individual he tried to arrest. Garda Brady was detained overnight for neurological assessment, which proved negative.

His injuries consisted of bruising of a soft tissue nature, bruising to the upper and lower limbs and a 2cm laceration above the lip on the left-hand side, together with a lump on the nose with consequent difficulty in breathing.

The garda surgeon classified the accident as serious, resulting in pain and discomfort of two weeks' duration and an anxiety verging on panic as a result of the ferocity of the assault. In the garda surgeon's opinion, the difficulty that Garda Brady experienced in breathing through his nose and the pain and discomfort in neck movements and headaches were not related to the injuries sustained.

A consultant surgeon considered that Garda Brady sustained trauma to his nose which most probably had been associated with the onset of nasal symptoms which were not previously present. High Court proceedings were issued by Garda Brady against the minister for finance pursuant to the *Garda Síochána Compensation Acts, 1941 and 1945*.

THE JUDGMENT

Murphy J considered the various injuries sustained by Garda Brady. In relation to the nasal obstruction, the judge noted that the evidence was that this was mainly attributable to the deviation of Garda Brady's nasal septum, which an operation could improve if deemed necessary.

Garda Brady consulted with a consultant dermatologist, according to the judge, almost three-and-a-half years after the incident. According to the judge, he complained of a recurrent pruritic urticarial eruption for the previous three years, which was triggered at times of stress. Investigations had ruled out a systemic cause for urticaria. The judge noted that the consultant dermatologist's impression was that the assault and subsequent post-traumatic stress disorder had been a major contributing factor towards the on-going nature of the chronic urticaria. However, there had been reasonable relief with antihistamines.

The consultant dermatologist had stated that chronic urticaria may have multiple listing factors, and on-going stress and emotional factors had an effect. In his opinion, the prognosis was poor and would continue indefinitely.

Murphy J noted that Garda Brady saw a consultant psychiatrist over five years after the incident. The psychiatrist's opinion was that Brady experienced post-traumatic stress disorder from moderate to severe intensity as a result of the incident. He anticipated that the disorder would resolve over an approximate 18 month to two-year period.

Garda Brady gave evidence that the frequency and intensity of his nightmares had increased, disturbing his sleep pattern and rendering him irritable. The judge noted that the consultant psychiatrist had examined Garda Brady a week before the court hearing and reported that Brady believed he had not regained his ambition or confidence and in confrontational situations was less inclined to lead, was wary and less trustful of people. The psychiatrist noted the garda had physical manifestations of anxiety, a periodic shake in his hands and a quiver in his voice. Garda Brady experienced an exacerbation of his allergic condition in recent months and was taking antihistamines for that condition. The applicant's personality, according to the psychiatrist, was sound. Following the conclusion of the case, the psychiatrist anticipated that his symptoms would abate over an approximate 12-month period.

Murphy J stated that the applicant had a cluster of *sequelae* resulting from the assault. The judge stated that it seemed to him that the assault had led to latent post-traumatic stress disorder which later contributed to the outbreak of pruritic urticaria. The judge considered the post-traumatic stress disorder to be the underlying cause of the skin problem.

THE AWARD

Murphy J awarded £25,000 to Garda Brady for past pain and suffering and £2,500 for pain and suffering in the future, to include medication. In relation to the 2cm laceration above the lip which had contributed to problems in relation to breathing, the judge noted that this might be resolved with surgery. He noted that it did not seem that any medication was necessary for the nasal complaint. He awarded a figure of £5,000 in respect of those injuries. The award, in total, came to £32,500.

The Equality Authority is an independent State body. It works towards the elimination of discrimination and the promotion of equality across nine grounds - gender, marital status, family status, age, sexual orientation, disability, race, religion and membership of the Traveller community.

The Equality Authority deals with employment matters as well as issues regarding the provision of goods, services, facilities and other opportunities to which the public have access. It also deals with specific complaints of discrimination and also provides an information, advisory and legal service about The Employment Equality Act,1998 and The Equal status Act, 2000. An information service is available about The Maternity Protection Act, 1994, The Adoptive Leave Act, 1995 and The Parental Leave Act, 1998.

The Equality Authority can provide legal assistance to claimants taking cases under the Employment Equality Act, 1998 and the Equal Status Act, 2000.

Free copies of our guides (both print and on video) to equality legislation and a range of legal, opinion and research publications are available from the Equality Authority's Public Information Centre.

Equality Authority
2, Clonmel Street, Dublin 2
Lo Call: 1890 245545

Tel: (01) 417 3333
Text Phone: (01) 4173385
Email: info@equality.ie
www.equality.ie

Road traffic accident – driver leaving car unlocked and keys in the ignition while going into a coffee shop for a sandwich – car stolen by unknown person – car struck and injured another – conflicting case law – who was to be held responsible?

CASE

***Patrick Breslin v Noel Corcoran and the Motor Insurers' Bureau of Ireland*, High Court, judgment of Mr Justice Paul Butler of 17 July 2001.**

THE FACTS

Noel Corcoran left his car outside the Tea Time Express coffee shop in Dublin on 5 August 1998. The car was unlocked and the keys were left in the ignition. Mr Corcoran had dropped into the shop to get a sandwich. As he came out from the shop, an unknown person jumped into the car and drove it off at speed. The car turned into a lane at Talbot Street, Dublin, and struck and injured Patrick Breslin.

Patrick Breslin was awarded £65,000 in damages, together with costs, against either Mr Corcoran or the Motor Insurers' Bureau of Ireland. In the High Court, counsel for Mr Corcoran acknowledged that his client had been negligent and in breach of statutory duty in leaving his car unattended with the keys in the ignition, but argued that Mr Breslin was not entitled to recover against his client on the basis that the negligent driving of the car was caused by a third party. In tort law, there is a defence known as *novus actus interveniens* (a new act intervening), whereby it is claimed that A is not liable for the damage done to B if the chain of causation between A's act or omission is broken by the intervention of a third party, thereby rendering the damage too remote. Counsel argued that the question to be decided was whether Mr Corcoran owed a duty to the person who was ultimately injured by the act of a third intervening party.

Counsel on behalf of the Motor Insurers' Bureau of Ireland argued that, in the circumstances, it was probable that Mr Corcoran's car was going to be stolen and that it was reasonably foreseeable that the person who stole it would injure somebody. Accordingly, Mr Corcoran should be liable.

THE JUDGMENT

Butler J referred to case law. First, he referred to the case of *Dockery v O'Brien* ([1975] ILTR 127), a decision of the late Mr Justice McWilliam, sitting as he then was as a judge of the Circuit Court. Butler J noted that the material facts in *Dockery* were identical to those in the present case: a car left with the keys in the ignition was stolen and caused damage to a person. He noted, however, it was only the owner of the car that was sued in the *Dockery* case as at that time one could not recover from the Motor Insurers' Bureau of Ireland in the case of an untraced motorist. Judge McWilliam rejected the plea and defence of *novus actus interveniens* and found that the damage suffered by the plaintiff in that case was reasonably foreseeable on the basis of the test laid down by Lord Atkin in *Donohue v Stephenson*.

The judge then referred to the case of *Topp v London Country Bus (South West) Ltd* ([1993] 3 AER 448). Again, the facts in that case were similar to those in the present case. The plaintiff had sued the owners of the vehicle, a minibus, and this action was dismissed by the High Court. However, the Court of Appeal dismissed the appeal on the basis that the bus company owed no duty of care to Mrs Topp, the plaintiff's wife, who was killed by the stolen minibus when she was cycling home from work. The driver did not stop after the accident and was never identified.

In the High Court, in the present case, Butler J considered that he was not bound by either of the decisions mentioned above. He also did not know what arguments were adduced in the Circuit Court in *Dockery*. However, he stated that he had no hesitation in finding that the chain of causation was clearly broken in the present case. He said that the only circumstances where he could envisage a plaintiff succeeding against the owner of a stolen vehicle in a case such as this would be where there was actual and clear evidence that the vehicle was left in an area where it should be known to the owner that people routinely stole cars for the purpose of driving them around in a reckless and dangerous fashion.

Accordingly, Butler J found that Mr Corcoran was not liable but that the Motor Insurers' Bureau of Ireland was liable to pay the sum of £65,000 damages and costs to Mr Breslin. G

These judgments were summarised by solicitor Dr Eamonn Hall.

European law healthcheck 2001

SATURDAY 13 OCTOBER 2001 – Education Centre, Law Society, Blackhall Place, Dublin 7

Organised by the EU and International Law Committee of the Law Society

9.50-10.00	**Registration and coffee**	
10.00-10.50	**Nice: full steam ahead? The 'no' vote and its legal implications** (Lecture Hall [LH])	
10.55-11.45 11.50-12.40	Recent developments in employment law (LH) Consumer law (LH)	Regulated industries (CLE Rooms [CLE]) Public procurement update (CLE)
12.40-1.10	**SANDWICH LUNCH**	
1.10-2.00 2.00-2.50	Electronic commerce – liability issues (LH) Environmental law update (LH)	Immigration and asylum (CLE) Competition update (CLE)

NAME: _____

ADDRESS: _____

TELEPHONE NO: _____

SOLICITOR/APPRENTICE/STUDENT/OTHER [Please circle as appropriate]

Cheque/money order for £100 [£55 – apprentices/students] attached.
Send to: Barbara Joyce, CLE co-ordinator, Law School, Law Society of Ireland, Blackhall Place, Dublin 7.

Diploma in legal French

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

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

Diploma in legal French
PRE-COURSE LANGUAGE ASSESSMENT APPLICATION FORM

Name: _____ Qualification: _____
Address: _____
Telephone: _____ Fax: _____ E-Mail: _____
Home address: _____
Telephone: _____ E-Mail: _____

Signature: _____ **Date:** _____

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

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

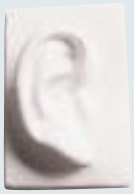
COURSE PARTICIPANTS
The course is open to solicitors, barristers, apprentices and other interested parties.

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

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

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

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



Practice notes

Registration of property adjustment orders

It is hoped that this practice note will be of assistance to both family lawyers and conveyancers alike.

Marriage breakdown, separation and divorce often give rise to either a sale or a transfer of the family home or other property owned by the spouses or either of them.

The *Family Law Act, 1995*, section 9, and the *Family Law (Divorce) Act, 1996*, section 14, provide for property adjustment orders to be made by the court. Sub-section 4 of each section provides that:

'Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to section 69(1)(h) of the Registration of Title Act, 1964 *in a register maintained under that act or be registered in the Registry of Deeds'.*

Section 69 of the *Registration of Title Act* provides a system for the registration of burdens which affect registered land. It should be noted that the registration of the property adjustment order is merely a burden on the folio and does not give effect to a transfer of the property to the benefiting spouse in accordance with the order of the court.

Concern has been expressed by some practitioners that registration of the property adjustment order may not always be effected in the correct registry. Experience has shown that orders affecting registered property have been registered in the Registry of Deeds and *vice versa*. This could arise, for example, where the relevant folio number is not disclosed in the order or where a freehold folio number is quoted but the interest of the parties is in an unregistered leasehold interest.

Certain discussions have taken place with some of the relevant officials and registrars and it is clear that there will be difficulties in registering the property adjustment orders if details of the title to the property are not clearly set out in the order of the court. There will also be difficulties if only part of a folio is effected and a proper map in compliance with Land Registry requirements is not furnished. In many instances the Land Registry cannot register the property adjustment order as it does not have details of the folio, or the names of the parties to the proceedings may not correspond with the names on the folio or the parties may have different addresses. In these circumstances, the order will be registered in the Registry of Deeds.

Family law practitioners are reminded that the *Circuit Court Rules (No 1) of 1997*, rule 5(a)(vi) and rule 5(b)(iv) in relation to divorce and separation specifically require that where reference is made in the civil bill to any immovable property, whether it is registered or unregistered land, that a description of the land/premises are given.

The *Rules of the Superior Courts (No 3) 1997*, order 4(a)(8), includes a similar requirement that details of the title, whether it is registered or unregistered, are given.

The registrar of the Circuit Family Court in Dublin has issued a practice direction that full details of the title, that is, Land Registry folio number or description of the property if unregistered title, must either be included in the civil bill or be given to the court at the time of the hearing of the case. Other county registrars throughout the country have their own practice, with many requiring details to be inserted in the civil bill prior to issue.

Practitioners are therefore urged to ensure that details of the title are included in the civil bill or special summons. Searches should be carried out on title in good time so this information is available. This in turn will ensure that the order of the court properly refers to the title of the property, which in turn will allow the registrar of titles to register the order in accordance with the legislation.

Practitioners are, however, also reminded that registration of the order as a burden pursuant to section 69 of the *Registration of Title Act* does not give effect to a transfer of the legal title in the property to the spouse who is entitled to the benefit of the property adjustment order. Practitioners should ensure that all conveyancing documents necessary to give effect to the property transfer order are signed and registered as soon as possible after the making of the order.

Notification of the completion of the registration in either the Land Registry or the Registry of Deeds is sent by the appropriate registry to the court registrar. Consideration is being given to the possibility of including the name and address of the applicant solicitor in the order, with a view to requesting the registries to also notify the solicitor of the completion of the registration.

Practitioners are also referred to the practice note on the cancellation of these burdens in the May 2000 issue of the *Gazette*, page 33.

Family Law and Civil Legal Aid Committee

Euro changeover: closure of accountant's office

Practitioners should note that the president of the High Court has directed that the Office of the Accountant of the Courts of Justice is to be closed from 17 December 2001 to 31 January 2002 to facilitate the euro changeover and the consequential balancing of the accounts under the control of that office.

Litigation Committee

Garda station (legal advice) scheme

Members should note the following increase in payments under the above scheme. The increases will be effective from 1 October 2001.

a) £79.31 plus VAT per visit between 9am and 7pm, Monday to Friday
b) £107.85 plus VAT per visit between 7pm and 9am, Monday to Friday and on weekends and bank holidays
c) £32.28 plus VAT per telephone consultation.

All claims for fees should be made in euro with effect from 1 January 2002.

Criminal Law Committee

Law Society Gazette
Yearbook and Diary 2002

COMING SOON: the *Law Society Gazette* Yearbook and Diary 2002, available in both week-to-view and page-a-day formats. Packed full of essential information for the busy lawyer, the *Gazette* Yearbook and Diary is the only product of this type endorsed by the Law Society. Now cheaper and better value than ever before!

All proceeds from the Law Society Gazette Yearbook and Diary will go the Solicitors' Benevolent Association

CONTENTS

- Member services
- Services to the legal profession
- Law terms
- Government departments
- State-sponsored bodies
- Law centres
- Local authorities
- Financial institutions
- The Euro changeover
- Contacts

SIZE: 7" x 10"

ORDER YOUR COPY NOW!

ORDER FORM

Gazette Diary 2002 page-a-day **£29** incl p&p and VAT Qty: ☐
Gazette Diary 2002 week-to-view **£23** incl p&p and VAT Qty: ☐

I enclose a cheque/postal order for ☐ made payable to *Gazette* Desk Diary
Or please charge my credit card ☐ Visa ☐ Mastercard ☐ American Express
Card no: ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ Card expiry date: ☐☐/☐☐

PLEASE PRINT IN BLOCK CAPITALS

Name

Address (of credit statement)

Delivery address

Tel DX no My order ref

Signed Date

Please forward all orders to *Gazette* Desk Diary, 10 Arran Road, Dublin 9

Orders will not be processed unless payment is received with the order. Please allow 28 days for delivery after printing.

Postage and packaging FREE.

FOR FURTHER INFORMATION, CONTACT SEAN Ó HOISÍN, TEL/FAX: 01 837 5018, E-MAIL: seanos@iol.ie

First Law Update

www.firstlaw.ie

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

COMPANY

Delay, fair procedures

Right to expeditious hearing – fair procedures – liquidation – duties of directors – restriction of directors – statutory interpretation – whether legislation intended to be retrospective – whether delay in bringing proceedings inordinate and inexcusable – whether balance of justice favoured allowing motion to proceed – whether delay resulted in prejudice – Companies Act, 1990, *section 150*

The applicant, acting as official liquidator, had brought a motion under section 150 of the *Companies Act, 1990* seeking to have the respondents restricted from acting as directors. The motion had been issued in 1994 and had not been proceeded with. The liquidator now sought to proceed with the motion and in this regard had served a notice of intention to proceed. On behalf of the respondents, a motion was brought seeking to have the liquidator's motion set aside. It was argued on behalf of the respondents that an order made under section 150 must date from the commencement of proceedings. In addition, it was argued that there had been excessive and inordinate delay by the liquidator in bringing his motion. O'Donovan J held that section 150 was prospective and any restriction made thereon would date from the date of the relevant court order. The liquidator had quite properly proceeded with a damages claim against the respondents before bringing the section 150 motion. However, the delay that had occurred in bringing the section 150 motion was inexcusable and inordinate. But, applying the principles of *Primor plc v Stokes Kennedy Crowley*, the balance of justice required that the liquidator's motion should proceed. The motion brought by the respondents would therefore be dismissed. The respondents appealed the judgment. Mr Justice Fennelly in the Supreme Court held that there was no basis for presuming that the delay in question had resulted in prejudice. The appeal would be dismissed.

***Duignan v Carway*, Supreme Court, 31/07/2001** [FL4144]

Duties of directors, liquidation

Duty of care – duty of liquidators – nature of revenue debt – failure by liquidator to maintain records of company – whether disqualification order should issue – Companies Act, 1990, *sections 159, 160*

The applicant brought a motion pursuant to section 160 of the *Companies Act, 1990*, seeking to have the respondent disqualified from acting as a liquidator. Mr Justice Smyth was satisfied that the respondent had failed to act in an impartial manner, destroyed the books and records of the company and had failed to act in the interests of the creditors of the company and, in particular, of the Revenue. The respondent was unfit to be concerned with the management of a company. The respondent would be disqualified for seven years from being concerned in the management of a company as liquidator, receiver or examiner. In addition, conditions were imposed on the respondent in relation to acting as an auditor, director or secretary of a company.

***Cahill v Grimes*, High Court, Mr Justice Smyth, 20/07/2001** [FL4159]

CONSTITUTIONAL

Election law

Elections – personal rights – requirement by candidates to pay deposit – whether legislation discriminatory – Electoral Act, 1992, *sections 47, 48* – European Parliament Elections Act, 1997 – Bunreacht na hÉireann 1937, *article 40*

The plaintiff initiated a constitutional challenge to legislation requiring candidates for election to Dáil Éireann or the European Parliament to pay a deposit. The plaintiff submitted that such requirements failed to vindicate the personal rights of citizens and was discriminatory. Mr Justice Finnegan was satisfied that the deposit system required by the legislation was not equal or fair. It had the effect of excluding a considerable percentage of the adult citizens of the state and the system was unjust, unreasonable and arbitrary. The relevant sections of the legislation were repugnant to article 40 of the constitution.

***Redmond v Minister for the Environment*, High Court, Mr Justice Herbert, 31/07/2001** [FL4173]

Locus standi

Judicial review – locus standi – *time limits – revised drawings submitted to local authority – planning permission granted – whether revised application substantially different to original application – whether planning permission granted different to planning permission sought – whether applicants possessed necessary* locus standi *to challenge constitutionality of legislation* – Local Government (Planning and Development) Regulations 1994, *article 35* – Local Government (Planning and Development) Act, 1963, *section 82(3B)(a)* – Local Government (Planning and Development) Act, 1992, *section 19* – Bunreacht na hÉireann 1937, *articles 40.3, 43*

The applicants initiated judicial review proceedings against the respondents on foot of a planning permission granted to the notice party who was a neighbour of the applicants. The applicants claimed that the notice party had informed them of a planning application that he was intent on making and in this regard showed the applicants plans of the proposed development. The applicants, although unhappy with the application, did not object. In any event, planning permission was refused by Dublin Corporation. However, the notice party was eventually granted planning permission for a development which the applicants claimed was even more obtrusive that the original application. However they claimed that by the time they were aware of the full implications of the planning permission granted, they were precluded from challenging same by reason of the time limits contained within the relevant legislation. Mr Justice Ó Caoimh was satisfied that the planning permission granted was very far removed from the initial application made. Substantial grounds existed for challenging the planning permission. However, under section 82 of the *Local Government (Planning and Development) Act, 1963*, the applicants were precluded from challenging same. The applicants possessed the necessary *locus standi* to challenge the constitutionality of the said section.

***White v Dublin Corporation and Others*, High Court, Mr Justice Ó Caoimh, 25/05/2001** [FL4158]

CORONERS

Inquests, judicial review

Powers and duties of coroners – evidence – fair procedures – whether coroner acted in unreasonable and unfair manner – whether coroner entitled to inquire into standard of care at hospitals – whether statements of witnesses must be furnished in advance – Coroners' Act, 1962, *section 30*

The respondent was a coroner in County Dublin and had decided to carry out an inquest into the death of a patient at a hospital. The applicant brought judicial review proceedings, protesting at the decision to hold an inquest and objecting to the manner it was being held. The applicant also objected to the admission of evidence from the deceased's daughter. Mr Justice Kelly held that the respondent was entitled to hold an inquest to allay rumours or suspicions. A coroner must have a certain amount of latitude and discretion in investigating the cause of death. The respondent could not be said to be acting *ultra vires* the provisions of the *Coroners' Act, 1962*. The application would be dismissed.

***Northern Area Health Board v Geraghty (as Coroner)*, High Court, Mr Justice Kelly, 20/07/2001** [FL4174]

COSTS

Hepatitis-c compensation

Tort – personal injuries – negligence – payment of interest by tribunal – statutory interpretation – costs – compensation – damages – loss of earnings claim – Hepatitis-C Tribunal – jurisdiction of tribunal – quantum – *whether tribunal had power to order payment of interest on award* – Courts Act, 1981, *section 22* – Hepatitis-C Compensation Tribunal Act, 1997, *sections 4, 5* – Civil Liability (Amendment) Act, 1964

The claimant's wife had contracted hepatitis-c and had been awarded compensation by the Hepatitis-C Compensation Tribunal. The claimant then brought a claim for loss of earnings arising out of having to curtail his teaching career in order to care for his wife. He also sought interest pursuant to section 22 of the *Courts Act, 1981*. The tribunal had refused the claim. In the High Court, O'Neill J was satisfied that the claimant's decision to curtail and subsequently retire from his teaching career was necessitated by his wife's deteriorating health and he should be compensated for the losses suffered. Furthermore, O'Neill J held that, as the tribunal did not in his view have the power to order the payment of interest, the court should not assume a greater jurisdiction than that of the tribunal and declined to order the payment of interest. The claimant was awarded a total of £60,559. The claimant appealed the decision not to award interest to the Supreme Court. Mrs Justice Denham was satisfied that in construing the relevant statutes both in a purposive and literal manner it was clear that the tribunal had the power to make an order for interest on foot of an award as would the High Court on a subsequent appeal. The matter would be remitted to the High Court for consideration as to whether an order for interest pursuant to section 22 of the *Courts Act, 1981* would be made.

***MO'C v Minister for Health*, Supreme Court, 31/07/2001** [FL4150]

CRIMINAL

Burden of proof

Appeal against conviction and sentence – assault – whether evidence correctly admitted – whether trial judge adequately explained burden of proof – whether verdict of jury safe

The applicant had been convicted of a number of offences arising out of an assault on a garda. The applicant sought leave to appeal, claiming that prejudicial evidence had been admitted by the trial judge and that the trial judge had incorrectly described the concept of the burden of proof. Mrs Justice McGuinness, delivering judgment, held that the evidence in question had been correctly admitted by the trial judge. The trial judge, although neglecting to mention 'the benefit of the doubt', had correctly instructed the jury with regard to the burden of proof. The application would be dismissed.

***DPP v Kiely*, Court of Criminal Appeal, 21/03/2001** [FL4077]

Delay, fair procedures

Criminal law – judicial review – delay – prosecution of offences – order of prohibition – assault offences – whether prosecution should be restrained – whether psychological evidence adduced reliable – whether delay gave rise to presumption of prejudice – whether evidence of dominion established

The applicant sought an order of prohibition against an impending prosecution of charges of assault. The offences had allegedly occurred in the early 1970s on foot of complaints made in the 1990s. Mr Justice Kelly was satisfied that the psychological evidence adduced explaining the delay for the making of the complaints was not satisfactory. The delay had resulted in actual prejudice and an order granting the restraint of the prosecution would be granted.

***Marley v DPP*, High Court, Mr Justice Kelly, 20/06/2001** [FL4116]

Detention, sexual offences

Statutory interpretation – common-law offence – indecent or sexual assault – abolition of assault and battery – applicant serving sentence for indecent offence – habeas corpus – *whether offence of indecent or sexual assault abolished – whether applicant lawfully detained – whether offence misdescribed in summons* – Bunreacht na hÉireann, *article 40.4.2* – Interpretation Act, 1937 – Interpretation (Amendment) Act, 1997 – Criminal Law (Rape) (Amendment) Act, 1935 – Criminal Law (Rape) (Amendment) Act 1990, *section 2* – Criminal Law (Rape) Act, 1981, *section 10* – Offences Against the Person Act 1861 – Non-Fatal Offences Against the Person Act, 1997, *section 28*

The applicant was serving a sentence, having pleaded guilty to an offence of indecent assault. Section 28 of the *Non-Fatal Offences Against the Person Act, 1997* abolished the common-law offence of assault and battery. Counsel for the applicant claimed that indecent or sexual assault was not an offence in its own right but was an instance of common-law assault. It was argued that there was no saving provision in the legislation which preserved prosecutions in respect of indecent or sexual assault and that the continued imprisonment of the accused was unlawful. Geoghegan J held that the *Non-Fatal Offences Against the Person Act, 1997* only dealt with non-fatal offences and did not deal with sexual offences. The offence of indecent or sexual assault had not been abolished by the *Non-Fatal Offences Against the Person Act, 1997* and consequently the applicant was lawfully detained. On appeal, Mr Justice Hardiman held that there was nothing to suggest the offence of indecent assault had been abolished by section 28 of the *Non-Fatal Offences Against the Person Act, 1997*. The appeal would be dismissed.

***SO'C v DPP*, Supreme Court, 13/07/2001** [FL4146]

Discovery, judicial review

Order of prohibition – discovery – further and better discovery – allegations of sexual assault – fair trial – confidentiality – nature of judicial review – whether appropriate to grant relief sought

The applicant had been charged with offences of sexual assault. The applicant sought various reliefs including an order of prohibition in respect of the impending prosecution and various discovery orders directed against a health board. In the Circuit Court, Judge Groarke had refused the order of discovery.

Mr Justice O'Neill held that it was important to balance the interests of confidentiality that a health board might have and the public interest in ensuring a fair trial. The Circuit Court judge was entitled to have reached the decision on the basis of the evidence before him. In the interim, the consent of the complainant had been obtained to the furnishing of certain documents. The appropriate step for the applicant was to make an application for further and better discovery. The application for judicial review would be refused.

***DH v Judge Groarke and the DPP*, High Court, Mr Justice O'Neill, 03/04/2001** [FL4183]

Human rights, international law

International law – constitutional law – human rights – legitimate expectation – Special Criminal Court – right to trial by jury – whether applicant's human rights violated – whether international covenant part of domestic law – Habeas Corpus Act 1782 – Offences Against the State Act, 1939 – International covenant on civil and political rights – Bunreacht na hÉireann 1937, *article 40.4*

The applicant sought leave to apply for judicial review. The applicant was seeking an order of *certiorari* in respect of his conviction in the Special Criminal Court on foot of various offences. The applicant's case had been the subject of a communication from the Human Rights Committee established under the *International covenant on civil and political rights*, which stated that the Irish state had failed to demonstrate that the decision to try the applicant in the Special Criminal Court was based on reasonable and objective grounds. In this application, the applicant argued that Ireland was bound by the adjudication of the Human Rights Committee and that section 47(2) of the *Offences Against the State Act, 1939* was incompatible with the *United Nations covenant on civil and political rights*. Mr Justice Finnegan held that the views of the Human Rights Committee were not legally binding. The applicant had failed to demonstrate an arguable case and leave to apply for judicial review would be refused.

***Kavanagh v Governor of Mountjoy Prison*, High Court, Mr Justice Finnegan, 29/06/2001** [FL4142]

Legal profession

Conduct of defence – handing over of case – barristers – Bar Council code of conduct – whether identification evidence improperly admitted – whether verdict of jury safe – whether legal advice rendered to applicant satisfactory

The applicant was convicted of murder and sentenced to life imprisonment. The applicant sought leave to appeal against his conviction, arguing that the preparation and conduct of his case had been seriously inadequate. On behalf of the applicant, attention was drawn to the fact that on the weekend before the trial was due to commence the applicant's senior counsel was forced to withdraw due to other commitments and a replacement senior counsel was only then instructed. The chief justice, delivering judgment, held that proper advice was given to the applicant by his legal advisers during his trial. Leave to appeal would be refused. However, attention was drawn by the court to the code of conduct of the Bar Council and in particular to the provisions regarding the withdrawal of counsel from cases. The court expressed the hope that such an unsatisfactory situation would not occur again.

***DPP v McDonagh*, Court of Criminal Appeal, 06/04/2001** [FL4143]

Right to expeditious trial

Order of prohibition – prejudice – delay – injunction – significance of psychological reports of alleged victims – presumption of innocence – whether delay in bringing proceedings irreparably prejudiced defence of accused – whether accused had significantly contributed to delay by virtue of domination over complainants – Criminal Law (Amendment) Act, 1935, *section 6*

The applicant had been accused and charged with offences of indecent assault allegedly perpetrated on members of his family. The offences allegedly occurred between 1961 and 1974. The applicant sought an order of prohibition in respect of the pending criminal proceedings. On behalf of the applicant, it was contended that the delay in bringing the proceedings prejudiced the applicant's defence. The respondent contended that delay in bringing proceedings had been significantly contributed to by the applicant by reason of his dominating effect over the complainants concerned. Laffoy J held that the delay in making the complaints in question was attributable to the acts of the applicant. In addition, the court was not satisfied that the consequences of the delay gave rise to a real risk of an unfair trial and the application was dismissed. On appeal, Hardiman J held that the applicant had demonstrated a severe risk of prejudice and was entitled to an order prohibiting the trial from proceeding. The appeal would be allowed.

***NC v DPP*, Supreme Court, 05/07/2001** [FL4103]

Road traffic offences

Judicial review – road traffic offences – remedy of certiorari *– availability of alternative remedy by way of appeal to Circuit Court – whether adjournment of District Court proceedings ought to have been granted*

The applicant brought judicial review proceedings seeking an order of *certiorari* against his conviction of an offence contrary to section 49 of the *Road Traffic Acts, 1961-1995* in the District Court. The applicant claimed that the hearing should have been adjourned in order to hear evidence from a garda witness. Mr Justice Kelly refused the relief sought, holding that the applicant already had the pathway of an appeal to the Circuit Court which would fully vindicate the applicant's rights. The normal order as to costs would follow.

***Cremin v Judge Smithwick and the DPP*, High Court, Mr Justice Kelly, 27/06/2001** [FL4100]

DAMAGES

Negligence

Personal injuries – road traffic accident – liability of local authority – causation – failure to include drain in construction of road – damages – quantum – *actuarial evidence – evidence as to applicable interest rates – driving in excess of the speed limit – failure to wear seatbelt – whether local authority negligent in construction of road – whether plaintiff guilty of contributory negligence* – Roads Act, 1993, *section 76* – Civil Liability Act, 1961, *section 34*

The plaintiff had been severely injured in a road accident when the car which he was driving skidded on a patch of ice. The plaintiff sued the first-named defendant on the basis that it had constructed the piece of roadway without including the necessary drainage, which, the plaintiff claimed, would have prevented the formation of ice. The case against a second-named defendant had been discontinued. Mr Justice O'Sullivan was satisfied that the failure to construct a drain amounted to a breach of duty which constituted negligence. The plaintiff was guilty of contributory negligence in driving at an excessive speed. It had not been demonstrated that the plaintiff had contributed to his injuries by his failure to wear a seatbelt. A total of £3,574,369 would be awarded, which would be reduced to £2,382,913, taking into account the finding of contributory negligence.

***McEneaney v Monaghan County Council*, High Court, Mr Justice O'Sullivan, 26/07/2001** [FL4176]

Revenue and financial law

Tort – personal injuries – Revenue – taxation – loss of earnings – discrepancy in earnings claimed and income tax forms – responsibility of employer to deduct tax – whether payments received by plaintiff net of tax – whether damages awarded excessive

The plaintiff was involved in a road accident and as a result was awarded £190,000 in damages. The defendants did not appeal against liability but appealed in relation to the amount awarded in respect of general damages and loss of earnings. Evidence was given on behalf of the plaintiff that the plaintiff's earnings amounted to approximately £20,000 a year (which included salary and a bonus). However, income tax forms from the period showed a lesser sum. Mr Justice Murphy held that the trial judge was entitled to conclude that payments received by the plaintiff were net of tax. The appeal against the damages awarded for loss of earning would be dismissed. Overall, the figure awarded for general damages could not be said to be excessive and the appeal in relation to this matter would be dismissed also.

***Pethe v McDonagh & MIBI*, Supreme Court, 25/07/2001** [FL4147]

IMMIGRATION AND NATIONALITY

Fair procedures

Judicial review – refugee and asylum – fair procedures – Hope Hanlan *procedures – requirements of natural justice – whether applicant entitled to oral hearing in respect of appeal* – Illegal Immigrants (Trafficking) Act, 2000, *section 5*

The applicant had applied for refugee status and had been refused. The applicant sought an order of *certiorari* in respect of the decision. Mr Justice Finnegan was satisfied that the absence of an oral hearing at the hearing of an appeal for an application for refugee status did not infringe the right of the applicant to natural and constitutional justice.

***Zgnat'ev v Minister for Justice*, High Court, Mr Justice Finnegan, 17/07/2001** [FL4083]

Judicial review

Delay – Refugee Appeals Authority – whether leave to extend time should be granted – whether appropriate to grant stay – Rules of the Superior Courts, *order 84, rule 21* – Immigration Act, 1999 – Illegal Immigrants (Trafficking) Act, 2000, *section 5*

The applicant sought leave to extend time pursuant to the *Illegal Immigrants (Trafficking) Act, 2000* to bring judicial review proceedings in respect of a decision of the Refugee Appeals Authority. A deportation order had been made in respect of the applicant and the period within which to bring proceedings had expired. Mr Justice Finnegan was satisfied that the responsibility of not receiving the deportation letter rested with the applicant. Leave to extend time would be refused. However, in view of certain circumstances, a 28-day stay would be placed on the order to enable representations to be made to the respondent.

***Benson v Minister for Justice*, High Court, Mr Justice Finnegan 02/04/2001** [FL4177]

Mistake of fact

Immigration – legitimate expectation – state liability – mistake of fact – damages – fair procedures – financial means of support – whether decision of immigration officer mistaken – whether plaintiffs entitled to damages

The first-named plaintiff had flown to Ireland with the intention of residing with the second-named plaintiff for three months. The first-named plaintiff was refused permission to enter the state and sent back to Hungary. The plaintiffs instituted proceedings. Ms Justice Carroll was satisfied that the decision to refuse entry to the first-named plaintiff was based on a mistake of fact and was not valid. Both plaintiffs were awarded damages by the court.

***Gulyas and Borchadt v Minister for Justice*, High Court, Ms Justice Carroll, 25/06/2001** [FL4082]

JUDICIAL REVIEW

Private rented dwellings

Landlord and tenant – judicial review – valuation – rent tribunal – inspection of premises – whether determination of respondent flawed – Housing (Private Rented Dwellings) Act, 1982 – Housing (Private Rented Dwellings) (Amendment) Act, 1983

The applicants, as landlords of a premises, sought a review of the terms of a tenancy under the relevant private rented dwellings legislation. A determination was made by the respondent which the applicants sought to have quashed on various grounds. The applicants complained that they had not been informed of the time of the inspection and furthermore had not been afforded sufficient time to respond to the valuation report submitted by the tenant. Mr Justice Finnegan was satisfied that the requirements of natural justice had not been met. In addition, the respondent had failed to furnish adequate reasons for its determination and the determination would be quashed.

***Beatty v Rent Tribunal*, High Court, Mr Justice Finnegan, 25/07/2001** [FL4089]

Refugee and asylum

Judicial review – refugee and asylum – practice and procedure – preliminary issue – statutory interpretation – leave to appeal – jurisdiction of Supreme Court – whether issue involved point of law of exceptional public importance – Illegal Immigrants (Trafficking) Act, 2000, *section 5* – Local Government (Planning and Development) Act, 1963, *section 82(3B)(a)* – Local Government (Planning and Development) Act, 1992, *section 19* – Bunreacht na hÉireann 1937, *article 34.4.3*

The applicant had sought leave to apply for judicial review pursuant to the *Illegal Immigrants (Trafficking) Act, 2000*. The application was out of time and the applicant first sought an extension of time, which was refused. The applicant now wished to appeal the refusal to extend time and in this regard the court had to decide whether leave must be sought from the court in order to appeal. Mr Justice Finnegan, having considered similar provisions contained in the planning legislation, held that leave of the High Court was required in order to appeal a decision of the High Court refusing to extend time pursuant to the provisions of the *Illegal Immigrants (Trafficking) Act, 2000*. This matter raised a point of law of exceptional public importance and it was in the public interest that an appeal should be taken to the Supreme Court in regard to this issue. However, in regard to the original issue – that is, whether an extension of time should have been granted – Mr Justice Finnegan did not consider that this involved a point of law of exceptional public importance and it was not in the public interest that an appeal should be taken to the Supreme Court. He also noted that the Supreme Court might well hold that leave was not required in order to appeal a decision not to extend time and might then proceed to determine the appeal in this manner.

***Sallim v Minister for Justice*, High Court, Mr Justice Finnegan, 10/05/2001** [FL4171]

LITIGATION

Practice and procedure

Preliminary issues of law – litigation – pleadings – beef industry – vicarious liability – whether defendant owed plaintiff duty of care – Rules of the Superior Courts 1986, *order 25, rule 1; order 34, rule 2*

The plaintiff had been employed as a supervisor at a meat factory. As part of the requirements of beef processing, the signature of the plaintiff was required on various documentation. The plaintiff

claimed that his signature had been wrongfully affixed to documentation by officers of the first defendant and initiated proceedings. The plaintiff had been arrested on charges of conspiracy but had been acquitted. By way of a preliminary issue, there arose a number of points for determination. Mr Justice Butler was satisfied that on the facts as established breach of duty could be inferred. In addition, the plaintiff could be said to have suffered damage.

***Kelly v Minister for Agriculture*, High Court, Mr Justice Butler, 01/05/2001** [FL4090]

PRACTICE AND PROCEDURE

Forum non conveniens

Jurisdiction – litigation – motion to set aside proceedings – insurance claim – financial loss – forum non conveniens *– whether service outside jurisdiction should have been ordered – whether proceedings should be set aside –* Rules of the Superior Courts 1986, *order 11, rules 1 and 5; order 12, rule 26*

The second-named defendant brought a notice of motion seeking to have the present proceedings set aside or, in the alternative, staying the said proceedings. The plaintiffs allegedly sustained serious financial loss as a result of an incident at their plant and submitted insurance claims to the defendants as their insurers. Coverage was denied by the insurers and the present proceedings were initiated. The second-named defendant submitted that the case was not a proper one for the service of a summons outside the jurisdiction or, in the alternative, that Massachusetts was a more appropriate forum to determine the dispute. Mr Justice Lavan was satisfied that Ireland was an appropriate forum for the hearing of the action and refused the relief sought.

***Analog Devices and others v Zurich Insurance*, High Court, Mr Justice Lavan, 18/05/2001** [FL4119]

Res judicata

Practice and procedure – res judicata *– amendment of court order – finality of litigation – payment of salary – revenue – whether payments made by plaintiff should be recovered – whether payments made in order – whether original High Court order should be amended –* Rules of the Superior Courts 1986, *order 28, rule 11 –* Income Tax (Employment) Regulations 1960, *regulations 31 and 43 –* Taxes Consolidation Act, 1997, *section 997*

The first defendant had been awarded damages reflecting the amount of salary due to her as principal. The plaintiff sought the repayment of certain monies it had previously paid to the first defendant. The plaintiff claimed that part of the monies paid by it should not have been paid and sought to have the original court order on foot of which payments had been made amended to reflect same. The plaintiff claimed that the first defendant's accountant had given evidence which in effect had meant that the first defendant would submit the award for assessment to the Revenue Commissioners to determine the income tax liability. Mr Justice O'Higgins held that the original court order accurately reflected the judgment of the High Court judge.

***Limerick VEC v Carr*, High Court, Mr Justice O'Higgins, 25/07/2001** [FL4105]

STATUTORY INTERPRETATION

Medicine, personal injuries

Administrative law – personal injuries – hospital charges – negligence – statutory interpretation – statutory provision for charges to be levied by health boards in relation to persons injured in road traffic accidents – system of charging – previous enactment provided for standard charge in relation to such services – 'Kinlen order' – plaintiff injured in road traffic accident – whether hospital charges payable at standard rate or on quantum meruit *basis – whether statements of minister in Dáil relevant to interpretation of statute –* Health (Amendment) Act, 1986 – Health Act, 1970

The assessment of hospital charges under section 2 of the *Health (Amendment) Act, 1986* is properly made on a *quantum meruit* basis rather than by reference to the standard maintenance charges provided for by the *Health Act, 1970* (in respect of hospital services provided by health boards to persons who are not eligible to avail of them free of charge), or by reference to an averaging of costs of hospital beds. So held by the High Court in refusing the application of the health board. On appeal, Mrs Justice Denham, delivering the leading judgment, held that the charge imposed must be a reasonable one. The methodology proposed by the health board – that of averaging – was reasonable and consistent. The appeal would be allowed. A note of caution was, however, sounded by the court regarding the use of ministerial statements in construing and interpreting statutes.

***Crilly v Farrington*, Supreme Court, 11/07/2001** [FL4195] G

Bank of Ireland

SOCIETY OF YOUNG SOLICITORS IRELAND

OSBORNE www.osborne.ie

AUTUMN CONFERENCE 2001

16-18 November 2001 at Dromoland Castle, Newmarket-on-Fergus, Co Clare.

Friday 16 November
20.00 - 21.30 – Registration
21.00 – Welcome in hotel bar

Saturday 17 November
10.00 - 13.00 Legal practice for the 21st century
GUEST SPEAKERS
1. Joe Kelly, A&L Goodbody
2. David Hackett, Eugene F Collins
3. Philip Nolan, Mason Hayes & Curran

13.00 – ACTIVITIES
Health centre, golf, walking, fishing,
horse riding, tennis, cycling
19.30 - 20.00 – RECEPTION
20.00 till late – BANQUET, LIVE BAND, DJ (black tie)

Sunday 18 November
12.00 – CHECK OUT

NOTES:

1. Solicitors wishing to attend must apply through SYS.
2. Accommodation at Dromoland Castle is limited and will be allocated on a first-come, first-served basis, in accordance with the procedure set out below.
3. The conference fee is €248 pps and includes Friday and Saturday night accommodation, two breakfasts, reception, subsidised activities banquet and conference materials. An alternative rate of €210 pps is available for delegates staying at the nearby Clare Inn. Unsuccessful Dromoland applicants will be accommodated in Clare Inn, subject to availability, **after** those who have opted for Clare Inn.
4. One application form must be submitted per room per envelope together with cheque(s) for the appropriate conference fee and a self-addressed envelope. All applications must be sent by ordinary prepaid post and only applications exhibiting a post-mark dated 15 October 2001 or after will be considered. Rejected applications will be returned in due course. Successful applications will be confirmed by e-mail only.
5. Names of delegates to whom the cheque(s) apply **must** be written on the back of the cheque(s).
6. Application for single rooms will only be considered after all twin/double applications have been considered.
7. Cancellations must be notified to waylmer@efc.ie on or before 5 November 2001. Cancellations after that date will not qualify for a refund.

APPLICATION FORM

Please use block capitals. One form per room per envelope.

Name 1 _____ Name 2 _____

Firm 1 _____ Firm 2 _____

e-mail _____ e-mail _____

One contact address _____

_____

Phone (H) _____ (O) _____

ACCOMMODATION IN DROMOLAND CASTLE €248 pps
Please tick ☐ Double ☐ Twin

ACCOMMODATION IN CLARE INN €210 pps
Please tick ☐ Double ☐ Twin

I enclose cheque payable to SYS, in the sum of €496/€420 (IR£390.63/IR£330.78) and I enclose self-addressed envelope.
Application to: the chairman, SYS, PO Box 7255, Dublin 4.

Eurlegal

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

Commission publishes draft notice on *de minimis* agreements

The European Commission has adopted and published a draft notice on agreements of minor or *de minimis* importance inviting interested third parties to submit their written observations before the now-expired deadline of 20 July 2001 (2001 OJ C149/18).

Article 81(1) of the *EC treaty* prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market. It has been established in a number of cases decided by the European Court of Justice that an agreement or concerted practice will only infringe article 81(1) if the agreement or practice has an appreciable effect on competition and trade between member states (this principle was first established in case 5/69 *Völk v Vervaeke* [1969] ECR 295). An agreement which does not appreciably affect competition and trade between member states falls outside the scope of article 81(1), even if its object is plainly to restrict competition.

The current commission notice on agreements of minor importance was published in 1997 and its main focus lies in determining the market shares of the parties stipulating that an agreement won't appreciably affect competition and trade between member states, where the aggregate market shares of the parties do not exceed the following thresholds:[1]

a) Where the agreement is made between undertakings operating at the same level of production or marketing ('horizontal agreements'), the aggregate market shares of the parties is 5%, and
b) Where the agreement is made between undertakings operating at different economic levels ('vertical agreements'), the aggregate market shares of the parties is 10%.

The 1997 notice specifies that in the case of a mixed horizontal/vertical agreement or where it is difficult to classify the agreement as either horizontal or vertical, the 5% threshold is applicable.

The new draft notice revises the 1997 notice, in particular by increasing the thresholds for the application of the *de minimis* principle. The draft notice states that an agreement which affects trade between member states will not appreciably restrict competition in the following situations:

a) If the aggregate market share held by all the parties to the agreement does not exceed 10% on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are actual or potential competitors on any of the affected relevant markets, or
b) If the market share held by each of the parties to the agreement does not exceed 15% in any relevant market affected by the agreement, where the agreement is made between undertakings which are not actual or potential competitors on any of the affected relevant markets.

The draft notice makes it clear that in cases where it is difficult to classify an agreement as falling under (a) or (b) above, the 10% threshold is applicable. The draft notice makes it clear that the commission is of the view that the concept of *de minimis* applies even if the above market share figures are exceeded by no more than 1% during two succeeding calendar years.

The draft notice is confined to examining the issue of appreciability in the context of competition and not trade between member states (although some analysis of this aspect of appreciability is made in the draft notice in the context of small and medium-sized enterprises, as discussed below). The commission states that the notice does not 'quantify what does or does not constitute an appreciable effect on trade'. The 1997 notice is not confined in this way. The commission in the draft notice is making it clear that if an agreement does not appreciably restrict competition it may fall outside the article 81(1) net if it does not appreciably affect trade between member states.

The 1997 notice expressly disapplies the benefit of the notice where competition in a relevant market is restricted by the cumulative effects of parallel networks of similar agreements established by several manufacturers or dealers. In the *Delimitis* case (C–234/89 *Delimitis* [1991] ECR I – 935), the ECJ examined the concept of *de minimis* in the context of markets characterised by parallel networks of similar agreements and it set out the following two tests:

- It is necessary to examine all similar contracts entered into on the relevant market and the other factors which are relevant to the economic and legal context in which the contract at issue must be examined and, if this shows that those agreements do not have the cumulative effect of denying access to that market to new national or foreign competitors, the individual agreements comprising the bundle of agreements in the market cannot be held to restrict competition within the meaning of article 81(1)
- If, on the other hand, the above examination reveals that it is difficult to gain access to the relevant market, it is necessary to assess the extent to which the agreements in question contribute to the cumulative effect produced in that respect by the totality of similar contracts found on the market. The agreement in question must make an appreciable contribution to the closing off of the market, and if the agreement in question contributes to an insignificant extent to the cumulative effect the agreement will not fall under the prohibition in article 81(1).

A significant aspect of the draft notice is that it specifies that it

is applicable where competition in an affected relevant market is restricted by the cumulative effect of parallel networks of agreements for the sale of goods or services established by several suppliers or distributors. The relevant market-share threshold for this purpose is to be 5% for both agreements between competitors and for agreements between non-competitors.

The draft commission notice provides that if an agreement contains one or more hardcore restrictions, the benefit of the notice does not apply and the agreement is unlikely to qualify for individual exemption assuming that the agreement has the requisite effect on inter-member-state trade. The hardcore restrictions identified in the notice are as follows:

1) **Horizontal agreements** (that is, agreements between undertakings operating at the same level of production or distribution) which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object or effect the fixing of prices when selling the products to third parties, the limitation of output or sales or the allocation of markets or customers
2) **Vertical agreements** (agreements between undertakings operating at a different level of the production or distribution chain) which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:
   a) The restriction of the buyer's ability to determine its resale price, without prejudice to the possibility of the supplier imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties
   b) The restriction of the territory into which, or the customers to whom, the buyer may sell the contract goods or services except the following restrictions, which are not regarded as hardcore:
      - A restriction on active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, provided such a restriction does not limit sales by the customers of the buyer
      - A restriction on sales to end-users by a buyer operating at the wholesale level of trade
      - A restriction on sales to unauthorised distributors by the members of a selective distribution system
      - A restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier
   c) The restriction on active or passive sales to end-users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment
   d) The restriction on cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade
   e) The restriction agreed between the supplier of components and a buyer who incorporates those components, which limits the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair and servicing of its goods
3) Vertical agreements entered into between actual or potential competitors that contain any of the hardcore restrictions listed above.

The draft notice specifies that the above hardcore restrictions may, however, escape the prohibition laid down in article 81(1), in particular in cases where the agreement does not affect trade between member states. The draft notice points out that case law has established, especially with regard to territorial protection and vertical agreements, that there is no violation of article 81(1) in cases where the agreement has only an insignificant effect on the relevant market due to the weak positions of the parties concerned.

The draft notice specifies that the above hardcore restriction are consistent with commission regulation 2790/1999 of 22 December 1999 on the application of article 81(3) of the treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336/21, the 'vertical restraints BER') and the commission notice on guidelines on the applicability of article 81 of the *EC treaty* to horizontal co-operation agreements (OJ 2001 C3/2, the 'horizontal co-operation notice').

The draft notice specifies that agreements between small and medium-sized undertakings, as defined in commission recommendation 96/280/EC, are 'rarely capable of significantly affecting trade between member states' and so, as a general rule, they are not caught by the prohibition in article 81(1) (commission recommendation 96/280). Commission recommendation 96/280 defines small or medium-sized enterprises as those enterprises that have the following characteristics:

- Less than 250 employees, and
- An annual turnover not exceeding €40,000,000 or an annual balance sheet total not exceeding €27,000,000, and
- Independence, meaning not owned as to 25% or more of the capital or the voting rights by one enterprise or jointly by several enterprises. This 25% threshold may be exceeded if:
  - the enterprise is held by public investment corporations, venture capital companies or institutional investors provided no control is exercised either individually or jointly, or
  - in situations in which the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise formally declares that it is not owned as to 25% or more by one enterprise or jointly by several enterprises and therefore falls outside the definition of a small or medium-sized enterprise.

The draft notice makes it clear that if an agreement is covered by the notice, the commission will not institute proceedings either upon application by a third party or on its own initiative. The draft notice further provides that where the undertakings assumed in good faith that the notice covers an agreement, the commission will not impose fines.

Although commission notices are not binding, they provide a useful insight into the commission's current thinking on a subject and provide guidance to the national courts and the authorities of the member states in their application of article 81.

An agreement may fall within the terms of the notice but still appreciably restrict trade and competition between member states and consequently be caught under article 81(1) of the *EC treaty*. As a result, an agreement which falls within

the scope of the notice but is still considered to appreciably restrict competition and trade between member states may be challenged in the national courts.

The concept of appreciability has been the subject of a number of decisions of the ECJ and the Court at First Instance. In the *Pioneer*[2] case, the ECJ held that an agreement did appreciably restrict competition and trade between member states in situations where the combined market shares of the parties was well below 5% (3.38% and 3.18% in France and the UK respectively), which is the current market-share threshold for horizontal agreements set out in the 1997 notice. The ECJ found that the agreement was not of *de minimis* importance as the market was very fragmented and the parties had the highest market shares in the relevant market.

The European courts have also held that an agreement can escape the prohibition on article 81(1) of the *EC treaty* in situations where the combined market share of the parties exceeds 5%. In the *European Night Services* case, the CFI concluded: 'the mere fact that the [5%] threshold may be reached or exceeded does not make it possible to conclude with certainty that an agreement is caught by article [81(1)]'.

It is clear from the European case law that appreciability involves an analysis of various factors, including the following:

- The market shares of the parties
- The level of concentration in the market
- Whether the agreement is horizontal or vertical
- Whether there are similar contracts existing in the relevant market and whether there are other factors relevant to the economic and legal context and whether that shows that the agreements in question have the cumulative effect of denying access to that market to new national and foreign competitors and, if the above examination reveals that it is difficult to gain access to the relevant market, it is necessary to assess the extent to which the agreements entered into by the parties in question contribute to the cumulative effect produced in that respect by the network of the similar contracts found in the market
- Other factors which may be responsible for the lack of appreciable effect, such as national laws precluding competition or the nature of the product or service.

Footnotes

1 Commission notice of 9 December 1997 on agreements of minor importance which do not fall within the meaning of article 85(1) of the treaty established in the European Community (1997 OJ C372/3).

2 Cases 100/80 etc, *Musique Diffusion Française* ([1983] ECR 1825). G

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

Recent developments in European law

COMPETITION

Multi-disciplinary partnerships

Case C-309/99 *JCJ Wouters, JW Savelbergh, Price Waterhouse Belastingadviseurs BV/Algemene Raad van de Nederlandse Ordre van Advocaten*, opinion of Advocate General Léger, 10 July 2001. Wouters and Savelbergh are Dutch lawyers. They notified their bar associations of their intention to collaborate with the accountancy firms Arthur Andersen and Price Waterhouse. Their bar associations refused their request in accordance with a 1993 regulation. That regulation permits co-operation with professions such as notaries, tax consultants and patent agents but does not authorise lawyers to set up integrated offices with accountants. This is in order to guarantee the independence of lawyers. The Dutch court of final appeal referred the matter to the ECJ to consider the application of competition law to this professional regulation. The advocate general said that the associations of lawyers were associations of undertakings. The association is composed exclusively of representatives of the profession and is not required by statute to take its decisions in the public interest. Therefore, it is an association of undertakings in respect of all its activities and in particular where it adopts rules prohibiting professional collaboration. The prohibition of multi-disciplinary partnerships produces effects restrictive of competition. It restricts competition for legal services as it deprives consumers of the opportunity of using integrated services (a broad spectrum of services offered by a single firm). The advocate general believed that the regulation has appreciable negative effects on competition. It may also affect trade between member states as firms established in other states are affected. However, the advocate general said that lawyers are entrusted with the operation of services of general economic interest. Lawyers perform duties which are essential in a state governed by the rules of law (defence and representation of individuals). Application of the competition rules to authorise multi-disciplinary partnerships would compromise the obligations that are peculiar to the legal profession, namely, independence, respect for professional secrecy and the need to avoid conflicts of interest. There is a certain incompatibility between those advisory activities and the supervisory activities of an accountant. In those circumstances, the restriction of competition caused by the Dutch regulation is lawful, especially as it does not forbid lawyers and accountants separately to offer their services to clients established in other member states. The advocate general put forward two criteria to make it possible to strike a balance between the need to recognise a certain power of self-regulation for the professions and the need to avoid the risks of anti-competitive conduct inherent in the granting of such powers. These are that the public authorities must reserve the power to determine, directly or indirectly, the content of the essential rules of the profession and that members of the profession must be able to seek legal redress before the courts of that state.

ENVIRONMENTAL LAW

The European Commission on 25 April 2001 proposed a new draft directive aimed at improving the energy performance of new and existing buildings within the EU. The member states are to work out a common method for developing minimum energy performance standards for different types of building. These standards will take into account a variety of factors such as difference in climate, heating and use of renewable energy sources.

Energy performance certificates will be issued for buildings. These certificates will be displayed in public buildings.

FAMILY LAW

On 27 March 2001, the commission adopted a working document calling for a regulation on parental responsibility applying equally to children of both married and unmarried couples (COM [2001] 166). The regulation is to be based on the *Brussels II* regulation on jurisdiction and enforcement of

Land Registry
Clárlann na Talún

Land Registry Computerisation Programme

The Chief Executive/Registrar of Deeds and Titles is pleased to announce that the Land Registry's computerised 'Integrated Title Registration Information System' (ITRIS) will shortly be extended as follows:

- County Waterford from early November
- Counties Kerry and Limerick during January 2002.

We will communicate directly with practitioners and other customers in each county when the exact dates are decided. All new folios for these counties created after the introduction date will be available for inspection at our public counters and also over the Internet through the Land Registry's Electronic Access Service (EAS) at www.landregistry.ie. A programme of data capture of the existing manual folios has commenced and these will be made available electronically as they are added to the database. Information on pending applications will also be available through this service and it will be possible to apply for copy folios and filed plan maps through the EAS. Customers are reminded that the Land Registry Practice Directions are available on-line.

Practitioners wishing to avail of the Electronic Access Service can get information at the Land Registry website www.landregistry.ie or from:

Peter McHugh, Land Registry, Chancery Street, Dublin 7. Telephone: 01-8048167
peter.mchugh@landregistry.ie

judgments in matrimonial matters. The commission is proposing to extend the *Brussels II* rules to all decisions on parental responsibility. One of the difficulties with this proposal will be agreeing rules where a child lives mainly in a non-EU state.

FINANCIAL SERVICES

The commission in April 2001 proposed a directive on insider dealing and market manipulation. Its aim is to increase standards for market integrity in the securities field throughout the EU. It would require close co-operation and an exchange of information between national authorities. It establishes a framework for the allocation of responsibilities, enforcement and co-operation in this area within the EU. The commission also intends to adopt technical measures to complement the framework established by the directive after consulting representatives of member states.

FREE MOVEMENT OF GOODS

Case C-123/00 *Christina Bellamy v English Shop Wholesale SA*, judgment of 5 April 2001. English Shop Wholesale is a shop in Anderlecht, Belgium. It imported food products from the UK for retail sale. Mrs Bellamy is the director of the business. A Belgian court gave judgment against her for having sold food products that did not comply with Belgian legislation. Mrs Bellamy argued that this legislation was contrary to article 28 of the treaty. The ECJ held that Belgian legislation, which prohibited the marketing of bread whose salt content exceeds 2%, is a measure having equivalent effect of a quantitative restriction. Such a rule is likely to hinder trade between member states and is not justified under article 30 on the ground of protecting public health. Belgian legislation also prohibited food products from giving the impression that a branded product possesses particular qualities when in fact all similar food products have such qualities. The court held that such a rule was not contrary to article 28.

FREE TO PROVIDE SERVICES

Case C-263/99 *Commission of the European Communities v Italian Republic*, judgment of 29 May 2001. Italian legislation required transport consultants to possess an administrative authorisation. The issue of the authorisation was conditional on a requirement that non-Italian nationals had to reside in Italy and lodge a security. The ECJ held that this requirement was a restriction on the freedom to provide services under article 49. As no account was taken of the licensing requirements in the state of establishment of the transport consultant, the Italian requirements were disproportionate and thus could not be justified.

NON-CONTRACTUAL LIABILITY

At present, applicable law in non-contractual situations is governed by national private international law rules. This leads to a great deal of uncertainty. The commission has proposed a new regulation for the EU. This instrument, known as *Rome II*, is designed to establish clear pan-European rules for non-contractual liability. This would cover cases involving tort actions such as defamation or product liability. The proposal is quite similar to the *Rome convention*. Parties would be free to choose the applicable law. In the absence of choice, the law would be that of the country which has the strongest links with the act creating the obligation. For consumers, the proposal applies the country of destination principle – looking to the place where the act has its effect. Thus, if an Irish-based website was accessed in Sweden, the Irish vendor would be subject to the non-contractual liability laws of Sweden. The Federation of European Direct Marketing and the Advertising Information Group have voiced their opposition to the proposal. They argued that advertising across Europe would become 'a game of Russian roulette' and possibly expose advertisers to claims in every member state.

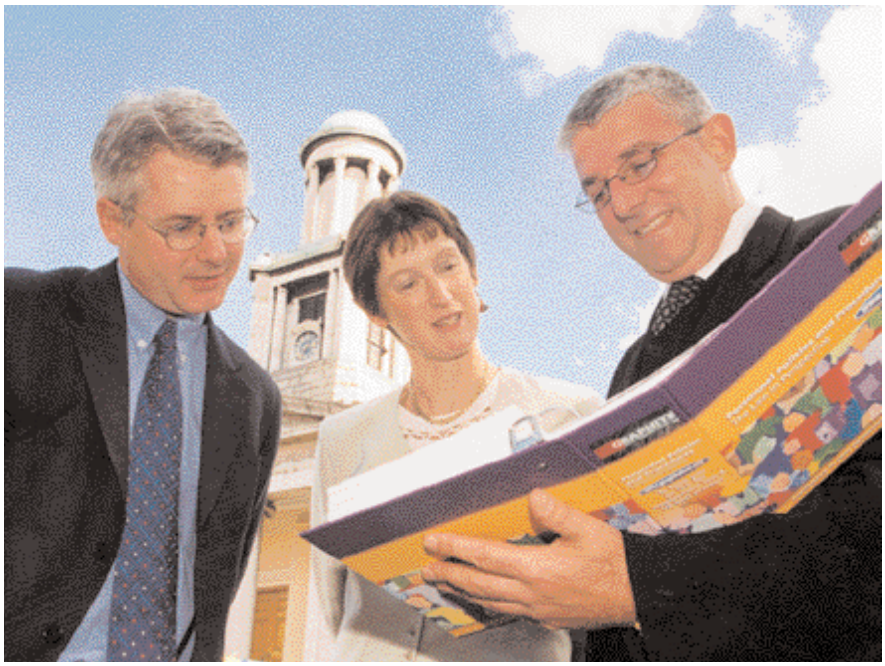
PRODUCT LIABILITY

Case C-203/99 *Henning Veedfald v Århus Amtskommune*, judgment of 10 May 2001. Mr Veedfald was due to undergo a kidney transplant operation. The donor kidney was prepared for the operation by flushing with a perfusion fluid designed for that purpose. The fluid was defective and a kidney artery became blocked, making the kidney unusable for transplant. The fluid had been manufactured in another hospital – the Amtskommune is the owner and manager of both hospitals. Veedfald sued, relying on the Danish law that implemented the *Liability for defective products directive*. The ECJ had to consider whether article 7(a) of the directive could be interpreted as meaning that a defective product is or is not put into circulation when the manufacturer makes it and uses it in the course of providing a specific medical service and the damage caused to the organ results from that preparatory treatment. The court held that the directive could be interpreted as meaning that a defective product is put into circulation in these circumstances. Article 7(c) provides an exemption from liability where an activity has no economic or business purpose. The court held that this exemption did not apply where the defective product is manufactured and used in the course of a medical service, which is financed by public funds and for which the patient is not required to pay. The manufacture still has an economic and business character. G

Criminal masterminds
The Institute of Criminology, based in UCD's law faculty, had its inaugural lecture on 19 September. The lecture, entitled *Capital punishment: what progress towards worldwide abolition?,* was delivered by Professor Roger Hood of the University of Oxford. At the event were *(left to right)*: Roger Hood, Paul O'Connor, dean of the UCD law faculty, and Dr Peter Young, director of the institute

Birthday bash
Legal recruitment specialists Osborne Recruitment recently celebrated five years in business. Pictured at the Osborne offices are *(left to right)* managing director Lesley Osborne and directors Mel Cathcart and Suzanne Johnston

Hold the Mayo
Law Society President Ward McEllin *(right)* and James Cahill, president of the Mayo Bar Association, enjoying the bar association's hospitality at a recent weekend on Inisbofin organised by the president's Mayo colleagues to honour their local-boy-made-good



Match made in heaven
Matheson Ormsby Prentice's employment and equality law group is providing legal editing for Graphite HRM's human resources publications.
Pictured with the recently-published *Personnel policies and procedures: the law in perspective* are *(left to right)* Paul Glenfield of Matheson Ormsby Prentice, and Graphite HRM's Mary Connaughton and Simon MacRory

DIPLOMA COURSES 2001 – 2002

The Law Society is pleased to announce the proposed schedule for the 2001/2002 diploma and certificate courses.

- Diploma in property tax
  1 December 2001 – 20 April 2002
- Diploma in commercial law
  9 February 2002
- Diploma in applied European Union law
  20 April 2002
- Diploma in e-commerce
  27 April 2002
- Diploma in legal French
  3 October 2001 – June 2002
- Certificate in legal German
  24 September 2001 - 7 June 2002
- Diploma in e-commerce
  6 October 2001 – 2 February 2002 (fully subscribed)

For further details on the above courses, please send your name, address and the course(s) you are interested in to Michelle Nolan, information and administration executive – m.nolan@lawsociety.ie

SADSI
Solicitors Apprentices Debating Society of Ireland

Mooting and debating news

Debating season starts soon and we will kick off with the annual SADSI versus Kings Inns John Edmund Doyle Memorial Debate on 18 October. Old enemies were vanquished last year, when SADSI beat the Inns' team on their home turf. The motion – that the professions of solicitor and barrister should merge – proved a popular one, and the debate was attended by a large crowd of supporters and hecklers. This year the debate will be held in Blackhall Place, and we can be certain that the Kings Inns team is already working extra hard to regain lost territory. It is hoped to follow this up with a further, less formal SADSI versus Inns colours debate before Christmas.

Since the historic victory of SADSI's mooting team in the Bar Council and Round Hall Press Irish Moot Court Competition, the subject matter of the 2001/2002 Jessup Moot Court Competition has been announced. The Jessup is the largest moot court competition and, like the earlier competition, the problem this year relates to e-commerce. Competing teams from 70 countries prepare written submissions and, after a series of national rounds, there is an international round in Washington DC. Any apprentice who is still in the apprenticeship period in June 2002 is eligible for the competition, and those interested should contact TP Kennedy at the law school. Congratulations once again to Loughlin Deegan and Barry Sheehan, winners of the Bar Council and Round Hall Press Competition.

• In other news, the World Debating Competition will be held in Toronto this Christmas, and SADSI hopes to send a team. The John Smith Memorial Mace and the *Irish Times* debate will run throughout the year, beginning in October. We would be delighted to welcome anyone interested in getting involved. For information on these or on the Maiden Speakers and Gold Medal debates, please contact Louise Rouse on 01 618 0000 or e-mail Louise.Rouse@arthurcox.ie. Alternatively, contact Kieran Doran on 01 661 9522.

Pictured at the SADSI social evening in Limerick in June were *(left to right)* Ian Folly, Margeritte Purtill, John Herbert, Michael Small, and Johnny McNamara

SADSI auditor, Claire O'Regan, and Margeritte Purtill of Sadlier & Associates, Limerick, share a moment

Employment and equality law training

On Monday 8 October at 6.30pm there will be an introductory practical training session in employment and equality law at the Labour Court, Tom Johnson House, Haddington Road, Dublin (beside the Beggar's Bush pub). This area is one of the fastest-growing areas of law, and as all apprentices have a right of audience in the employment law courts, this is an invaluable opportunity to learn about it and to get up and practice your advocacy skills. Hugh O' Neill, registrar of the Labour Court, Madeline Reid of the Office of the Director Of Equality Investigations, and Kieran O'Meara of the employment appeals tribunal will explain in practical terms how employment law works, and, through mock applications, offer advice on improving advocacy skills and on preparing a matter to come before the Labour Court, employment appeals tribunal or the director of equality investigations. A maximum of 30 people can be accommodated in the court, so please e-mail sadsi2001@Ireland.com or phone Claire O'Regan on 01 878 7022 if you would like to attend. The continued and generous assistance of Terence McCrann of McCann Fitzgerald is gratefully acknowledged.

All roads lead to Wexford

They may not have won trophies on the sporting field this year, but they captured the next best prize! Wexford town will host the 2001 SADSI ball on Saturday 13 October. The ball kicks off at 7pm with a gin-and-tonic tasting reception, kindly sponsored by Irish Distillers Ltd. The meal is at 8pm sharp – vegetarians among us should let the Talbot Hotel know well in advance. Hard to Touch, who brought the house down at last year's ball, will supply the music. Please refer to your mailshot for details on accommodation and tickets. Remember that there are only 250 tickets available and that they will be allocated on a 'first come, first served' basis. We look forward to seeing you there!

SADSI WEBSITE AND ACCOMMODATION REGISTER

We are delighted to announce the launch of the SADSI website, with details of SADSI history, apprentice information and news of debating and social events. The site also contains a comprehensive accommodation register, so for those of you either seeking a humble abode or moving on, check out the site or send details to be included to mbairead@mhc.ie. The website address is www.sadsi.ie.

HLB Nathans

CHARTERED ACCOUNTANTS

WHO ARE WE?

HLB NATHANS was established in 1970 and we have significant offices in Dublin and Cork as well as a number of busy sub-offices throughout Munster. We are a part of HLB International – a worldwide organisation of accounting firms providing clients with a comprehensive and personal service. For further information about **HLB NATHANS**, our organisation, our people and our services visit our website @ www.hlbnathans.com

Over recent years we have enjoyed strong growth in demand for our brand of professional services, both domestically, through providing a client orientated value added service, and internationally through our strong links with our associated HLB offices. We are currently seeking to recruit a Tax Manager and a Tax Senior for the Dublin Tax Practice.

TAX MANAGER

The manager will have primary responsibility for the further development of the tax practice in Dublin both domestically and internationally. This senior role will primarily focus on the tax planning requirements of the new and existing diverse portfolio of clients. In addition the manager will be responsible for the day to day running of the tax department. The development of new and existing client relationships will be a key element of this role.

Candidates should have professional qualification (e.g. Solicitor/AITI/ACA) and at least five years post qualification experience with a strong command of all areas in taxation as well as having a flair for practical tax planning. The individual should be able to work on their own initiative, with the support of our team of tax professionals based in both our Dublin and Cork offices and should be able to demonstrate strong client relationship skills.

TAX SENIOR

The senior should have a professional qualification (e.g. Solicitor/AITI/ACA) with two years experience in taxation (preferably corporate) with a desire to gain wide-ranging exposure to all aspects of domestic and international taxation.

We offer an excellent remuneration package with significant opportunity for personal and career development.

WHO TO CONTACT?

If you are interested in either of the above positions, just send your CV to Michael Mullins or Andy Quinn at:

HLB Nathans,
Nathan House,
Chartered Accountants,
Christchurch Square,
Dublin 8.

Or email us at:
michael.mullins@hlbnathans.com
andy.quinn@hlbnathans.com

The closing date for receipt of applications is Friday 19 October 2001. We look forward to hearing from you.

mbc LEGAL

FINANCE • INSURANCE • OFFICE STAFF • LEGAL STAFF • WAREHOUSING

OPPORTUNITIES IN BRIEF

Solictors • Legal Executives
Legal Advisors • Company Secretaries
Receptionists • Law Clerks • In House

Mary B Cremin Ltd
39 Fitzwilliam Place, Dublin 2
Tel: 01 663 5901
Fax: 01 662 8662
Email: roisin.moriarty@marybcremin.ie

70 Clanbrassil St. Dundalk, Co Louth
Tel: 042 932 9440
Fax: 042 932 9441
Email: dundalk@marybcremin.ie

www.marybcremin.ie

21 YEARS OF EXCELLENCE

Dublin Corporation
Bardas Átha Cliath

EXECUTIVE SOLICITOR

Dublin Corporation is recruiting Executive Solicitors to work in the Conveyancing and Litigation Sections of the Law Department based in the Civic Offices, Wood Quay.

The work in the Law Department is varied and challenging and involves working on Corporation Major Projects, such as the Port Tunnel, Planning, Building Control and Housing Enforcement, Judicial Review, Compulsory Acquisition of Land, Disposal of Land for Projects and Shared Ownership Scheme.

The office may, subject to the approval of the Corporation, be held by two persons on a job-sharing basis. While it may be possible in some cases for an officer to continue to serve in a job-sharing capacity on promotion, revised job-sharing arrangements may be necessary. Dublin Corporation also operates a 'Family Friendly' policy.

Applications on the official form are invited from suitably qualified candidates who wish to be considered for inclusion on a panel from which appointments to these positions may be made.

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

- Have been admitted and enrolled as a Solicitor in the State.
- Have at least five years experience as a Solicitor, including adequate experience of Conveyancing and Court work, after admission and enrolment as a Solicitor, and
- Possess a high standard of professional training and experience.

Salary: £28,704 per annum rising to £40,964 (2nd LSI) per annum
(with effect from 1st October, 2001)

The number of years work experience of successful candidates will determine the point of entry to the scale.

Closing Date: Friday 26th October, 2001.

Particulars of office and application forms are available by contacting the Human Resources Department, Block 4, Floor 4, Civic Offices, Wood Quay, Dublin 8, to whom completed application forms should be lodged not later than 5.00 p.m. on the date specified as the closing date for the above competition.

Tel: 672 3041 / 672 3042

Dublin Corporation reserves its right to shortlist applicants in the manner it deems most appropriate.

CANVASSING WILL AUTOMATICALLY DISQUALIFY.

Dublin Corporation is an equal opportunities employer

Positive to Disability

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 5 October 2001)

Regd owner: Patrick and Elizabeth Brady; Folio: 415F; Lands: Garrymore; Area: 2.0375 acres; **Co Cavan**
Regd owner: Noel and Bernadette Cooney, Drumnaveagh, New Inns, Ballyjamesduff, Co Cavan; Folio: 12384F; Lands: Drumnaveagh; Area: 0.700 acres; **Co Cavan**
Regd owner: Sean Madden; Folio: 25866; Lands: Maghera and Barony of Inchiquinn; **Co Clare**
Regd owner: Gunter Gilbert; Folio: 25125; Lands: Whitegate and Barony of Leitrim; **Co Clare**
Regd owner: Catherine Coyle, 132 Ard O'Donnell, Letterkenny, Co Donegal; Folio: 22711F; Lands: Ard O'Donnell; **Co Donegal**
Regd owner: Hugh Fields, Kilmacrennan, Co Donegal; Folio: 19918; Lands: Gortin North; **Co Donegal**
Regd owner: Patrick Bosco McGrath, Tullyrap, Raphoe, Co Donegal; Folio: 2209; Lands: Tullyrap; Area: 0.0977 acres; **Co Donegal**
Regd owner: Thomas Gibney and Sharon Fay; Folio: DN51689L; Lands: Property known as no 54 Valley Park Road situate in the parish of Finglas and district of Finglas North; **Co Dublin**
Regd owner: William Joseph Jones; Folio: DN19900; Lands: Property situate in the townland of Ballykea and Barony of Balrothery East; **Co Dublin**
Regd owner: Thomas and Laura Feeney; Folio: DN126965F; Lands: Property known as site 131 Grattan Lodge situate in the parish of Balgriffin and district of Kilbarrack; **Co Dublin**
Regd owner: Thomas O'Flaherty; Folio: 11571F; Lands: Townland of Teeravane and Barony of Corkaguiny; **Co Kerry**
Regd owner: John Barrett (deceased), Roibeard Casey, Michael Prenderville, Gerald McKenna and Tadhg Crowley; Folio: 4334F; Lands: Townland of Garrynadur and Barony of Corkaguiny; **Co Kerry**
Regd owner: Edward Brennan; Folio: 2558; Lands: Scart and Barony of Gowran; **Co Kilkenny**
Regd owner: John Hogan (deceased); Folio: 1828; Lands: Graigue and Barony of Grannagh; **Co Kilkenny**
Regd owner: William Keenan, Ardagh, Co Longford; Folio: 10450; Lands: Moyra and Formill; **Co Longford**
Regd owner: John and Catherine Sheridan, Market Square, Longford; Folio: 1457F; Lands: Agharickard; Area: 0.281 acres; **Co Longford**
Regd owner: Peter W Heffernan, Callystown, Clogherhead, Co Louth; Folio: 2274F; Lands: Callystown; Area: 0.388 acres; **Co Louth**
Regd owner: John and June Byrne, Drumard, Corcreaghy, Dundalk, Co Louth; Folio: 1496F; Lands: (1) Drumard and (2) Ballyregan; Area: (1) 38.202, (2) 14.684; **Co Louth**
Regd owner: Thomas and Nano Convery, c/o Messrs Marcus A Lynch & Son, Solicitors, 12 Ormond Quay, Dublin and 41 Camlough Road, Newry, Co Down; Folio: 2511; Lands: Mooretown; Area: 4.85 acres; **Co Louth**
Regd owner: Hugh McKiernan, Aughawilliam, Ballinamore, Co Leitrim; Folio: 8463; Lands: Aughawillin; Area: 12.6875; **Co Leitrim**
Regd owner: Patrick Wyrnn, The Commons, Fenagh, Ballinamore, Co Leitrim; Folio: 18032; Lands: Knockmullin and Commons; Area: 1 acre and 4.315 acres; **Co Leitrim**
Regd owner: James Robert Carter; Folio: 1592; Lands: Luggacurren and Barony of Stradbally; **Co Laois**
Regd owner: Brendan and Cynthia Johnston, 35 The Old Mill, Fairyhouse Road, Rathoath, Co Meath; Folio: 30771F; Lands: Rathoath; **Co Meath**
Regd owner: John Murray, Ardnamilla, Kinnegad, Co Westmeath; Folio: 17487; Lands: Ardnamullin; Area; 0.5625; **Co Meath**
Regd owner: James Currid; Folio: 5426/9125; Lands: Castlegal and Barony of Carbury; Area: 5.21 hectares; **Co Sligo**
Regd owner: Michael Gayson; Folio: 14935; Lands: Racecourse Demesne and Barony of Middlethird; **Co Tipperary**
Regd owner: John Bell (deceased); Folio: 37840; Lands: Carrigeen and Barony of Iffa and Offa West; **Co Tipperary**
Regd owner: Maura Mulvihill; Folio: 3565F; Lands: Bearlough and Barony of Forth; **Co Wexford**

WILLS

Casey, John (deceased), late of 31, St Lawrence Road, Clontarf, Dublin 3. Would any person having knowledge of a will executed by the above named deceased who died on 13 July 2001, please contact John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare

Casey, Mathilda (deceased), known as Hilda Casey, late of Kimmage Road West, Dublin 12 and Bunting Road, Dublin 12, and also previously of Thornton Heath, Surrey, England. Would any person having knowledge of a will made by the above named deceased who died on 19 March 2001, please contact Louis Leahy, 6 Fortrose Park, Dublin 6W, tel 490 2147

Flood, Laurence, late of Kilnagtogue, Rathangan, County Kildare. Would any person having knowledge of a will made by the above named deceased who died on 3 September 2001, please contact Michael I Moore, Solicitor, The Square, Kildare, Co Kildare, tel: 045 521315

Laffan, Patricia, late of 13 La Touche Close, Greystones, Co Wicklow and also of 42 Fortfield Terrace, Rathmines, Dublin 6. Would any person having knowledge of a will made by the above named deceased who died on 29 August 2001, please contact PD Gardiner & Co, Solicitors, 15/17 South Leinster St, Dublin 2, tel: 676 6350, fax: 676 7827, e-mail: pdgsol@indigo.ie

McEntee, Patrick (otherwise Patrick Joseph), late of 31 Tuscan Close, Widnes, Cheshire WA8 6EA, England, and formerly of 156B Iverson Road, Kilburn, London. Would any person having knowledge of a will executed by the above named deceased on 28 December 1984 and who died on 26 June 2000, please contact Mason Hayes & Curran, Solicitors, 6 Fitzwilliam Square, Dublin 2, tel: 01 614 5000, fax: 01 614 5001

McKeon, Michael D (deceased), late of 9 Carrigwood, Firhouse, Dublin 24. Would any person having knowledge of the whereabouts of the last will and testament of the above deceased who died on 2 March 2001, please contact Messrs BCM Hanby Wallace, Solicitors, 4 Sutton Cross Centre, Sutton, Dublin 13, tel: 839 0100, fax: 832 0093

EMPLOYMENT

Solicitor required for mid-west practice, experience in litigation, conveyancing. Must have computer skills and be technology aware. **Please reply to Box no 80**

Assistant solicitor required for Monaghan general practice. Conveyancing, probate and computer experience essential. General litigation experience and a specialism desirable. **Apply to Box no 81**

Monaghan practice requires assistant solicitor with general practice experience, to include litigation, conveyancing and probate. **Please reply to Box no 82**

Litigation locum required for approximately two months, general practice, Dublin, commencing immediately. Flexible arrangements available. **Replies to Box no 83**

Conveyancer to work part/full time in small busy practice in Dublin 2. Might also suit solicitor with own clientele to take on some extra caseload. Reply to C Sullivan & Co, 31 Westland Square, D2 DX: 183 Dublin

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 criminal and family law. **Reply to Box no 84**

Locum solicitor required for office Ennis, County Clare, to cover maternity leave. Must be experienced in conveyancing. 3 January 2002 to 3 June 2002. Salary commensurate with experience. Reply in writing to: Cahir & Co, Solicitors, 36 Abbey Street, Ennis, County Clare

Big Five firm seeks ambitious Commercial Solicitor (2yrs+ pqe) to join expanding unit. Sal c£40k + bens. Fast-track opportunity to progress in dynamic working atmosphere! Call Melanie Holmes @ Osborne Recruitment in strictest confidence 01 638 4400, fax 01 6384444 e-mail melanie@osborne.ie. For a full selection of current roles log onto: www.osborne.ie

Solicitor sought for general practice in County Meath, approx 25 miles from Dublin. Two years' post-qualification experience preferred. Salary commensurate with experience. **Reply to Box no 85**

MISCELLANEOUS

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

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

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

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

Personal injury claims, employment, family, criminal and property law specialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford), Birmingham and

Cardiff. 'No win, no fee' available for accident and employment claims, legal aid for family and criminal cases. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, tel: 0044 20 8881 7777. Alternatively, e-mail us on info@levenes.co.uk or visit our website at www.levenes.co.uk

EYE INJURIES AND OPHTHALMOLOGIAL NEGLIGENCE

Mr Louis Clearkin ChM, FRCS, FRCOphth, DO, MAI, MEWI
Consultant Ophthalmic Surgeon

Experienced expert witness in ophthalmological personal injury, medical negligence and civil litigation

Renuntiabo, 8 Rose Mount, Oxton, Wirral, Merseyside, L43 5SW

secretary: +44 (0) 151 6047047
fax: +44 (0) 151 6047152
e-mail: L.Clearkin@Liv.ac.uk

Storage in the heart of the city. Hanover Quay, Dublin 4. Lock-up units available. 750sq ft to 1,250sq ft. Contact David M Turner, Solicitor, tel: 878 7137(direct line), e-mail: **info@dmturner.ie**

German firm of lawyers specialising in providing German legal services and advice to English-speaking clients seeks Irish Firm as 'partner' for development of German/Irish legal business. All correspondence and discussion can be carried out in English. Interested firms please make initial contact by e-mail to *JanWeber@weberundpartners.de*

TITLE DEEDS

Would any person knowing the whereabouts of the title documents to the premises known as 'Ballinasloe House' ('The Bal'), Salthill, Galway, registered in the names of Michael O'Connell and Lucy O'Connell, please contact MacDermot & Allen, Solicitors, 10, St Francis Street, Galway, tel: 091 567071

MEDIATION/ CONFLICT RESOLUTION TRAINING

NATIONAL AND INTERNATIONAL ACCREDITATION

Michael Williams
Adele Gannon
Grace Corrigan
Tel: 353 1 8328730
Email: info@mediationsolutions.ie

EXPANDING SOLICITORS PRACTICE FOR SALE IN NORTH DUBLIN AREA

Prime location and Excellent potential.

Established client base.

Principal re-locating. Replies to **Box No 86**

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1989*: notice of intention to acquire the fee simple

To whom it may concern:
That all that and those the dwelling-house and premises known as 43/44 Patrick Street, Templemore in the County Tipperary
Particulars of applicant's lease or tenancy are unknown.
Take notice that Edward J Allen of 43/44 Patrick Street, Templemore in County Tipperary being the person whom I believe to be entitled under section 8 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* proposes to purchase the fee simple in the lands described in paragraph one and further take notice that such application shall be made before the county registrar on 21 November 2001.

Signed: James J Kelly & Son, Solicitors, Patrick Street, Templemore, Co Tipperary

CONTINUING LEGAL EDUCATION

One day Law Society conference

Reviewing recent developments in legal practice

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

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

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

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

SOLICITORS' HELPLINE

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

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

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

01 284 8484