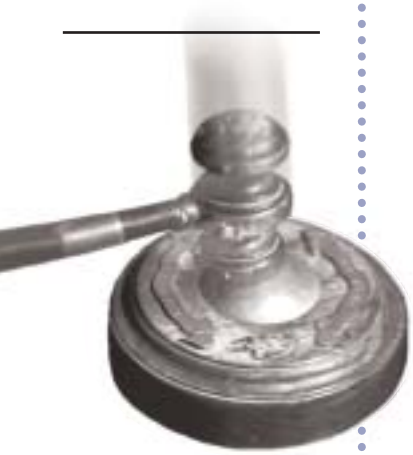
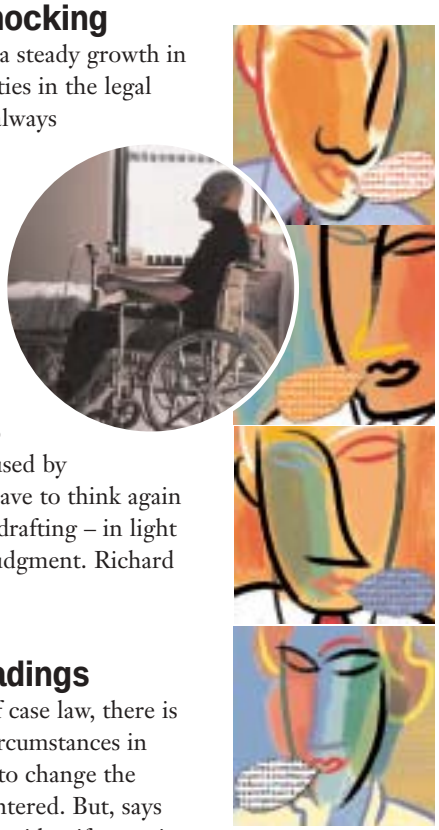
Gazette LawSociety

Regulars



Cover Story



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Past, present and future

As this is my first message to you, I would like to begin by saying what an honour and a privilege it is for me to represent you as president of the Law Society of Ireland for the coming year. When my term of office comes to an end, I hope you will be able to say that I represented you as you would have wished me to and that I worked hard on your behalf.

These are not empty words, because I am acutely aware of the long and proud history of this organisation. We have a fine tradition of what my immediate predecessor in this job called 'fighting the good fight', and I am confident that our future is equally bright. I am confident of this because we are an adaptable profession, having embraced the many changes imposed on us by the ever-evolving complexity of the law. I am particularly proud to be serving as your president in this year, the 150th anniversary of the granting of the Law Society's charter. You may have noticed the special anniversary logo on the front cover of this magazine. This will be appearing on all Law Society stationery and publications in the coming year. I hope it will serve as a reminder to the profession, and to the wider public at large, of our rich history and proud record of acting in the public interest. That has always been our role; as a profession, we have always put our clients' interests above our own. I hope you are as proud of this tradition as I am. And I am confident it will continue.

To commemorate this anniversary, we will shortly be publishing a history of the Law Society, detailing the development of our profession over 150 years. A lot of work has gone into the preparation of this book and I hope you will find it both entertaining and enlightening. Further information about the history will be available closer to its publication date.

No increase in members' subscriptions

So much for the past. As for the present, I am particularly pleased to announce that for the first time in years there has been no increase in members' subscriptions. In fact, if you take inflation into account, there has been an effective 4% decrease in members' fees! We have been able to achieve this splendid result through good financial management and astute forward planning. We have spent many years clawing our way back from the financial ravages of the early 1990s, and I'm sure I'm not alone in wanting to express my thanks to the members of the society's Finance Committee, and the Law Society staff in the finance department, whose stewardship has left us in this healthy position.

New conveyancing material

As you probably know by now, the Law Society has launched a range of new and updated conveyancing documentation for practitioners. These core conveyancing documents include the contract for sale, requisitions on title, the building agreement and pre-contract checklist. A great deal of time and effort went into the preparation of this material, and I'm sure the profession at large will welcome the initiative and find the new documents a real benefit to their practices. Special thanks must go the members of the taskforces established by the society's Conveyancing Committee and the Dublin Solicitors' Bar Association to oversee the preparation and production of this material.

And so to the future. You will all be aware that the new *Solicitors' accounts regulations* were passed by Council and signed by the president of the High Court towards the end of last year. We realise that these new regulations, however necessary they may be, will involve some changes in how we manage our practices. Accordingly, we have organised a series of seminars in venues around the country to explain how the new regulations will work in practice. All firms will be receiving notification about the time and place of this 'roadshow', and I would strongly urge you to make the effort to attend the one closest to you if you are at all unsure about what the new regulations entail.

Finally, I would like to take the opportunity to thank all those who have signed up for this year's annual conference, which will be held in the wonderful setting of Sorrento. Advance bookings far exceeded expectations and I'm sorry to have to tell you that the conference is now sold out! And to those who are making the trip: I look forward to seeing you there.

Elma Lynch,
President

'As a profession, we have always put our clients' interests above our own. I hope you are as proud of this tradition as I am'

Giles J Kennedy v Law Society of Ireland: judgment of the Supreme Court, 20 December 2001

In the May 2001 issue of the *Gazette*, the Law Society informed the profession of the Supreme Court judgment in the above case. The society advised that the Supreme Court had directed further submissions from both parties. These were to be directed to the issue as to whether the main part of the report under the *Solicitors' accounts regulations* (the subject of the proceedings) could be preserved, with the excision of that part of the report dealing with fraudulent claims.

The society prefaced the report in the May *Gazette* with the statement that it would not normally comment on a case which is still before the courts but was concerned that potentially misleading and incomplete reports of the case had appeared in certain publications. The society is once again concerned at the publication of further seriously misleading reports. This is particularly the case as none of the findings of fact of the High Court was disturbed by the Supreme Court.

The judgment of the Supreme Court was delivered by Fennelly J on the above date. A number of points arise out of this judgment:

1. The case is part heard only and will now continue in the High Court.
2. The Compensation Fund Committee can consider *de novo* the part of the report which deals exclusively with alleged breaches of the *Solicitors' accounts regulations*.
3. In relation to the question of damages (pertaining to the investigation of fraudulent claims found by the Supreme Court to be *ultra vires* the regulations), the Supreme Court made the following statement:

'… the court has already reserved to the High Court any question of damages to be paid to Mr Kennedy arising from the appointment and investigation of the accountant. For the elimination of all doubt, it should be emphasised that nothing in this judgment implies that any entitlement to damages flows from the invalidity of the appointing decision. The High Court will consider that matter in the light of the general law including the recent decision of the court in Glencar Exploration plc v Mayo County Council *(unreported, 19 July 2001).'*

The *Glencar* case, as readers will recall, was examined in an article at page 22 of the December 2001 *Gazette*.

4. Relevant to this issue also is the statement by the Supreme Court that while the investigation of fraudulent claims was *ultra vires* the *Solicitors' accounts regulations*, the court was: *'… not saying that the Law Society was acting* mala fide, *in the sense of knowingly exceeding their powers.'*

The judgments of the High Court and the Supreme Court are available from the society's library.

FOUR COURTS OFFICE GETS E-MAIL

The Law Society offices in the Four Courts are now on e-mail, and members can book consultation rooms by contacting the society's offices on fourcourts@lawsociety.ie

ONE TO WATCH: NEW LEGISLATION

Protection of Employees (Part-time Work) Act, 2001

This act came into force on 20 December 2001. It is based on the provisions of the EU council directive 97/81/EC, which was drafted against a background of skill shortages and the need to make part-time work fairer and more attractive. According to figures mentioned in the parliamentary debate, part-time workers make up 17% of the workforce – 281,000 workers – and this proportion is rising. Over 80% of these workers are women, representing 23% of all women working – nearly one in four. The act replaces 1990 legislation under which part-time workers had to work over eight hours a week for 13 weeks to be eligible for protection. Part-time workers had less protection in relation to dismissal, paid annual leave, parental leave and vocational training. They also suffered in relation to social insurance for pensions, unemployment benefit and sick pay.

The explanatory memorandum published with the bill in 2000 sums up the objectives of the legislation as follows: 'The bill provides for the removal of discrimination against part-time workers where such exists. It aims to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers. The bill guarantees that part-time workers may not be treated less favourably than full-time workers'.

These are key provisions of the act:

- Section 8 provides that all 'relevant enactments' shall apply equally to part-time employees. The relevant enactments are: the *Carer's Leave Act, 2001*; the *Minimum Notice and Terms of Employment Acts, 1973 and 1984*; the *Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990*; the *Redundancy Payments Acts, 1967 to 1990*; the *Terms of Employment (Information) Act, 1994*; the *Unfair Dismissals Acts, 1997 to 1993*; and the *Worker Participation (State Enterprises) Acts, 1977 to 1993*
- Section 9 provides that generally a part-time employee cannot be treated less favourably than a comparable full-time employee, unless this can be justified on 'objective grounds' or the part-time employee works less than 20% of the time of a comparable full-time employee
- Section 10 provides that any benefit of employment must relate proportionately to the time worked (*pro rata temporis*)
- Section 11 distinguishes part-time employees who work on a casual basis. They are those who work for an employer for less than 13 weeks and whose employment could not reasonably be regarded as regular or seasonal. They are also those who are so defined in an approved collective agreement. They may be treated less

Court slams door on unfair building contracts

The High Court's decision to ban unfair terms in building contracts has been given a warm welcome by Law Society, whose Conveyancing Committee played a key role in securing the order. Mr Justice Kearns made the order just before Christmas on foot of an application from the director of consumer affairs, Carmel Foley, under the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*.

The society's Conveyancing Committee had initially brought this problem to the attention of Foley's predecessor in 1997 and had urged the director to use the regulations to prohibit the use in building contracts of some of the onerous terms and conditions that had become prevalent in recent years. The committee provided Foley with examples of unfair terms for litigation purposes. These sample conditions had been submitted to the committee by conveyancing practitioners

around the country who had expressed great concerns on behalf of their consumer clients about the use of such conditions.

Proceedings were issued by the director of consumer affairs in May last year, using the 15 sample conditions, and the application for a declaratory order was heard in the High Court on 5 December 2001. Judgment was given that day, with the order being made on 20 December.

The application was largely unopposed in relation to the 15 sample conditions and Mr Justice Kearns had no hesitation in granting the order sought. The order sought by the director in relation to stage payments was opposed by the Law Society and was granted 'without prejudice to the issue of the propriety or impropriety of stage payments' – in other words, without ruling on the appropriateness or otherwise of stage payments. The society will now continue to seek the outright abolition of stage payments by the legislature.

The case is something of a milestone in that it is the very first case brought in the Irish courts under the regulations which implemented the EU directive. When the regulations were passed in 1995, it could hardly have been foreseen that their first outing in the courts would occur in relation to building contracts, but that is what has happened.

(See also Safe as houses?, *page 12.)*

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in December 2001: Michael P McMahon, 5/6 Upper O'Connell Street, Dublin 1 – £21,480.

RETIREMENT TRUST SCHEME

Unit prices: 1 January 2002
Managed fund: 460.693c
All-equity fund: 127.353c
Cash fund: 240.868c
Pension protector fund –

SEMINARS WITH BITE!

The Law Society's Continuing Legal Education section has launched a series of early morning briefings to meet the growing need for concise updates on key legal issues. The first *Blackhall Breakfast Briefing* will take place on Thursday 28 February from 8.15am–9.30am in the Members' Dining Room in the Law Society's Blackhall Place headquarters. The fee is €30 and further information can be obtained from the society's information and administration executive Michelle Nolan on tel: 01 672 4802 or by e-mail on m.nolan@lawsociety.ie.

favourably 'in respect of a particular condition of employment' than a comparable full-time employee if this can be justified on objective grounds. The minister has power to keep the operation of this section under review and to prescribe certain classes of employee to whom this section should not apply. This will enable the minister to eliminate abuses if necessary

- Section 12 limits what may be objective grounds to considerations other than the part-time nature of the employment in question. These grounds must be to achieve a legitimate objective of the employer and the treatment of the part-time employees must be appropriate and necessary
- Section 13 provides for the Labour Relations Commission at the minister's request to study industries and sectors of employment and make recommendations as to how obstacles to part-time work could be eliminated, including a code of practice for employers
- Section 14 provides that in general this act cannot be contracted out of
- Section 15 prohibits an employer penalising an employee for invoking rights under this act
- Section 16 gives a right of complaint to a rights commissioner in relation to sections 9 and 15, who may require compliance by the employer and payment of up to two years' remuneration. A complaint must be made within six months of the contravention, and in exceptional circumstances within a further 12 months. Complaints are heard in private
- Section 17 provides that appeals lie to the Labour Court within six weeks of the rights commissioner's decision. The Labour Court may request the minister to refer a question of law to the High Court, or a party may appeal on a point of law to the High Court, and in both cases that court's decision is final and conclusive. If the employer does not implement a rights commissioner's decision and the appeal period is past, within six weeks the complainant can bring the case before the Labour Court, which without further hearing will confirm the decision
- Section 18 deals with enforcement of Labour Court determinations through the Circuit Court
- Section 20 confirms that Irish employee protection legislation applies to foreign workers posted to work in this country.

It can be expected that this act will gradually begin to affect terms of employment. It will result in some increased administration costs for employers, but more importantly, it is likely to lead to changes in the ways in which part-time employees are seen, are used and are valued. G

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

New Circuit Court rules introduced

The *Circuit Court Rules 2001* (SI no 510 of 2001) became operative on 3 December last. The rules consolidate Circuit Court rules which have come into existence in and since 1950.

According to the Law Society's Litigation Committee, the new rules largely represent consolidation rather than the creation of many new rules or even extensive amendment. The committee sets out some of the changes below, but stresses that this list is not comprehensive:

1) Third party procedure in the Circuit Court is now governed by order 7 in the 2001 rules
2) The issue of a civil bill, service and entry are covered by order 11. It must be emphasised that the procedure in relation to the issue and service of civil bills remains unchanged and attention is drawn to the specific memorandum which has been inserted by the Circuit Court Rules Committee at page 329 in the new rules. Nothing has been changed and the warnings previously set out in the *Gazette* about the issue and service of civil bills must be repeated here
3) Order 15, rule 21(2) provides that a '*qualified party*' in lieu of lodging money in court may make an offer of tender of payment to the other party or parties to the cause or proceedings. This brings tendering into line with the procedure recently adopted in the High Court
4) Order 5, rule 5 provides, among other things, that '*full particulars of all items of special damage being claimed*' should be stated in civil bills
5) Order 26, rule 4 provides that where judgment by default in cases of liquidated demands and claims for delivery of goods and chattels is sought, the supporting affidavit shall now be sworn and the certificate required by rule 2(e) be given within the period of 28 days next preceding the date of application for judgment
6) As a general rule, references to scale costs have been removed. In many instances, the alternative provision is that reasonable costs be determined by the court or the county registrar. In order 5, rule 6, where a plaintiff's claim is for a debt or liquidated claim only costs (six-day costs) '*shall be in accordance with a schedule of fees to be determined by the county registrar for the county of the city of Dublin from time to time*'
7) The longest order in the new rules sets out the procedure to be applied in the family law courts
8) A number of new forms have been provided in schedule B. There are 15 civil bill forms including an '*equity*' civil bill. The family law civil bill provided may be used in relation to matters arising under seven different statutes. There is also a separate domestic violence civil bill
9) Orders 18 and 19 detail orders which may be made by the county registrar, and order 20 similarly lists matters which may be dealt with at sittings in chambers and/or by interlocutory application.

Postcard from the past

On Wednesday 19 May 1841, a meeting of attorneys and solicitors in Ireland was convened at the Court of Common Pleas and resolved to *'appoint a Committee or Deputation to wait upon the Benchers of the Honourable Society of King's Inns to ascertain when it will be their pleasure to give the Members of the Profession generally the possession of the new rooms at the rere of the Courts'*.

Possession of 'the large room and the two rooms on the landings' as well as the 'four arbitration rooms below stairs' was taken on Saturday 29 May 1841. The Report of the Building Committee of the Benchers recommended that the 'apartments' be placed in the care of 'a discreet and meritorious person', who would 'provide fire and pens and ink' and would be remunerated *'by charging such persons as may engage such apartments for the purpose of arbitration or consultation 2/6 for the first hour and 1/- for every succeeding hour, during which they may occupy same – all such payments to be made in advance'*.

On Thursday 17 June 1841, the rules and regulations for 'The Society of Attorneys and Solicitors of Ireland' were adopted, including rules relating to the management of *'the apartments adjoining the Four Courts allotted for the exclusive use of the Profession of Attorney and Solicitor'*.

Extracted from the *Book containing the early Proceedings connected with the formation of the Society and the Minutes of its various Public Meetings held in the Solicitors Room at the Solicitors Buildings, Four Courts – 1841-1850*

IALT annual conference

The Irish Association of Law Teachers will be holding its annual conference in the Ramada Hotel, Belfast, on 12-14 April. The theme will be *Hard cases and bad law*, exploring situations in the past where the law has gone wrong. The conference costs €400 (including accommodation) and further details can be obtained from Dr John Stannard on tel: (028) 9027 3457, fax: (028) 9027 3376 or e-mail: *j.stannard@qub.ac.uk*.

Conveyancing revolution in England predicted

Conveyancing in England and Wales is about to undergo a revolution, according to leading London barrister and former Law Commissioner Charles Harpum, *writes Pat Igoe*.

A property sale will close, the balance sale proceeds paid and the title of the purchaser registered in the Land Registry – all at the same time. Paper would effectively be banished from land registration, he told a meeting in London last month of the Society for Advanced Legal Studies.

The aim of the *Land Registration Bill*, which is expected to become law this month, is to create a conclusive register to show title to land. The way that conveyancing is conducted would be dramatically changed. All rights claimed to land would require registration. Unless registered, they would have no effect.

Part of the completion of a conveyancing transaction would be for the solicitor or licensed conveyancer to instantly and electronically register the title (and presumably any mortgage). For this system to work, solicitors and licensed conveyancers would require training. A proposed Network Access Agreement would provide for obligatory training in the procedures. There would be serious sanctions against solicitors and licensed conveyancers not properly operating the new system. State guarantees of titles would remain.

Mr Harpum, who was instrumental in formulating the bill, suggested that dramatic changes would follow in the way that conveyancing is conducted. Transparency in the property market was one of the aims of the bill.

These dramatic changes in conveyancing and registration of title could be expected to introduce a greatly improved, more comprehensive and more open system of registering title, he felt.

Both conveyancing solicitors and the Land Registry in Ireland will be watching with more than passing interest.

Statement from the Disciplinary Tribunal

The Disciplinary Tribunal recently enunciated its future attitude towards solicitors who have been referred to the tribunal for practising without practising certificates.

The tribunal stated that the consequences of practising without a practising certificate are such that under no circumstances can it be tolerated. Professional misconduct is a very serious matter which has implications against the record of a solicitor during his or her entire professional life. The tribunal further stated that it was particularly important to draw to the attention of all members of a firm that they have an obligation to apply for their practising certificate, whether as partners or as assistants, or in whatever capacity they are employed, and furthermore to ensure that their practising certificate is in force. Practising for any period of time without a practising certificate could jeopardise a solicitor's professional indemnity insurance. Furthermore, a break in continuity of practising certificates may disqualify a solicitor from applying for judicial appointment.

The Law Society once again wishes to draw members' attention to its policy of referring all solicitors to the Disciplinary Tribunal who are required under the *Solicitors Acts* to apply for a practising certificate prior to 1 February of each year and who have not done so.

Advocacy training for solicitors

The Law Society will shortly be announcing full details of an *Advanced advocacy for solicitors* course. It will comprise a series of evening seminars/workshops on evidence. These will be held in Dublin one evening a week in April/May. Those who complete the evidence course will participate in a five-day full-time intensive course in advocacy, provisionally scheduled for September. This advanced advocacy course will be run in partnership with the US-based NITA organisation (National Institute for Trial Advocacy), which is renowned worldwide for its trial-skills training. The course is aimed at solicitors who already have significant court-room/representational experience. As demand for places is expected to exceed supply, timely application is essential. Priority will be on the basis of number of years' post-qualification experience.

Further details and application information will be available in the next issue of the *Gazette*.

NORTH/SOUTH BUSINESS FORUMS

Inter*Trade*Ireland, the development body set up to facilitate cross-border trade, is to host a series of North/South business forums aimed at solicitors, accountants, business advisors and owner/managers of small businesses. The forums are designed to raise awareness of the opportunities and pitfalls involved in trading between the two jurisdictions on the island. Five forums will be held during February and March, focusing on corporate and personal tax, corporate and employment law, financial incentives, VAT and indirect taxes. Numbers are limited and there is a charge of £40/€60 per person. For further information, visit the website at www.intertradeireland.com, call Nicola McGuinness on 028 3083 4154 or see the loose-leaf insert included in this month's issue.

LAWTECH RETURNS

The LawTech 2002 exhibition and seminar will be held on 1 March in Blackhall Place. The exhibition will run from 10.30am to 5.30pm in the Members' Lounge and Blue Room, while the seminar on *Prof-IT-ability: technology and the bottom line* will be held in the Presidents' Hall at the same time. The seminar costs €127 (which includes a buffet lunch) but the exhibition is free of charge.

LAW REFORM COMMITTEE: INVITATION FOR CONTRIBUTIONS

The Law Society's Law Reform Committee is starting work on a new project on solicitor/client confidentiality and invites contributions from the profession in relation to any views, experiences, problems or ideas about the law and practice as it affects this issue. Please send any contributions to Alma Clissmann, secretary to the Law Reform Committee, Law Society, Blackhall Place, Dublin 7, or e-mail: a.clissmann@lawsociety.ie.

Letters

New Circuit Court rules shocker

From: John Dunne, Dublin

A circular was received from the Law Society on 19 December last indicating that there were new Circuit Court rules and that they had been in force since the previous 16 days. This was useful information. It is a pity that the information was received after the event. The major change in the Circuit Court rules in 1995 requiring the civil bill to be issued in the Circuit Court office was similarly unheralded. It is unwise to extend the 'learning by doing' technique to discovering changes in the court rules.

It is surprising that neither the *Gazette* nor the Law Society nor any of its committees saw fit to provide advance notice of the new rules. By contrast, the Revenue are very forthcoming with advance notice of changes. Incidentally, the circular on 19 December accompanied the demand for €1,770 for the practising certificate. It makes one wonder.

The editor replies:

The new rules were introduced without fanfare or advance publicity on 3 December last, too late to be mentioned in the December issue of the magazine, which unfortunately had already gone to press. A report on the changes introduced by the new rules can be found on page 6 of this issue.

The good old days

From: Gerard O'Herlihy, M Roche & Co, Dublin

I read recently that the Law Society is contemplating changing the terms 'master/apprentice' to 'trainer/trainee'. This, I presume, is being done in an effort to make the profession appear more 'up-to-date'. Why not go the whole hog and use the terms 'coach/rookie'!

Let's have a bit of perspective here. Let's keep some of the fine old traditions which we have had in the Law Society over many years.

This proposal should be rejected.

The Solicitors' Mutual Defence Fund

From: Laurence K Shields, Secretary, SMDF

I write as secretary to the Solicitors' Mutual Defence Fund Limited (SMDF) with reference to the letter published in the December 2001 issue of the *Gazette* from Andrew Dillon, to correct and clarify a particular issue. The articles of association were amended in May 1997 to remove the power of the Council of the Law Society to appoint or remove directors of SMDF. Accordingly, under the articles of association of the SMDF, the Law Society has no role in the appointment of directors, contrary to what is stated in the letter.

I do not propose to respond to the other comments of Mr Dillon, which are matters between the board of directors of SMDF and its members.

DUMB AND DUMBER

From: Rogan & Moran, Solicitors, Cahirciveen, Co Kerry

The following special condition appeared in a recent contract for sale of a site drafted by a reputable firm of Cork solicitors: 'In addition to the purchase price, the purchaser shall be responsible for any engineering and baking costs incurred by the vendor'.

From: Patrick G McMahon, Newcastle, Co Limerick

A rather haughty solicitor was getting nowhere in spite of the vigorous cross-examination of an old lady in the witness box. Finally, in exasperation, he acknowledged defeat. As he was sitting down, he said, 'I will ask you no more questions, Madam. You are far too clever'. The little old lady in the witness box delivered the *coup de grâce*, with the retort:
'I'd return the compliment, sir, only I am on my oath sir!'

Rogan & Moran win the bottle of champagne this month.

Stop making cents

From: Alison Brennan, Dublin

Well done to the Law Society for cashing in on the euro changeover. I was in the society's library early in the new year and wished to pay for some photocopying. I was informed that it was 15 cent per sheet in the new currency. With a rare burst of mental agility, I discerned that 15 cent did not bear any direct correlation to the old price of 10p. In fact, it represents a hefty increase of 20%. Having requested the hapless person behind the desk to confirm this on her calculator, I was offered a mumbled, feeble explanation about 'change difficulties' – and this the day after the Central Bank had assured the country that an abundance of one and two cent coins had been made available in order that there would be no excuse to round-up old prices!

Still on the subject of our new currency: what is the difference between 29 cents and 29 cent? The first is the US currency; the latter is bad grammar. The official line being promulgated in the media is that our new currency is only to be cited in the singular form, and I even found myself noting one of our esteemed judges in the Bridewell Courts meticulously referring to new currency amounts in the singular.

I determined to clarify the matter, and after labyrinthine enquiries within the Euro Changeover Board, I obtained the definitive answer from an official, who happened to be an ex-teacher of language. Having discussed the grammatical deficiencies of the new currency, we agreed that there was, in general, a sad and creeping decline in our use of the English language. We commiserated with one another on people's increasing inability to differentiate between the plural of a noun and the Anglo-Saxon genitive, or between the latter and the dative case.

Purists will be glad to learn that we are not to be subdued by the dictates of some Bundesbanker's Eurospeak. Where our new currency is concerned, the use of the singular is merely a suggestion. (Somebody learnt a lesson after our 'No' vote to the *Nice treaty*!) We are all free to use whichever form we are most comfortable with – the singular only or the singular and plural. This, in my view, is somewhat unfortunate. Could we not have commenced by using the grammatically correct forms? It must be every EU bureaucrat's financial nightmare that we shall all irrepressibly assert our cultural diversity and reduce the homogeneous euro and cent to linguistic havoc.

Live long and prosper

From: David Hodnett, Competition Authority

While flicking through the stylish 2001 Law Society annual report, my eye was drawn to a colour-coded pie chart on page 38, titled *Age of members*.

'Kill the lawyers first', they say in Shakespeare's *King Henry VI*. Clearly, 'tis not so in Eire, for apparently 11% are over the age of 99. This begs the question: where are the lawyers aged 80-99? No figures are given. Is there some *Cocoon*-type exodus that occurs which isn't mentioned on the advanced course?

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 to cover applications from the following areas:

- **County Tipperary from April**
- **Counties Meath and Westmeath from early May**

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 paper folios has commenced and these will be made available electronically on a phased basis. Information on pending applications will also be available through the EAS and it will be possible to apply for copy folios and filed plan maps through this on-line system.

ITRIS (including the EAS) is already operational in twelve counties:
Dublin, Galway, Mayo, Sligo, Clare, Roscommon, Kildare, Wicklow, Cork, Waterford, Kerry and Limerick and will be extended on a phased basis to the entire country by the end of this year.

Prior to the introduction of the full ITRIS system, in response to customer demand, the Electronic Access Service (EAS) will be made available for all counties. This will offer considerable benefits for practitioners immediately, which will be built on over time.

To date, prior to introducing the system in each county we have hosted a series of seminars/information sessions for practitioners. These have been organised in conjunction with the local bar associations and have been well attended and have proved to be very successful and mutually informative to date. We will continue with these seminars throughout this year.

A measure of the success of the EAS to date can be gleaned from the usage of the service which was initially launched in the Autumn of 1999.

- 123,000 business transactions were undertaken via this service in year 2000. In 2001 this figure grew to almost 160,000.
- At the end of 2000 we had approx 1,600 account holders. By April 2001 this had grown to 2,000 and now exceeds 3,000.

Customers are also reminded that the Land Registry Practice Directions are available on-line.

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

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A root and branch examination of the operation of our courts

Ken Murphy welcomes the chief justice's invitation to propose 'radical reforms' of the Irish court jurisdictions in the first critical analysis since 1924

'This working group has a wide remit to conduct a root and branch examination of the operation of our courts. If it achieves in its deliberations what the working group for a courts commission did in helping to establish the Courts Service, we will see the operation of our court jurisdictions radically reformed' – Chief Justice Ronan Keane at the establishment of the working group on 10 January 2002.

This is very much the chief justice's initiative. In a speech in University College Cork in March 2001, he first announced publicly his intention to have the Courts Service Board, of which he is chairman, commence a review of the jurisdictions of the Irish courts system.

His speech was well publicised and commented on favourably. The fact that the Irish courts system, since it was first established in 1924, had never been subjected to any critical analysis made the need for a review self-evident.

Mr Justice Nial Fennelly: chairs the working group

Much comment focused on his questioning of whether the four layers of the courts system – district, circuit, high and supreme – which reflected the four-layer system which preceded independence, were really necessary. Would a three-layer system of court of summary jurisdiction, court of first instance, and court of appeal as exists in a great many other jurisdictions, not suffice? What price a merger of the district and circuit courts, therefore?

Whether the chief justice was seriously proposing this or merely using this radical suggestion to capture attention and start a debate is not entirely clear. Nor does it matter. By establishing the working group with such wide terms of reference, every idea to improve the structures of the courts may now be explored and evaluated.

In Mr Justice Nial Fennelly of the Supreme Court, the working group has a chairman with experience of a very different courts system, gained when he served as an advocate general in the European Court of Justice in Luxembourg. This experience will be valuable.

The Law Society warmly welcomes this initiative. James MacGuill (on the criminal law module), Roddy Bourke (on the civil law module) and I look forward to contributing the solicitors' profession's insights and ideas for 'radical reform', in response to the chief justice's invitation. G

Ken Murphy is director general of Law Society of Ireland.

THE MEMBERS OF THE WORKING GROUP:

The chairperson of the working group is Mr Justice Nial Fennelly, judge of the Supreme Court

The members of the working group for module one are:

- Caitlín Ní Fhlaitheartaigh (Office of the Attorney General)
- Michael Durack SC (Bar Council)
- Judge Pat McCartan (Circuit Court)
- Noel Rubotham (Courts Service)
- John McGreevy (Courts Service staff representative)
- Claire Loftus (Office of the Director of Public Prosecutions)
- Judge Peter Smithwick (District Court)
- Mr Justice Paul Carney (High Court)
- Mr Justice Declan Budd (Law Reform Commission)
- Ken Murphy (Law Society)
- Michael Errity (Department of Finance)
- John Cronin (Department of Justice, Equality and Law Reform)
- Judge Michael Reilly (National Crime Council)
- Finbarr McAuley (UCD)
- Tom O'Malley (NUI Galway)
- Donal Egan (Victim Support)

The working group's terms of reference:

1) To examine the existing jurisdiction of the courts of Ireland and make recommendations as to any changes which, in the opinion of the working group, are desirable in the interests of the fair, expeditious and economic administration of justice, including proposals for the establishment of new courts jurisdictions, whether appellate or first instance, for determining the appropriate number of judges for each jurisdiction and the supporting staffs required in such jurisdictions and for alterations in the quantitative or geographical limitations of existing jurisdictions
2) With a view to (1), to conduct research into:
   (a) The manner in which the courts of Ireland have operated since their establishment in 1924 and are likely to continue operating in the future on the assumption that the existing structures remain unchanged
   (b) The manner in which the administration of justice is conducted in other jurisdictions to the extent that the working group considers such research might be helpful
3) To make such further recommendations as to changes in the law which, in the opinion of the working group, are desirable in order to secure the fairer, more expeditious and more economic administration of justice
4) To make such interim reports as it considers appropriate.

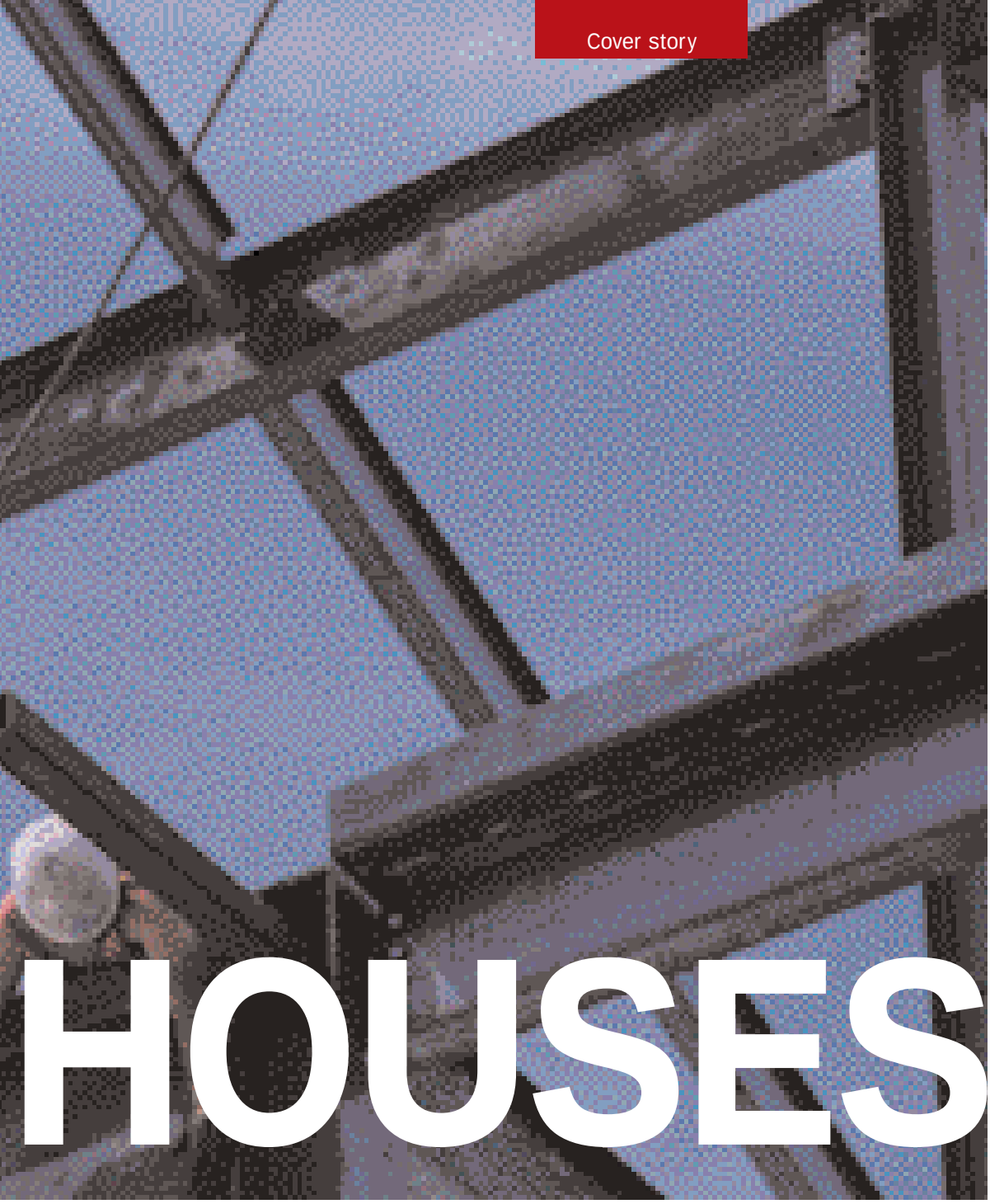
During the boom years for the building trade, many house buyers found themselves having to sign contracts that left them at a distinct disadvantage or run the risk of missing out on that vital first step on the property ladder. A recent High Court order prohibiting unfair terms in building contracts should go some way towards redressing the balance, as Patrick Dorgan explains

SAFE AS

MAIN POINTS

- Background to the High Court order
- 15 contractual conditions prohibited
- Limits on stage payments but no outright ban

The *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (contained in SI no 27 of 1995) incorporated the EU directive on unfair terms and conditions in consumer contracts into Irish law. These are very wide-ranging regulations and solicitors in all areas of practice are urged to familiarise themselves fully with them as they have the potential to be of great assistance to practitioners and their clients in a wide variety of contractual matters. The Conveyancing Committee of the Law Society itself recognised their value in helping it tackle a problem which had become very onerous on solicitors and on purchasers of new houses in recent times and, in particular, during the housing boom of recent years – that is, the problem of unfair and unreasonable terms being inserted in building contracts by some solicitors acting for



HOUSES?

builders in various parts of the country.

The Conveyancing Committee urged the director of consumer affairs in 1997 to take action under the regulations to tackle these onerous and unfair terms and conditions. In May last year, proceedings were issued by the current director, Carmel Foley, using 15 sample conditions provided mainly by the Law Society, and an application was also made by the director in the proceedings in relation to stage payments. Various 'interested parties', as provided for in the regulations, including the Law Society, the Construction Industry Federation/Irish Home Builders' Association and the Department of the Environment, filed affidavits and were heard in the proceedings before the court.

The application for a declaratory order was heard in the High Court on 5 December 2001 and judgment was given that day. The various parties represented in the proceedings were asked to agree and lodge a draft order for approval, and this order was ruled on 20 December 2001.

The 15 sample terms

These 15 terms are contained in the first schedule to the High Court order (see *Extract from order*, **overleaf**). The reasons why the director believed them to be unfair and in breach of the regulations is not set out in the order itself, but a synopsis of the reasons that were given in the pleadings can be found on page 15. In order to demonstrate what is deemed to be unfair under the directive, an extract from the regulations is printed on page 16.

The Department of the Environment did not think that term 1 was necessarily unfair but submitted that all the other terms were in breach of the

EXTRACT FROM HIGH COURT ORDER

In the matter of an application pursuant to regulation 8(1) of the *European Communities (Unfair Terms In Consumer Contracts) Regulations 1995*

The director of consumer affairs, applicant

This matter coming on for hearing before the court on the fifth day of December 2001

It is ordered:

1) That no person or body shall use or, if appropriate, continue the use in building contracts any terms in the form of the terms of the first schedule hereto annexed or any term which is intended to, or does in fact, have like effect the said terms having been adjudged by the court to be unfair terms pursuant to the provisions of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*
2) Without prejudice to the issue of the propriety or impropriety of stage payments or interim payments in any such contract, no such building contract providing for such stage or interim payment shall provide for any interim payment such as will exceed the percentages specified in the Irish Home Builders' Association code of practice, being the percentages set out in the second schedule hereto, or which exceed the extent and value of works carried out at the date specified for such a payment …

FIRST SCHEDULE

Term 1. The employer hereby acknowledges that this building agreement and the contract for sale between the employer and ..... of even date hereto constitutes the entire agreement between the parties and hereby admits that he/she has not entered into this building agreement or the aforementioned contract for sale in reliance on any other warranty or representation whether verbal or in writing. The employer further admits and agrees that he/she will not seek to enforce this building agreement without a similar enforcement of the aforementioned contract for sale.

Term 2. If the employer shall fail to pay any instalment of the contract price or the balance of the contract price within 14 days of the same becoming due for payment, then without prejudice to any other right which the contractor may have at law or in equity, the contractor shall be at liberty to rescind this agreement by giving either directly or through his solicitors to the employer or the employer's solicitor seven days' notice in writing of such rescission and on the expiration of such notice the contractor shall be entitled to resell the site with the works thereon whether by way of private treaty or public auction and at such price as the contractor may determine upon giving seven days' prior written notice to the employer's solicitors. Any deficiency realised on such sale shall be payable by the employer and shall be recoverable as liquidated damages, but any excess realised on the sale shall belong to and be the sole property of the contractor. Any notice under this condition shall be effectively given if sent by post or delivered by hand to the employer or his solicitors at his or their last known address. Where such notice is sent by post, the notice shall be deemed to have been served on the day after the date of such posting.

Term 3. If the employer shall prior to the payment of any instalment of the contract price or the balance of the contract price make or raise any objection to or make any claim or demand in respect of the works or in any wise appertaining thereto or the materials or workmanship thereof or in respect of the area of measurements or dimensions of the site or in respect of any other matter whatsoever arising out of this agreement which the contractor shall either be unable or unwilling to remove or comply with any planning or building regulation requirement or if the compliance with any planning condition or local authority requirement shall cause delay in the completion of the works or other developments in the estate of which the site forms part then, notwithstanding any negotiations, litigation or attempt to remove, comply with or satisfy same and notwithstanding anything contained in clauses 11, 12 and 13 hereof, the contractor shall be at liberty to rescind this agreement by giving either directly or through his solicitor to the employer or the employer's solicitor seven days' notice in writing of such rescission and on the expiration of such notice this agreement shall be at an end and neither party hereto shall have any claim against the other save that the contractor shall be bound to refund to the employer all monies actually paid by the employer to the contractor or the contractor's solicitor in return for all documents furnished to him. Any notice under this condition shall be effectively given if sent by post or delivered by hand to the employer or his solicitor at his or their last known address. Where such notice is sent by post, the notice shall be deemed to have been served on the day after the date of such posting.

Term 4. There shall also be excluded from the contractor's liability pursuant to sub-clauses (a) and (b) of clause 8 any defects (patent or otherwise) which occur before the employer enters into possession of the works or pays the balance of the contract price (whichever shall first occur) unless the existence of any such defect has been acknowledged in writing by the contractor.

Term 5. On receipt by the employer or his solicitor of notice from the contractor that the works have been completed, the employer shall be entitled to submit one snag list to site foreman only within seven days of the completion notice. If the said snag list is not submitted within this period, the purchaser wholly relinquishes his right to submit the said snag list. The employer shall not submit a second snag list and shall include in the first snag list all items which he regards or considered as outstanding in the works.

In the event of this agreement or contract of even date in relation to the sale of site ..... being rescinded or repudiated, the employer shall surrender any interest that he might have in the site and shall return all documentation in relation thereto. The purchaser shall not be entitled to possession of the premises or the site thereof until completion of both this agreement and the contract for sale of even date.

Term 6. The time period mentioned in general condition 4(c) is hereby amended from 14 days to seven days.

Term 7. The contractor may determine this contract by notice in writing to the employer and recover from the employer payment for all work executed and for any loss sustained by the contractor resulting from such determination with interest at the rate of 15% per annum from the date upon which payment became due of the losses incurred up to the date of actual payment which sums are to be paid to the contractor.

Term 8. Notwithstanding clause 4(c) hereof:

- If the employer shall not pay the balance of the contract price on the closing day, the contractor may (unless this agreement shall first have been rescinded or become void) give to the employer or his solicitor notice in writing to complete the sale and pay the balance of the purchase price
- Upon service of such notice, the employer shall complete the sale and pay the balance of the contract price within 14 days after the day of such service (excluding the day of service) in respect of such period time shall be of the essence of the contract (but without prejudice to any intermediate right of rescission by the contractor)
- If the employer does not comply with such notice within the said period (or within any extensions thereof which the contractor may permit), he shall be deemed to have failed to comply with these conditions and his deposit shall be absolutely forfeited to the contractor and the contractor shall be at liberty to re-sell the property without notice to the employer either by public auction or private contract and the deficiency (if any) arising on such re-sale (after giving credit for the deposit so forfeited) and all expenses and costs attending same or an attempted re-sale shall be made good and paid by the employer as liquidated damages.

Term 9. The purchaser shall procure that the premises to be erected in pursuance of the building

contract is erected in accordance with the provisions of the said building contract within 18 months from the date of execution of the building contract. In default of compliance with this provision and unless the within sale shall have been completed within the said period, interest shall accrue on the unpaid balance of the purchase price from the end of the 18 months period until completion of the within sale. In the event of the erection of the premises not being completed within a period of two years from the date hereof due to the default of the purchaser, then and in that event the vendor shall be entitled to rescind this agreement and to forfeit the deposit and in this respect time shall be deemed to be of the essence. In the event of the vendor rescinding the within contract, the vendor shall pay to the purchaser 75% of all sums paid by the purchaser to the building contractor under the building contract, and the purchaser shall assign the benefit of the building contract to the vendor subject to the vendor indemnifying the purchaser against all further obligations of the purchaser under the building contract.

Term 10. The employer shall not assign or part with the benefit of this agreement or his interest in site without the previous consent in writing of the contractor. The contractor is entitled to assign the benefit of this agreement and the employer acknowledges this and the general condition 9 is modified accordingly.

Term 11. The vendor reserves the right to modify materials specifications and to vary dimensions of the site and building during construction.

Term 12. The contractor shall not be liable to the employer in respect of any loss, expenses, costs or otherwise incurred as a result of any delay howsoever caused in completing the works referred to in clause A hereof.

Term 13. It is further agreed between the parties hereto that any delay by the contractor or employer in completing the aforementioned work or works shall not operate so as to delay the closing date.

Term 14. The contractor shall endeavour to keep all extras ordered by the employer when supplied free from damage injury or dirt but it is hereby agreed that the contractor shall not be responsible for any damages of same or other materials or work ordered by the employer when supplied.

Term 15. If any part of the sum demanded by the contractor for extras is not paid within five days from the date of the demand, then interest shall be payable by the employer to the contractor on a day-to-day basis at the rate of 20% per annum from the date of demand to the date of payment.

SECOND SCHEDULE

- Booking deposit 4%
- Contract deposit 11%
- Interim payment at joist level 25%
- Interim payment at roof level 25%
- Interim payment at internal plastering stage 25%
- Completion payment 10%

WHY ARE THE TERMS UNFAIR?

A synopsis of the reasons given in the pleadings why the 15 terms are deemed unfair

TERM	WHY IT IS UNFAIR	BREACHES WHICH REGULATION?
1)	It has the effect of limiting the builder's obligation to respect commitments undertaken by him or his agents prior to signing of the contract.	1(b) of sch 3◆ 1(n) of sch 3*
2)	There is an imbalance (in the parties' rights and obligations under the contract to the detriment of the consumer – referred to below as 'an imbalance') in that there is no provision for any excess realised on a sale to be repaid by the builder and this is particularly unfair in circumstances where all but one stage payment had been made to the builder.	3(2)*
3)	It could be used by a builder to determine a contract where no event has occurred which goes to the root of the contract and it creates an imbalance, as above.	3(2)*
4)	Makes the commitment of the builder subject to compliance with a particular formality which can only be performed/ completed by him, that is, the acknowledgement in writing by the builder.	3(2)* 1(n) of sch 3*
5)	Seeks to limit liability of the builder in an unfair imbalanced way. Any snag list submitted within the specified time should be accepted.	3(2)*
6)	Unfair to consumer and imbalanced in view of the serious consequences of failing to observe an unreasonable time limit. Halves the time limit specified in the standard agreement.	3(2)*
7)	Allows builder to terminate agreement without reasonable cause. Allows builder to be doubly compensated. Requires consumer to pay a very high price in compensation/interest at a penal rate.	1(e) of sch 3◆ 1(f) of sch 3◆ 1(g) of sch 3◆
8)	Allows builder to be enriched at expense of consumer. Requires consumer to pay disproportionately high price in compensation.	1(e) of sch 3◆
9)	Agreement binding on consumer but at the will of builder. Builder keeps 25% of money and an assignment of the building contract if consumer ends the agreement. Agreement can be ended arbitrarily by builder but no such facility for consumer. Responsibility for complying with the contract lies solely with consumer, whereas it is the builder who has control over construction.	1(b) of sch 3◆ 1(c) of sch 3◆ 1(d) of sch 3◆ 1(e) of sch 3◆ 1(f) of sch 3◆
10)	Prevents a consumer from minimising loss by selling an interest in the contract but allows such an arrangement for the builder.	1(p) of sch 3◆
11)	Deviations from the plans are not limited to minor deviations as is the case is the standard agreement. Consumers would not get what they contracted for. Builder has discretion to make variations during construction. Unfairly balanced against the consumer.	1(j) of sch 3◆ 1(k) of sch 3◆ 1(l) of sch 3◆ 1(m) of sch 3◆
12)	Allows builder to undermine provisions in contract relating to completion periods.	1(b) of sch 3◆
13)	Requires consumer to fulfil his obligations (complete payment for the building works) where builder does not perform his (whether they have been completed or not).	1(o) of sch 3◆
14)	Treats extras in terms of works and materials differently to the main works and materials supplied and contracted for, even though consumer is paying for both.	1(b) of sch 3◆
15)	Interest on unpaid monies sought at a disproportionately high rate.	1(e) of sch 3◆
	◆ *Breaches cited by director of consumer affairs* * *Breaches extrapolated by author*	

regulations. Both the Law Society and the CIF/IHBA supported the director's application in relation to all 15 terms, and Mr Justice Kearns did not seem to have any difficulty in granting the order sought in relation to these 15 terms.

It is significant that the affidavit filed on behalf of the CIF/IHBA confirms that the IHBA code of practice requires that their member builders use the Law Society/CIF standard form of building agreement. In their view, both parties to the agreement should enjoy freedom of contract and they should be permitted to negotiate changes or alterations to the agreement within the parameters indicated in the code of practice. In other words, the standard conditions should remain unamended except as to matters of title or other matters which are generally regarded within the legal profession as proper matters for amendment. They went on to note that the terms and conditions complained of in the application all involved departures from the standard building agreement.

Significantly, the order not only prohibits the use or, if appropriate, the continued use in building contracts of any of the 15 terms listed in the order but it also prohibits the use of '*any term that is intended to, or does, in fact, have like effect*'. So clearly there can be no suggestion that only conditions in the exact terms of the 15 samples used in the proceedings are prohibited by this order. It is the Law Society's view, therefore, that solicitors acting for both builders and purchasers must in the future examine each and every special condition in a building contract and test it for compliance with these regulations.

It has long been the Conveyancing Committee's view that there should be no need whatsoever in the

WHAT THE REGULATIONS SAY

Besides the provisions in schedule 3 of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* that are breached by these 15 terms, regulation 3(2) also appears to be breached by a significant number of them.

Regulation 3(2) provides that: 'For the purpose of these regulations a contractual term shall be regarded as unfair if, contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.'

SCHEDULE 3
Unfair terms in consumer contracts

1) Terms which have the object or effect of:
   a) Excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier
   b) Inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him
   c) Making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone
   d) Permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract
   e) Requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation
   f) Authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract
   g) Enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so
   h) Automatically extending a contract of fixed duration where the consumer does not indicate otherwise when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early
   i) Irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract
   j) Enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract
   k) Enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided
   l) Providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded
   m) Giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract
   n) Limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality
   o) Obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his
   p) Giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement
   q) Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

(**Author's note:** There are certain limitations on the scope of sub-paragraphs (g) and (j) which are not set out here, but they relate mainly to the supply of financial services. Sub-paragraph (l) is without hindrance to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.)

vast majority of new house purchases to go outside the general terms and conditions of the standard building agreement (as any issues with regard to title should be dealt with in the contract for sale of the house site). It is important to point out that no issue at all was taken by any of the parties to the proceedings with any of the terms of the standard building agreement.

Stage payments

The second part of the application by the director of consumer affairs concerned stage payments. In this regard, the Law Society had urged the director to call for a complete ban on stage payments, but it was indicated that she did not propose to make such an application. She applied for a declaration that stage or interim payments which exceed the value of the actual work done or goods supplied by the builder are inherently unfair to a consumer and that the limits she suggested, being those contained in the IHBA code of practice, are fair, reasonable and balanced to both sides. The CIF supported the director in this part of the application.

The Law Society indicated very strongly that it could not support the director in this section of the application. The court was told that the Law Society favoured an outright ban on stage payments. However, the society has a jurisdictional difficulty which prevents it from making such an application itself formally to the court: the regulations provide that only the director of consumer affairs can bring an application under the regulations. Therefore, since the director was not bringing an application for a ban on stage payments and the Law Society had no jurisdiction to do so, the question of a ban of stage payments was not formally before the court and could not therefore be ruled on.

The society submitted to the court that any declaration that the IHBA code of practice is fair and reasonable would not adequately meet the situation and therefore, in the circumstances, the society would prefer if the court made no order at all in relation to stage payments.

Counsel for the Department of the Environment indicated to the court that it believes stage payments should be abolished, and the department has drafted legislation to bring about such a ban. However, due to certain drafting difficulties, the draft legislation has been delayed, but the department still hopes to introduce it at the committee stage of the current *Housing Bill*.

As will be seen from the order, the court held, 'without prejudice to the issue of the propriety or impropriety of stage payments or interim payments in any such contract', that no building contract providing for stage payments shall provide for any stage payment such as will exceed the percentages as specified in the IHBA code of practice or which exceed the extent and value of works carried out at the date specified for such a payment. The court has therefore not given a ruling on whether stage payments are proper or not. But it has set up two tests which must both be met by stage payments before they can be deemed to be fair: the stage payment must not exceed the extent and value of works carried out at the date specified for such a payment or the percentages set out in the IHBA code of practice.

'There should be no need whatsoever in the vast majority of new house purchases to go outside the general terms and conditions of the standard building agreement'

It is the Conveyancing Committee's view that the percentages set out in the IHBA code of practice cannot meet the requirement set out in the order that stage payments should not exceed the value of actual work done. This is because, in the committee's view, the builder's profit is built into the relevant percentage at every stage. The profit represents the builder's trading return on a speculative investment and it does not, in the committee's view, represent the value of actual work done.

It has come to the committee's attention that colleagues acting for purchasers of new houses in the Cork area (where stage payments are commonplace) have started to put builders on proof of the value of works carried out at each stage. In other words, they are seeking confirmation of costs at each stage from the client's engineer or architect. This seems to be a sensible approach to take in cases where stage payments cannot be resisted in full.

It is the Law Society's intention to continue to work with the Department of the Environment to promote any legislation which would bring about the eventual abolition of stage payments, as only a full prohibition will protect the consumer in the purchase of a new house. This, of course, would be fully in accordance with Law Society's policy on this issue.

The particular thanks of the Law Society are due to Conveyancing Committee members Brian Gallagher and Colm Price, who steered the society's course in this matter, and to the secretary of the committee, Catherine O'Flaherty, who was the society's solicitor of record in the court proceedings. G

Patrick Dorgan is chairman of the Law Society's Conveyancing Committee.

It's good

The growing use of alternative dispute resolution methods – particularly mediation – means that lawyers need to prepare to meet this demand. The best way is to watch it in action and then try it out for yourself. Evlynne Gilvarry recently did just that

MAIN POINTS

- Mediation a cheaper and cleaner option
- Demand from business clients
- Irish training course in mediation

Shuttle diplomacy. Proximity talks. These terms have a particular resonance for people who have followed the painstaking progress of the Northern Irish peace talks. But few people realise that the very techniques and skills that nudge such talks along are successfully used across the world every day to mend fractured business and other relationships where the stakes are not as high.

In the United States, most of the *Fortune 500* companies take the mediation route as a first option when business deals come unstuck. In the UK, an increasing number of the *FTSE 100* companies are following suit.

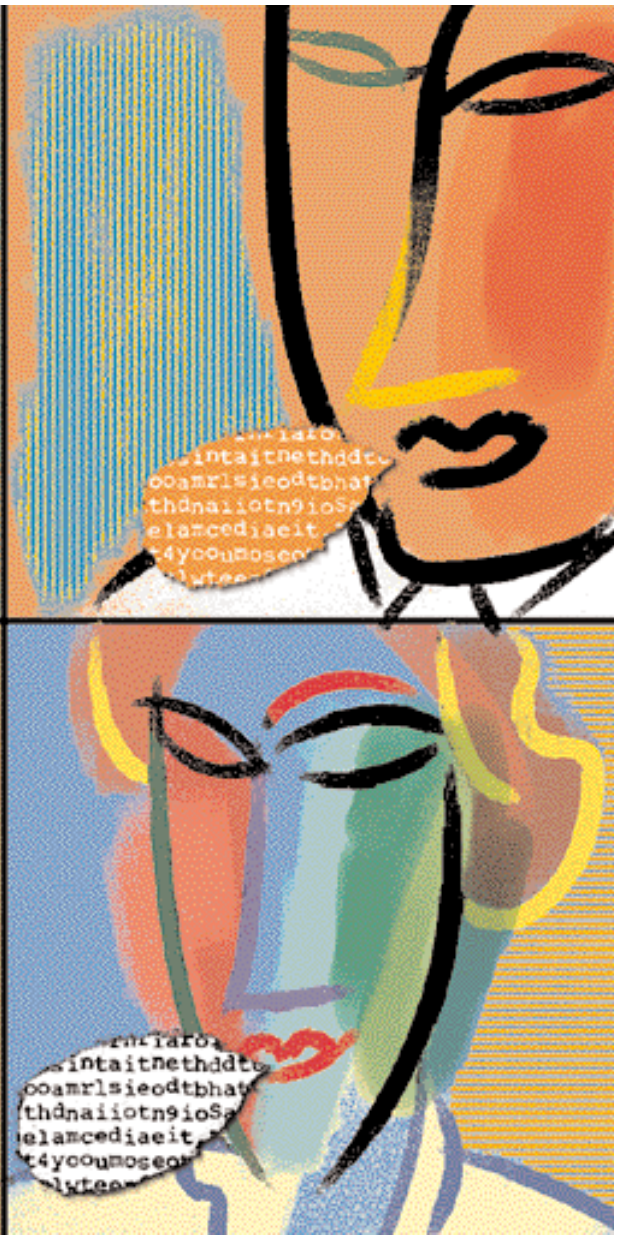
What this means for lawyers is that there is a growing demand from their biggest and wealthiest clients for something other than the traditional litigation route. Litigation for these business clients means huge expense, delay and, most damaging, a corrosive effect on business relationships that could be saved using a different approach.

Taking the plunge

It wasn't that I was new to mediation. I knew a great deal about the theory of it and the principles on which it was based. I knew about the vast range of applications it has in global and local business disputes, in consumer disputes and neighbourhood spats, in sports deals, in medical negligence cases and in employment cases. I was aware of several examples of major deals that had been salvaged as a result of mediation, enabling previously-warring business partners to continue profitably. I was also aware that the costs involved were dwarfed by what would have been the bill had the cases taken the traditional route with the classic steps-of-court settlement.

But I had not tried it out for myself and doing so made all the difference. I enrolled in a course with the Centre for Effective Dispute Resolution, a brand

to talk



leader in mediation training delivery. I chose the residential summer school, which this year was in a beautiful location overlooking Lake Geneva.

My classmates were a highly professional mixed bunch. There was Tim, the construction silk who, having built up a stellar reputation within the adversarial system, was now looking to acquire a skill he felt he could no longer live without, such was the demand within the construction field. He was very apprehensive at the outset and he wasn't alone.

There was Joe, a seasoned litigator and partner in one of the biggest City of London firms, who similarly felt that if his firm was to win and retain the biggest international clients, he would have to skill up in mediation and sell it on to his whole department.

There was Duncan, a senior in-house counsel at an international insurance broker, whose company spends vast sums on legal fees annually. He was there to learn the techniques that he would expect to be offered in the future by his company's panel of law firms.

There was also the banker, the chairman of an international airline, the chartered surveyor and the accountant. All were highly accomplished in their fields, but all recognised that they needed some new skills to secure their professional futures.

The course was demanding and, yes, a bit of a roller coaster. The first two days knocked most of us for six, as we realised how some of our best-loved habits would have to go if we were to make a fist of this whole new field. Our first attempts at mediating disputes (based on real-life examples) were riddled with classic errors. We were behaving like blunt instruments when the circumstances called for something much subtler and, it was proved, much more effective. The seasoned litigators showed the strain as they lost points heavily.

However, with the help of a team of exceptionally

The Centre for Effective Dispute Resolution's residential spring school is being held at Johnstown House, near Dublin, from 11-16 March 2002. For more information, visit the website at www.cedr.co.uk/springschool or call +44 (0)20 7536 6000.

MEDIATION: AN IRISH PERSPECTIVE

Shaking the client's hand, having settled the case in the Four Courts on the day of trial, have you ever wondered why the case could not have been settled months – sometimes years – previously? With an earlier focus on the facts? With a bit more co-operation all around? With a better understanding of the other side's position? At less management time and cost – financially and emotionally – for the client? With less acrimony? Preserving the existing business relationship which may now have been irreparably damaged by the litigation process?

Even if none of the above has occurred to you, you can be sure that your client will certainly have asked themselves these questions. They may also have had some additional ones, such as: how could it have taken so long to get this sorted out? Was all of this tedious discovery process of any benefit whatever? Why was I discouraged from contacting or speaking to the other side directly to explain our position; to express regret for the situation; to see whether it might have been compromised directly between us? Why has the whole process been hijacked by my lawyers? Surely there must be another way?

And there are other ways of resolving disputes instead of litigation. One of these is mediation, which is particularly suitable where the parties have had a long and successful trading relationship which they wish to continue. In other countries, many companies now insist on having terms and conditions or 'boilerplate' contract terms which include a mediation clause, requiring the parties to attempt to resolve disputes by way of mediation or conciliation before resorting to the courts (or arbitration). In England, the requirement to seek to mediate disputes is enshrined in their rules of court. Judges will ask the parties at case management conferences whether the parties have made a genuine attempt to mediate the dispute and will defer fixing a trial date until the parties have done so. Mediation is similarly encouraged by the courts in Australia, New Zealand and the United States.

Given developments elsewhere, we can expect that our commercial clients, too, will be looking for alternative ways of resolving disputes. Already in the area of construction, litigation is rare. Conciliation, sometimes mediation, and in particular arbitration (sometimes a combination of these) are the standard provisions in contracts, and this is in response to client demand. There is a real likelihood that if we are unwilling or unable to offer an alternative dispute resolution service, informed clients in many instances will choose to take their disputes to a jurisdiction where the lawyers are more positively disposed and are capable of resolving disputes other than by litigation.

Leaving aside higher considerations of being able to offer a better or wider service to the client, self-interest suggests that we should be in a position to offer alternatives to our clients.

And what is mediation? It is a process whereby parties to a dispute invite a third party to facilitate a negotiation between the parties to enable them to resolve their dispute. This does not necessarily dispense with lawyers representing the clients. It does, however, require them to adopt an attitude which is non-adversarial. It also entails an active involvement by the parties in the process.

What lawyers will agree to refer a *commercial* dispute to mediation here? At the moment, probably only a handful. Understandably, most solicitors feel more comfortable with what they are used to – and that is litigation. There may also be a suspicion that if the other solicitor is proposing mediation, there must be some advantage to his client in doing so. On each occasion where I have suggested mediation, the proposal has been promptly declined (in most cases, I suspect, without any discussion with the client). On the bright side, there are a growing number of solicitors doing commercial litigation who are prepared to positively consider mediation as an alternative to litigation. Quite a few lawyers have now undergone training in handling a case by way of mediation. Apart from a course held here in McCann FitzGerald for a group of enthusiastic solicitor colleagues from a number of different firms, the Law Society also held a similar course recently.

So why not inform yourself about mediation and indeed other forms of dispute resolution? There are endless possibilities for training, both here and abroad. One of the institutions offering mediation training in England is the Centre for Effective Dispute Resolution, whose course for mediators is mentioned elsewhere in this article.

Here in Ireland, further information is available from the Mediator's Institute of Ireland (tel: 01 289 2896). Bodies offering training in mediation here include MAG Training (tel: 01 832 8730 or e-mail: info@mediationsolutions.ie) and CDR at 79 Merrion Square, Dublin 2 (tel: 01 661 3929).

Watch this space. If your clients decide that they want to avoid the acrimony, expense and management time which litigation inevitably entails, they will expect you to know what the alternatives are. G

Petria McDonnell is a partner in the law firm McCann FitzGerald.

skilled trainers – active mediators all – most of us had found our footing by the end of the third day. Then it became deadly serious: the last two days were when we would be allocated tough multi-party disputes to settle (again, based on real-life examples) with assessors sitting in judgement.

We pulled through and celebrated on the last evening with a raucous dinner where we swapped stories of our biggest cock-ups during the week. But behind the fun was a much-enhanced respect for techniques and skills so sophisticated and adaptable that not one of us could consider a successful professional future without them. G

Evlynne Gilvarry is a solicitor and former editor of the English Law Society's Gazette.

Opportunity still knocking

Recent years have seen a steady growth in the number of employment opportunities for the legal profession, but the future may not be quite so rosy. Recruitment consultant Melanie Holmes outlines some of the options available to newly-qualified solicitors in the changed economic climate

In the last few years, many of us have benefited from the economic boom. But, given recent events, what is the outlook is for legal recruitment in Ireland, particularly for newly-qualified solicitors? Will the legal profession be touched by current rumblings and is law still a sensible choice for students?

While the main findings of the ESRI's quarterly economic commentary for 2002 are not perhaps the most optimistic in recent years, opportunities within the legal profession are still plentiful. While some firms adopted a 'wait and see' approach in the aftermath of the 11 September attacks, the early stages of 2002 have shown an increase in available positions for lawyers, especially in commercial areas.

What is perhaps of more importance from the 'newly qualified' perspective is the fact that 252 solicitors qualified in 1992, while the projected number for 2002 is in the region of 445. This effectively means that the up-and-coming newly-qualified solicitors will increase the number of practising solicitors in Ireland (now approximately 5,800) by 7.5%. Is there enough work in Ireland to absorb these increased numbers? If so, where is it to be found?

Career options available to newly-qualified solicitors are diverse, and, given a feared oversupply, many – on completing their PPC2 course in Blackhall Place – will have to look further afield for employment than the familiar 'private practice'. But it is not doom and gloom. I have seen a steady increase in in-house positions, particularly in the technology, banking and financial services sectors. While such positions do perhaps require specialisation in a particular field at an early stage, the overall packages on offer can be extremely attractive, often including share options, company cars, good pensions, health insurance and other perks that may not be available to those in private practice.

Carving a niche

Furthermore, certain niche areas within private practice, especially in the bigger firms, are expanding and may also provide choices to newly-qualified solicitors who are interested (whether of necessity or otherwise) in specialisation. Insolvency, employment law, pensions, funds and tax all provide good opportunities for the new breed. This time last year, it was a seller's market, as many newly-qualifieds felt that they had extensive options and could afford to be selective. This is changing, and I feel that many of the next crop will find that they cannot afford to be quite as choosy. It is a competitive market and this should be taken into account.

Working abroad, for both short and long periods, also appeals to many. However, because few international economies are quite as buoyant as they were this time last year, the roles available for 'foreign' lawyers are limited. Added to this is the risk factor involved in leaving Ireland, intending to return in a number of years at a time when the future here is slightly uncertain.

Forewarned is forearmed

So, can law students and trainees do anything to safeguard their future, or at least contribute to their own future marketability? Absolutely.

Well in advance of qualification, students should decide what type of work they would like to (and feel they should) gain experience in during the course of their apprenticeship. This work should culminate in qualification as a well-rounded solicitor with solid experience in core areas (commercial, litigation and conveyancing), together with experience in favoured niche areas if possible. It is therefore very important to consider the legal fields that will see future growth and to try to gain experience in these areas before qualification. It is at this stage that I would recommend obtaining advice from relevant sources such as the Law Society, recruitment companies and so on.

There will always be a demand for a good solicitor. Good work experience, strong academic qualifications (including supplemental qualifications, such as the New York Bar exams, Institute of Taxation exams, relevant diplomas and Law Society courses), legal publications and seminar presentations will ensure that on qualification you are a valuable commodity. It is therefore imperative that you contribute now to your future success in the legal field. Use your apprenticeship well, and the world will still be your oyster. G

Melanie Holmes is a recruitment consultant with Osborne Recruitment.

MAIN POINTS

- **Growth in number of trainee solicitors**
- **No longer a seller's market**
- **Specialisation recommended**

Melanie Holmes: 'There will always be a demand for a good solicitor'

Companies that pay their employees who miss work through injury caused by a third party may have to think again in light of a recent Supreme Court judgment – or at least tighten up on their drafting skills. Richard Grogan reports

MAIN POINTS

- ***Hogan v Steele & Co Ltd*** **(Nov 2000)**
- **Gross cost to employer not recoverable**
- **Tighter wording of employee undertakings needed**

WHAT ARE WO

It is now quite common, and good human resources practice, for employers to pay an employee who is absent from work due to an injury caused by the negligence of a third party, particularly if caused during working hours. The normal procedure has so far been to make a 'loan' to the employee in consideration of being reimbursed from the damages the employee recovers.

However, after the decision of the Supreme Court in *Hogan v Steele & Co Ltd* (1 November 2000), this method needs to be reviewed.

In that case, the plaintiff was injured while delivering materials to the defendant's premises. The plaintiff had given a written undertaking after the accident to refund to his employers, the ESB, the wages paid to him during his absence from work as a result of the injuries sustained, in the event of him recovering that sum by way of damages. The terms of the undertaking were: 'In consideration of the [ESB] making me advance payments during my absences from duty, arising out of my accident ... I undertake to refund to the board the total amount so advanced out of any monies which I may recover by way of damages from the third party involved in the accident or by way of compensation from any source'.

His employers had deducted PAYE, PRSI and contributions in respect of his pension from the sums paid to the plaintiff while he was out of work.

Macken J, in the High Court, upheld the ESB's contention that the plaintiff was entitled to recover the sums paid in respect of loss of wages from the defendant but, importantly, concluded that the deductions in respect of PAYE, PRSI and pension contributions were not recoverable from the defendant.

Keane CJ in the Supreme Court upheld this view, stating: 'It is beyond argument, in my view, that the plaintiff will be fully compensated in this case by the payments to him of the wages that he would have earned after deducting PAYE, PRSI and pension contributions'. And he quoted with approval the view of Nolan LJ in the English Court of Appeal decision in *Franklin v The British Railway Board* ([1994] PIQRI), who said: 'It seems to me quite inappropriate to describe the sums handed over by the respondent to the Inland Revenue and the Department of Social Security in discharge of an accepted statutory duty as constituting in any sense of the word a "loan" which is "repayable"'.

The effect of the decision was that only the net wages after tax and pension contributions were recoverable and not the gross cost to the employer. If

ORDS WORTH?

that had been the total extent of the decision, the effect for employers who advance monies to their staff in such circumstances would be that there would be a real unrecoverable cost which might militate against such practices in future.

Tighter wording needed

However, the decision, by way of *obiter* comments, does provide a possible solution to this situation for employers. The obligation, as noted by the Supreme Court, was to refund 'the total amount so advanced'.

The court stated that it would have been open to the ESB, as the employer, to require its employee to include in his claim the gross wages to which he would have been entitled during his absence from work without any deduction for PAYE, PRSI or pension contributions. A similar view was taken in *Franklin v The British Railway Board*, where Nolan LJ stated that 'no doubt it would be possible for A and B to make an agreement under which A will pay B's tax on his behalf, in return for B's promise of reimbursement, and such an agreement might broadly be described as involving a "loan" by A to B'.

It would, therefore, appear that this is one of those cases where, if different wording had been used, the plaintiff could have recovered not only the net wages but also the PAYE, PRSI and pension contributions deducted by his employers. These would then have been reimbursed to the employer on foot of the undertaking given by the employee. While the issue has not been definitively ruled on by the courts, it should be possible to draft appropriate undertakings from employees which will enable recovery of the full gross cost to an employer paying the salary of an employee who is out of work due to an accident caused by a third party.

This is one of those unfortunate cases where the nuances of the words used in an undertaking had a cost to the employer and where alternative wording may have achieved the desired result, namely, that the employee could have received his net wages, with the employer recovering through the employee's claim the gross cost, including PAYE, PRSI and pension contributions.

For employers who have a standard form of undertaking, now is the time to have it reviewed to avoid the negative effects of this judgment on what is good HR management towards staff who suffer an injury caused by a third party. G

Richard Grogan is a solicitor with the law firm O'Flynn Exhams & Partners.

Despite a growing amount of case law, including a number of recent Supreme Court decisions, there is no definitive ruling on the circumstances in which a court will allow you to change the pleadings you have already entered. But, says Stephen Dodd, it is possible to identify certain trends

Amendment

MAIN POINTS

- Recent case law on amended pleadings
- What can be introduced as an amendment?
- Lack of consistency in courts' approach

# of pleadings

'*Pleadings which initiate an action in this court carry with them the potentiality of being amended by the court in the exercise of its general jurisdiction to allow a party to amend his endorsement or pleadings "in such manner and on such terms as may be just".*'
(Keane J in *Krops v The Irish Forestry Board*, [1995] 2 IR113).

This passage indicates the frequency with which amendment to pleading may arise. The spectrum can range from the innocuous (such as correcting spelling mistakes) to the highly contentious, such as introducing new claims. Order 28, rule 1 of the *Rules of the Superior Courts* is expressed in the widest language to reflect the discretionary nature of leave to amend. Leave is not required in the limited circumstances set out in rule 2 (before the time for defence, in the case of the plaintiff) and rule 3 (by defendants, where they have raised a counterclaim).

The overarching principles are of the broadest nature. These are that 'the main criteria in any case is to try to do justice between the parties, which is why order 28 is so wide' (Kinlen J, *Bell v Pederson*, [1995] 3 IR511). Also, that 'the amendment should be allowed if it is necessary to ensure that the real issues in controversy are before the court, provided this does not do an injury or injustice to the other party' (O'Sullivan J, *Cornhill v Minister for Agriculture*, unreported, 13 March 1998).

Delay alone will not be a ground for refusing an amendment, though it will be a factor to be considered. Delay may relate, in absolute terms, to the time since the pleadings were delivered or to the late stage, such as in the middle of a trial, when the application to amend was made. Amendments have been allowed where there was a delay of three years since delivery (*Rubotham v M&B Bakeries Ltd* [1993] ILRM 219 and *Cornhill v Minister for Agriculture*), six years (*Palamos Properties v Brooke* [1996] IR597), three years and six months (*Bell v Pederson* [1995] 3 IR511) and four years (*Wildgust & Carrickowen v Gov & Co of Bank of Ireland* [2000] 1 ILRM 24). In *Cornhill*, O'Sullivan J stated: 'I do not think that delay in any of these cases is sufficient of itself to justify a refusal of the amendments'.

In the recent case of *O'Leary v Minister for Transport* ([2001] 1 ILRM 132), Keane CJ said that the degree of delay on the facts, and the repeated delay, was 'the strongest argument against permitting the inclusion of a new and distinct claim of conspiracy'. He nevertheless allowed the amendment, as there was insufficient prejudice to the defendants. In cases where the amendment was disallowed, the delay was for six years (*Shepperton Investment Ltd v Concast 1975 Ltd*, unreported, 25 February 1994) and three years (*McFadden v Dundalk & Dowdallshill Coursing Club Ltd*, unreported, 22 April 1994). But these cases did not turn on delay alone; prejudice or absence of reasons for the delay were other factors.

Regarding the other aspect of delay – that is, the stage when leave was sought – in *McFadden*, the case was listed for hearing in December 1993 and the application to amend was made on 6 December 1993. The Supreme Court held the application to be too late. In *Wildgust*, McGuinness J in the Supreme Court said: 'It is not impermissible for pleadings to be amended during the course of a trial ... While no-one would suggest that amendment of pleadings in mid-trial is normally a desirable practice or should frequently be permitted, it was open to the trial judge in the instant case to take that course'.

In *Doyle v C&D Providers* ([1994] 3 IR57), a Circuit Court action of alleged negligence was dismissed. On appeal, the plaintiff for the first time

WHAT THE RULES SAY

Order 28, rule 1 of the *Rules of the Superior Courts* provides that 'the court may, at any stage of the proceedings, allow either party to alter or amend his endorsement or pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties'.

INTRODUCTION OF A NEW CLAIM

Amendment of pleadings is not synonymous with substitution, so it would appear to follow that there are limits to what can be introduced as an amendment. In *Rubotham v M&B Bakeries Ltd*, Morris J granted liberty to comprehensively amend a statement of claim and introduce a claim for relief not originally made. The fact that it was a new and hitherto unpleaded case was not a bar to granting the amendment.

In *Krops v Irish Forestry Board*, where the statement of claim alleged negligence, Keane J allowed an amendment to plead nuisance, considering that it would not in any way prejudice or embarrass the defendant by new allegations of fact. He said that where the plaintiff seeks to add a new cause of action arising out of the same facts or substantially same facts, there is no reason to preclude permission for such amendment.

More recently, Herbert J in *Wolfe v Wolfe* said that 'in the absence of some special circumstances, as where the party opposing the amendment has rights existing at the date of the application to the court, such as the benefit of the *Statute of Limitations*, which would be thereby prejudiced, the mere novelty of the proposed re-amendment does not represent a barrier to its being permitted by the courts'. This comment was *obiter*, as the amendment was on consent, and in my view it is perhaps over-sweeping in scope.

applied to amend the civil bill to incorporate an allegation of fraud on the part of the defendant. This was refused on the basis that the plaintiff sought the amendment in reliance on evidence given by the defendant in the Circuit Court and that such evidence could have been obtained at an earlier stage by delivery of interrogatories.

No justification

The cases in which amendments have been refused have largely been based on the absence of explanation for the delay in amending pleadings. More recent cases have placed less importance on this ground. In *Shepperton Investment Ltd v Concast*, Barron J noted that the court must strike a balance between the plaintiff's need to carry on his delayed claim and the defendant's right not to be subject to a claim which he could not reasonably defend. The amendments were refused, as no effort was made to indicate when and in what circumstances it was found that the defects existed. Before an amendment should be allowed, full disclosure should be made as to the circumstances in which the claim comes to be made and as to why it has not been made sooner. The long period that would pass before the proceedings would come to trial was a further factor making it unjust to the defendants to allow the amendment.

And in *McFadden*, where the Supreme Court refused the amendment as it was too late, no explanation was given in the affidavit as to why the matter was not adverted to or included in the original defence or why no application had been made earlier. The Supreme Court held that it would be unjust to allow the amendment.

But since these cases were heard, the courts have been more liberal in accepting explanations. In *Rubotham v M&B Bakeries Ltd*, Morris J considered the infancy of the plaintiff to be an answer to claims of delay. In *Bell v Pederson*, Kinlen J accepted an error in failing to provide counsel with full papers as an explanation for the delay. And in *Palamos Properties v Brooke*, Flood J noted that 'there must be such evidence from which an inference can reasonably be drawn as to why the plea which is sought to be introduced by way of amendment was not put in the original defence or express evidence given to explain the failure in a manner which renders the omission broadly excusable if not actually justifiable'. However, he accepted the explanation set out in an affidavit without any analysis, despite referring to 'its manifest lack of detail'.

In *Aer Rianta International v Walsh Western International* ([1997] 2 ILRM 45), the Supreme Court, in allowing the amendment, pointed to the fact that it had been explained that there were no instructions to make an erroneous admission, while no such explanation had been provided in *McFadden*. In other cases, the court has shifted focus as to whether there was prejudice to the other party because of the delay, as opposed to requiring an explanation for the delay.

Prejudice to the other party

In *Krops v Irish Forestry Board* ([1995] 2 IR113), Keane J held that: 'Where, as here, an amendment, if allowed, will not in any way prejudice or embarrass the defendant by new allegations of act, no injustice is done to him by permitting the amendment'. He rejected the claim that the defendant would be deprived of a defence under the *Statement of Limitation* since proceedings were instituted within the limitation period and it was not appropriate to consider the limitation period at the time of the amendment.

In *Palamos*, Mr Justice Flood quoted with approval Lord Keith in *Ketteman v Hansel Properties Ltd* ([1988] 1 AER 38), who said: 'The sort of prejudice which is here in contemplation is something which places the other party in a worse position from the point of view of presentation of his case than he would have been if his opponent pleaded the subject matter of the proposed amendment at the proper time. If he would suffer no prejudice from that point of view, then an award of costs is sufficient to prevent him from suffering injury and the amendment should be made. It is not a relevant type of prejudice that allowance of the amendment will or may deprive him of success which he would achieve if the amendment were not to be allowed'.

On the facts in *Palamos*, Mr Justice Flood found there to be no prejudice as 'the facts upon which they depend are known to the parties and can hardly be said by either party to come as a surprise and therefore do not constitute a prejudice'. In *Cornhill*, O'Sullivan J, in allowing the amendment, noted there was no prejudice or injustice as contemplated by the authorities.

However, even if there is prejudice to the other party, this will not necessarily mean the amendment will be disallowed. So, in *Wildgust*, McGuinness J in the Supreme Court allowed the amendment, arguing that to send the matter for a new trial would place an undue burden on the plaintiffs which was not

necessitated by possible prejudice to the defendants arising out of the continuation of the current trial. In *O'Leary v Minister for Transport*, where the respondents claimed they would be prejudiced in their defence by the death of a witness, Chief Justice Keane declared: 'The death of Mr Brennan will indeed cause some prejudice to the respondents in their defence but this I consider will be more than balanced by the difficulties which his death will cause the applicant in pursuing his claim. I do not, on balance, consider that the prejudice to the respondents is sufficiently great to prevent the applicant from endeavouring to establish his claim'.

Strength of the case

In *Shepperton Investment Ltd v Concast*, Mr Justice Barron gave as one reason for refusing the amendment the fact that the technical evidence available to the plaintiff did not appear to support the amendment. In *Cornhill*, Sullivan J considered the comments of Barron J as not indicating that relevant credible evidence is a prerequisite to success. He considered that the authorities established that 'the amending party is entitled, without necessarily adducing primary evidence, to an amendment which discloses a reasonable cause of action (or defence) provided no injustice is done to the opposing party'.

The amendment must nevertheless have some reasonable basis. Thus, in *Bula v Crowley* (unreported, 20 February 2001), Mr Justice Barr refused several amendments on the basis there was no 'stateable argument' in support of the new claim. One of the opposing parties cited the *Supreme Court Practice*, 1998 edition, paragraph 20/5-8/23, declaring that a party to an action will not be permitted to amend his pleadings so as to include a claim which must fail. Also, in allowing an amendment, Barr J declared that 'it is sufficient that the court should be satisfied that there is a stateable argument in support of the claim which it sought to include in the proceedings and that its inclusion would not be unjust to the defendants'.

In summary, the authorities show a certain lack of consistency: the weight given to various factors appears to vary from case to case. There is perhaps some evidence of a more liberal trend in permitting amendments. A party resisting an amendment may be advised to focus on cases requiring an explanation for the delay (*Shepperton Investments*, *McFadden*). On the other hand, the party seeking the amendment may be recommended to rely on cases requiring a relatively high level of prejudice to disallow the amendment (*Krops*, *Wildgust* and *O'Leary*, among others). G

Stephen Dodd is a practising barrister.

THE QUESTION OF COSTS

In many cases where the amendment is allowed, costs are awarded to other side for expenses incurred in reasonably dealing with the re-amendment. In *Aer Rianta International*, Murphy J said that 'if justice requires that the amendment be allowed, it likewise requires that all costs and expenses caused thereby should be borne by the defendant'.

In *Wolfe v Wolfe* ([2001] 1 ILRM 389), the costs claimed related not only to those consequent upon the amendment but also costs thrown away up to the date of the adjournment of proceedings, rendered necessary by the re-amendment. Herbert J stated that for the court to allow only costs of the day would fail to recognise the time and circumstances of the re-amendment and the probable impact of the re-amendment. Costs of the day are defined under order 99, rule 37 (33). He nevertheless did not allow full costs on a party-and-party basis, which would be as if the petition was discontinued and determined in favour of the respondents.

Herbert J confined costs to counsels' fees, witnesses' allowance and expenses, the solicitors' proper charges for attending in court and such other fees, disbursements and charges as relate solely to the preparation of the adjourned trial and which would require to be repeated or be of no value at the next hearing. He also rejected the argument that the costs be paid immediately rather than at the conclusion of the case or that security for costs be provided. He referred to *Stanley v Aer Lingus TEO* (114 ILT 26), where it was a condition of the amendment that the costs be paid before proceeding. However, he refused to exercise his discretion to make it a similar condition.

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Book review

Judicial review of administrative action: a comparative analysis

Hilary Delany. Round Hall Sweet & Maxwell (2001), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-220-6. Price €70 (£55).

Judicial review is of seminal significance in the scheme of government in the Ireland of today. One of the celebrated expositions on the judicial arm of government and a definitive justification of judicial review in the purest sense was penned by Alexander Hamilton in *The Federalist, no 78*, when he wrote that the judiciary would always be 'the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them'. The judiciary had 'no influence over either the sword or the purse … It may be said to have neither force nor will, but merely judgment; and must depend upon the aid of the executive arm even for the efficacy of its judgments'. This American view may be contrasted with the English position of the time typified in the statement of Lord Justice Holt in *City of London v Wood* (12 Mod 669 [1700]): 'An act of parliament can do no wrong, though it may do several things that look pretty odd'.

Dr Hilary Delany's book, which owes its origins to a PhD thesis, analyses relevant developments relating to judicial review of administrative action and to evolving principles elsewhere in the common-law world. The author is of the view that Ireland would not rate as the most progressive common-law jurisdiction, but our jurisprudence has steadily developed, albeit with 'inevitable inconsistencies'. The author's use of 'inevitable' is welcome. While one expects that he or she who attains judicial rank will possess that sense of judicial temperament that may assist him or her in the emancipation from what has been described as the suggestive powers of individual dislikes and 'prepossessions', the forces of individualism will always be with us.

Perhaps any eccentricities of judges – as in many human institutions – may balance each other out. One great judge said that he was painfully aware, in the context of the pronouncement of legal scholars, of the close syntactical and other resemblances between the phrases 'sitting judge' and 'sitting duck'.

It is only possible in a review of this nature to touch generally upon the author's work. Dr Delany's book has six chapters covering the themes of jurisdictional error, the control of discretionary powers, legitimate expectations, fair procedures and, finally, in chapter 6, she considers various themes in the development of judicial review of administrative action.

Dr Delany's book is an admirable and well-conceived work and an important contribution to our law. The comparative perspective will assist in the development of judicial review of administrative action. The rigour and challenge of its analysis will be welcomed by practitioners, jurists and judges. This is a valuable work of reference. Dr Delany has illuminated this important part of our law in an original and provocative manner. G

Dr Eamonn Hall is company solicitor of Eircom plc.

Davy STOCKBROKERS

How long will t

America sneezed and we all caught a cold. Donnacha Fox analyses the current predictions for US recovery and assesses the likely effects of the recession on our own economic prospects

Donnacha Fox: 'It is unlikely that growth in the Irish economy will return to the above-average rates commonly anticipated'

The year 2001 will be remembered as one of the most difficult years for equity investors. The terrorist attacks in the United States and military conflict in Afghanistan exacerbated an already challenging environment where profit warnings became the norm and not the exception. Last year will also be remembered as the year when the US economy went into recession, despite the best efforts of the US Federal Reserve, which reduced US interest rates to their lowest levels in 40 years. The main question for investors in 2002 is: when will this monetary policy action begin to improve the fortunes of the US economy?

A synchronous global recession?

The talking point of 2001 was the degree to which forecasters failed to predict the downturn in all the leading economies. In the early part of the year, the OECD forecast that economic growth in the US would approximate 3.5%; this has been revised to 1%. But even this lower forecast may turn out to be optimistic. The US, the engine of the world economy, has entered its first recession since 1991, ending 33 consecutive quarters of economic growth. Recessions have also been confirmed in Japan, the fourth in a decade, and more worryingly in Germany, Europe's largest economy.

The consensus among economists is that global economic growth will remain elusive in the first half of 2002, but a recovery will develop in the second half of the year and, by 2003, growth around the world will be back to its long-term trend. This belief is based on the view that the extraordinarily accommodative US monetary policy and massive fiscal stimulus should be more than sufficient to place the world economy back on a growth path. Of course, this view assumes we are in a traditional recession. But what if we're not?

There is an alternative view which argues that the current downturn isn't normal – in fact, it's anything but. Generally, recessions have been created by governments to cure inflation brought about by too little capacity in the economy. Lower interest rates in themselves may not cure the ills of the US economy, as the problems facing US companies relate to demand and excess capacity. Recovery will involve US businesses aligning their inventories and capital expenditure along more profitable and productive lines. This may take longer than expected due to the excesses of the capex splurge of 1990s. The markets, however, expect this process will be quickly achieved. Proponents of a 'V' shaped recovery of the US economy argue that by the second half of 2002 there will be a strong revival in US economic growth. However, it may take longer and be more anaemic than many expect.

Ireland: economic issues for 2002

The Irish economy has had to contend with an array of negative influences over the past 12 months: the foot and mouth outbreak, the collapse in the technology and communications sector, and, of course, the further negative influences on tourism and other sectors following the events of 11 September.

Inevitably, this slowdown in the global economy has had an impact on Ireland. Having expanded at an average rate of 8% a year during the 1990s, growth in 2002 is likely to slow to between 1% and 2%.

Ireland relies heavily on exports as a source of wealth generation. In 2000, exports amounted to more than 110% of our GNP. To ascertain future trends, one only has to look at our two main export destinations: the US and the eurozone. In the US, overall imports declined at an annual rate of 13% quarter-on-quarter in Q3 and were 7% below the third quarter of 2000.

In the eurozone, imports

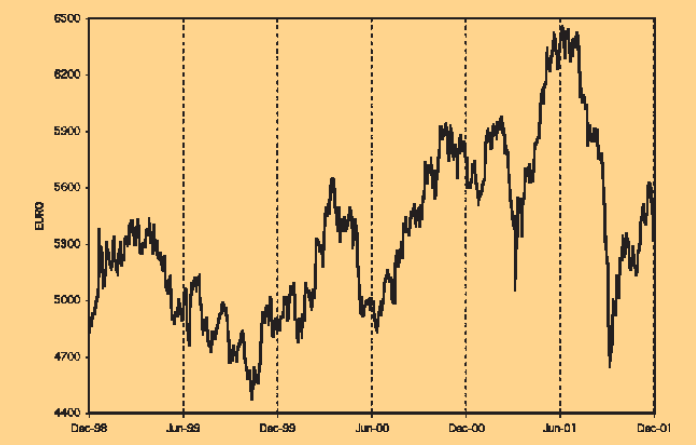
TABLE 1: EQUITY MARKET RETURNS IN 2001

Equity markets	% Change
US (S&P 500)	-12.1
US (NASDAQ)	-19.5
Japan	-23.5
UK	-16.2
Eurobloc	-20.2
Worldbloc	-16.5
Ireland	**-0.3**

Source: Davy Stockbrokers

he recession last?

CHART 1: ISEQ THREE-YEAR PERFORMANCE



declined at an annual rate of 7% in Q3 and were more than 1% below the third quarter of 2000. Given the dependence of the Irish economy on its exports sector, these trends will have a dampening effect on the economy in 2002.

Perhaps the most important element in the debate is the likely shape of the recovery after 2002. The ESRI, the government and the OECD believe that the economy will quickly return to growth rates of 5-6% and will maintain those growth rates for several years. This optimism is based in large part on demographic considerations. The availability of a large pool of highly-educated, skilled workers played a critical role in the economic boom of the 1990s and is likely to do so again over the next decade. But it was not just demographics that delivered the growth rates of the 1990s; it was a combination of favourable demographic features and the explosion in overseas investment by the US corporate sector. Unless the latter recovers to something like its previous level, it is unlikely that growth in the Irish economy will return to the above-average rates commonly anticipated. Our instinct is that when the economy does experience a recovery, it will do so at more 'normal' growth rates of 3-3.5%.

Equity markets are pricing in a strong earnings recovery

At the beginning of 2001, consensus forecasts expected a 10% rise in US corporate earnings, but the eventual outcome could show earnings have fallen by as much as 18% for the year. The resurgent rally of the last three months of 2001 took the focus away from company earnings. As with previous quarters of 2001, the fourth quarter US earnings season (currently underway) is not expected to provide a boon for investors and the more optimistic expectations will need to be pared back when the results start to filter through.

Since the third quarter results, investors have had to rely on the companies telling us via conference calls and media briefings that they are beginning to see signs of the elusive 'stabilisation', the bottom in corporate profitability. The same managements are not willing to give earnings guidance – even for the next three months. According to the research agency First Call, the rate at which companies have issued negative pre-announcements showed signs of slowing down in the fourth quarter of 2001.

But profit warnings continue to remain well above the norm. As a result, the arguments by the proponents of a V-shaped recovery in the US look rather hollow. After all, wouldn't it be more normal for earnings and company profitability to bounce along the bottom for a couple of quarters before resuming an upward path?

In addition, a sharp recovery in economic activity makes the implicit assumption that US consumers (accounting for two-thirds of the US economy) will drive this recovery. But consumer activity as witnessed by record auto sales and new home sales shows that they have not experienced any ill effects of the downturn. They can hardly spend more than they have already been spending and their personal balance sheets need to be repaired.

In summary, it is likely that the US economy will recover, precipitating a broader global economic recovery this year, but it is unlikely that the strength of this recovery is going to be anywhere near that which is discounted in equity market valuations.

With equity markets having more than recouped their losses as a result of the events of 11 September, investors more than ever need to be mindful of how company profitability is faring, as this will be the driver of share prices in the near term.

If this view proves correct, it is bound to result in substantial opportunities for patient investors. The focus should be confined to quality companies in proven long-term outperforming sectors such as financials, pharmaceuticals and oil. The food sector should also fare well due to its defensive characteristics. G

CHART 2: S&P 500 THREE-YEAR PERFORMANCE

Donnacha Fox is a portfolio manager with Davy Stockbrokers' private clients unit.

Tech trends

Apple does it again with new iMac

Four years ago, the introduction of the iMac redefined the way people looked at computers – and revived Apple's flagging fortunes into the bargain. The introduction of the new iMac may well have a similar impact. Although it bears more than a passing resemblance to a desk lamp, the new slimline iMac boasts a 15-inch LCD screen that can be adjusted for height and angle with the touch of a finger. Its ten-inch base contains an 800MHz power PC G4 processor, which basically means that it can knock spots off most of its competitors in terms of speed and processing power. And, like its predecessor, it's an Internet-ready machine. The top of the range iMac comes with a SuperDrive that lets you burn your own custom CDs and DVDs. All models play audio CDs and movie DVDs and run the Mac OS X operating system, so you can run virtually all your existing Mac applications on the new machine.

Available from Apple Store (www.store.apple.com) and computer outlets. Prices range from €1,599 (IR£1,259.31) for the basic model to €2,199 (IR£1,731.85) for the top of the range iMac with SuperDrive.

Does my bum look big on this?

Projectors are basically good for two things: making important business presentations or boring the pants off people by showing them your holiday snaps. The new iPaq MP2810 portable projector from Compaq should suit both purposes admirably. Weighing in at just under 1.4 kilos, the iPaq MP2810 manages to cram in many of the advanced features you'd expect from larger projectors, including outstanding picture resolution (1000 lumens of brightness, as if you cared), integrated zoom capabilities and remote control. It also autosynchs automatically with any PC or you can use it in conjunction with your iPaq Pocket PC for more lightweight presentations. All this for a mere €5,014 excluding VAT. But if you buy one, don't expect us to call round to your house.

Available from Compaq Ireland on-line (www.compaq.ie) and from computer outlets.

Holographic projection screen

And now that you've got a portable projector, you'll probably need something to project onto. The Reversa is a translucent rear-projection screen designed to be used at point of sale, in the boardroom or outdoors. It can hang from the roof or in a shop window (using special suction cups) or be put up in an open area, and can be projected onto from a multimedia or slide projector. It is available in sizes ranging from 50 inches to 120 inches (measured diagonally) and can be supplied in a made-to-order size of 3m x 2m. Now you can inflict those holiday snaps on innocent passers-by.

Prices range from €1,662 (IR£1,308.93) to €4,010 (IR£3,158.13), depending on size of screen. Available from Sight & Sound (Distributors) Ltd, Terminus Mills, Clonskeagh Road, Dublin 6, tel: 01 283 8974 (www.sightandsound.ie).

Turn on, tune in, look odd

The future is here and it looks … distinctly odd. The new range of Olympus Eye-Trek FMD-700 multimedia glasses allows you to watch DVDs, play video games or watch TV and videos, all the while cocooned in your own little world. The manufacturers claim that you get the same experience as if you were sitting six feet from a 52-inch screen, while the integrated headphones supply all the surround sound you're ever likely to need. The ultra-compact Eye-Trek (it weighs only 85g) plugs into your television, game console and even your laptop, so you can watch your favourite films even if you're on the move. And the downside? Well, it costs a thumping stg£999.99 and you'll never even see the mugger coming. On the plus side, if you can afford it, you've probably got too much money and too few friends anyway.

Available from Olympus Optical Co (UK) Ltd, tel: +44 171 253 2772 or visit the website at www.olympus.co.uk.

Yeah, baby, yeah!

Yeah, we know. Industrial espionage is wrong. But who hasn't ever wanted to get their hands one of those little miniature cameras that spies love to whip out at opportune times. Well, now you can. The CJ-100 from Kiiro claims to be the world's smallest camera but it also offers the latest in multi-functional hi-tech digital photography. It can be used as a digital still camera to take pictures of those ridiculous-looking blueprints you always wanted to steal, but it doubles up as a PC-compatible camera with its own PC software package and Internet access, capable of storing 127 digital images that can then be downloaded to your computer.

You can even film video footage (in webcam mode) that can be e-mailed as an executable file. Running on two normal AA batteries and costing stg£159.99, this is just the toy for the aspiring Austin Powers in your life.
Available from Kiiro Limited, tel: +44 1992 710770 or visit the website at www.kiiro.co.uk.

Sites to see

Mapflow (*www.mapflow.com*). Want to see what your house looks like from the air? This website lets you do just that. Typing your address gets you an ordinary map, but zoom in for a close-up and the map becomes an aerial photograph! This is a just a taster of the type of service Mapflow has to offer, letting paid-up subscribers choose route directions and get live traffic news.

Irish constitution (*www.irlgov.ie/taoiseach/publication/constitution)*. If you've misplaced your dog-eared copy of *Bunreacht na hÉireann* and need to read up on its provisions in a hurry, check out the official Irish government version on-line in both English and Irish, complete with amendments.

Shockwave (*www.shockwave.com)*. Not the site to be browsing if your boss is lurking around the office. This site is a slacker's paradise, featuring free playable versions of many 1980s arcade classics, such as Joust, Defender and Spy Hunter, It also includes more modern games such as 3-D video pool and bowling, and allows you to download the site's Shockmachine to your own PC so you can play off-line. Time spent at this site is time well spent!

Irish Music Rights Organisation (*www.imro.ie)*. IMRO is a not-for-profit organisation that administers the performing rights in copyright music in Ireland on behalf of its members – song-writers, composers and music publishers – and which collects and distributes royalties from the public performance of copyrighted works. This site includes news and information from the music industry and provides on-line licensing for business premises.

In briefing this month ...

Report of Law Society Council meeting held on 9 November 2001

New Council members

The Council welcomed its newly-elected members Michael Boylan, Angela Condon, Andrew Dillon and John O'Connor, together with the new nominees from the Dublin Solicitors' Bar Association, John P O'Malley, Michael Quinlan and Boyce Shubotham, and from the Southern Law Association, Fiona Twomey, and wished them well for their term of office.

Taking of office of president and vice-presidents

The outgoing president, Ward McEllin, thanked the Council members, the director general and staff for their help and support during his year of office. He wished the incoming president, Elma Lynch, every success for her year. Ms Lynch was then formally appointed as president of the society. She thanked the Council for the opportunity to serve as their representative, which she regarded as a great honour. She undertook to serve the profession with total dedication and to the utmost of her ability. She paid tribute to the tireless and dignified commitment of Ward McEllin during his year of office and for the exemplary manner in which he and his wife, Ann, represented the profession throughout the year.

The senior vice-president, Geraldine Clarke, and the junior-vice president, Philip Joyce, then took office and pledged to serve the Council and the profession to the best of their abilities during the coming year.

Motion: Education regulations

'That this Council approves the Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations 2001'.
Proposed: Michael D Peart
Seconded: Donald Binchy

The Council, noting that, to a large extent, the regulations involved changes in terminology to reflect the new education system, approved the regulations.

EU directive on money laundering

John Fish outlined developments in relation to the directive and noted that the process at EU level was approaching conclusion. It was clear that, within one or two years, solicitors in Ireland would be subject to the reporting requirements in the directive in relation to suspicions of money laundering, although the requirements had been ameliorated by representations from professional bodies. Geraldine Clarke noted that the concessions obtained to date within the directive were largely due to the hard work and commitment of John Fish as chair of the CCBE task force on the directive. She believed that the profession owed him a vote of gratitude for his sterling efforts on their behalf.

Motion passed at annual general meeting

The Council welcomed the motion passed at the AGM on the previous evening providing for the introduction of a mentor programme by the society, and agreed to establish a task force to advise on its implementation.

Report on meetings with the taoiseach and the tánaiste

The president reported on separate meetings with the taoiseach and the tánaiste in recent weeks, in the course of which the society had raised its concerns regarding a number of matters, including the proposed Personal Injuries Assessment Board and the proposed increases in jurisdictions of the courts unless they were accompanied by the allocation of additional resources. The director general confirmed that the society's submission in relation to limited liability partnerships had been referred by the tánaiste to the Company Law Review Group with her support.

Conference on the rights of the disabled

The Council noted that a conference on the legal and social rights of the disabled, jointly sponsored by the Law Society and the Disability Authority, would be held on 23 November.

Equality investigations

The Council approved the nomination of Ciaran O'Mara as the society's representative on the users' forum of the Office of the Director of Equality Investigations. G

Report of Law Society Council meeting held on 7 December 2001

Motions for February meeting

'That this Council approves the publication of the second Guide to professional conduct'.
Proposed: John P Shaw
Seconded: Keenan Johnson

'That this Council approves the report of the Mentor Programme Task Force'.
Proposed: Stuart Gilhooly
Seconded: Kevin O'Higgins

Solicitors (Amendment) Bill, 1998

The director general reported that, while the second stage of the *Solicitors (Amendment) Bill, 1998* had been taken in the Dáil on 15 November 1998, the committee stage had not commenced until 4 December 2001. It had not progressed beyond a small number of amendments on that date and was due to resume on 11 December. The Council expressed its deep disappointment at the inordinate delay in enactment of the bill.

EU directive on money laundering

Geraldine Clarke reported that the wording of the directive had been agreed in the conciliation process. The next step would require the individual member states to introduce domestic legislation. A number of discretions had been given to the member states in the manner of their implementation of the directive and the society would seek to persuade the government to introduce measures that would maximise a client's right to confidentiality.

Revenue audits of solicitors' practices

John O'Connor briefed the Council in relation to discussions on a draft memorandum of understanding between the society and the Revenue in relation to the conduct of Revenue audits. Once finalised, a letter and guidelines would issue to the profession and it was also intended to organise CLE seminars.

Appointment of Law Society representatives

The Council approved a number of appointments of society representatives on external bodies, as follows:

- Michael Peart to the Superior Courts Rules Committee
- Gerard Doherty to the Circuit Court Rules Committee
- Sean McMullin to the District Court Rules Committee, each for a five-year term
- Geraldine Clarke to the CCBE for a three-year term
- Ken Murphy to the working group on the jurisdiction of the courts, with James MacGuill participating in the criminal law module and Roddy Bourke participating in the civil law module.

The Council acknowledged the contribution made by Gordon Holmes as a member of the Superior Courts Rules Committee for the past number of years.

Judicial Appointments Advisory Board

The president reported that she had asked Laurence K Shields to serve as her nominee on the Judicial Appointments Advisory Board for a three-year term, commencing in January 2002. The Council acknowledged the contribution made by Patrick O'Connor as a member of the board for the past three years.

Extraordinary members of the Council representing the Law Society of Northern Ireland

The Council approved the nominees of the Law Society of Northern Ireland as extraordinary members of the Council for 2001/2002, as follows: Alan Hewitt, John Neill, Joe Donnelly, John Meehan and Catherine Dixon.

Approval of practising certificate fee for 2002

The Council approved the practising certificate fee for 2002 in the amount of €1,770 for a solicitor in practice for more than three years and €1,475 for a solicitor in practice for less than three years.

Unfair terms in building contracts

Patrick Dorgan briefed the Council in relation to the outcome of proceedings brought by the director of consumer affairs, to which the Law Society was a notice party, in which the High Court had struck down a series of unfair terms in building contracts (*see also pages 5 and 12*). The court had also considered the issue of stage payments and had concluded that no contract should provide for stage payments exceeding the extent and value of the works done or the percentages specified in the IHBA code of practice. However, the society favoured a total ban on stage payments and would continue to work with the Department of the Environment to seek to secure legislation providing for their abolition.

Pension schemes for solicitors' employees

The Council indicated its support for the voluntary introduction by solicitors of pension schemes, including death-in-service benefits, for their employees. G

LEGISLATION UPDATE: 20 NOVEMBER 2001 – 11 JANUARY 2002

ACTS PASSED

Air Navigation and Transport (Indemnities) Act, 2001
Number: 48/2001
Contents note: Provides for the granting of indemnities to air navigation undertakings by the minister for public enterprise and provides for related matters
Date enacted: 19/12/2001
Commencement date: 19/12/2001 (See s19 for duration of the act)

Appropriation Act, 2001
Number: 52/2001
Contents note: Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act, 1965* and makes certain provision in relation to the financial resolutions passed by Dáil Éireann on 5/12/2001
Date enacted: 20/12/2001
Commencement date: 20/12/2001

Asset Covered Securities Act, 2001
Number: 47/2001
Contents note: Facilitates the establishment and operation in the state of designated credit institutions, and the establishment and operation of a market in asset covered securities so as to make available further sources of funds to those institutions; amends the *Buildings Societies Act, 1989* and certain other enactments and provides for related matters
Date enacted: 18/12/2001
Commencement date: Commencement orders to be made (per s1(2) of the act)

Criminal Justice (Theft and Fraud Offences) Act, 2001
Number: 50/2001
Contents note: Updates and consolidates the law relating to dishonesty and fraud. The provisions of the act are based in part on two reports: the Law Reform Commission report on the law relating to dishonesty (LRC 43-1992) and the *Report of the government advisory committee on fraud* (1993). Repeals a number of acts including the *Larceny Act 1861* (except ss12 to 16, 24 and 25), the *Larceny Acts 1916 and 1990*, the *Forgery Acts 1861 and 1913*. Also includes measures designed for the protection of the European Communities' financial interests from fraud and corruption and the protection of the euro. Gives effect to the *Convention on the protection of the European Communities' financial interests* done at Brussels on 26/7/1995 and the three protocols to that convention
Date enacted: 19/12/2001
Commencement date: 19/12/2001 for parts 5 and 7 and ss23, 53, 58 and 60(1); commencement order/s to be made for all other sections (per s1 of the act)

European Communities and Swiss Confederation Act, 2001
Number: 41/2001
Contents note: Gives the force of law to the agreement between the European Community and its member states of the one part and the Swiss confederation of the other, on the free movement of persons, done at Luxembourg on 21/6/1999; also gives the force of law to certain other agreements between the European Community and the Swiss confederation and between the European Communities and the Swiss confederation in relation to air transport, road transport, trade in agricultural products, conformity assessment, government procurement and scientific and technological co-operation. Amends the *European Communities Act, 1972*
Date enacted: 1/12/2001
Commencement date: Commencement order to be made (per s4(3) of the act)

Extradition (European Union Conventions) Act, 2001
Number: 49/2001
Contents note: Gives effect to two European conventions on extradition: the *Convention on simplified extradition procedures between the members states of the European Union*, drawn up on the basis of article K3 of the *Treaty on European Union*, by Council act, done at Brussels on 10/3/1995; and the *Convention relating to extradition between the member states of the European Union*, drawn up on the basis of the said article K3, by Council act, done at Brussels on 27/9/1996. Amends the *Extradition Act, 1965*
Date enacted: 19/12/2001
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Family Support Agency Act, 2001
Number: 54/2001
Contents note: Provides for the establishment of the Family Support Agency which will provide a family mediation service; support, promote and develop the provision of marriage and relationships counselling services; support, promote and develop the Family and Community Services Resource Centre programme; undertake research on family issues and provide information about relationships education, parenting issues and family responsibilities, and provides for related matters
Date enacted: 22/12/2001
Commencement date: 22/12/2001; establishment day order to be made (per s2 of the act)

Fisheries (Amendment) Act, 2001
Number: 40/2001
Contents note: Makes provision in relation to the determination by the Aquaculture Licences Appeals Board of appeals against ministerial decisions to grant or to refuse to grant an aquaculture licence under the *Fisheries (Amendment) Act, 1997*, as amended and extended by the *Fisheries and Foreshore (Amendment) Act, 1998*; clarifies the power of the board or any consultant or adviser engaged by it to inspect any land, foreshore or area or water to which the relevant appeal relates, whether or not that appeal is the subject of an oral hearing; amends and extends the *Fisheries (Amendment) Act, 1997*
Date enacted: 27/11/2001
Commencement date: 27/11/2001

Heritage Fund Act, 2001
Number: 44/2001
Contents note: Provides for the establishment of the Heritage Fund to build up resources for use by the principal state collecting cultural institutions in acquiring heritage objects for the national collections; establishes the Council of National Cultural Institutions which will make recommendations on acquisitions using the fund
Date enacted: 10/12/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Horse Racing Ireland (Membership) Act, 2001
Number: 46/2001
Contents note: Amends the schedule to the *Irish Horse Racing Industry Act, 1994* as amended by the *Horse and Greyhound Racing Act, 2001* by increasing the number of ordinary members of the Board of Horse Racing Ireland (HRI) from 12 to 13 and provides for the additional member to be appointed directly by the minister for agriculture, food and rural development. Provides for related matters
Date enacted: 18/12/2001
Commencement date: 18/12/2001

Industrial Designs Act, 2001
Number: 39/2001
Contents note: Provides for the protection of designs; gives effect to directive 98/71/EC of 13/10/1998 on the legal protection of designs and to the *Geneva act* of the *Hague agreement concerning the international registration of industrial designs*, adopted at Geneva on 2/7/1999, and provides for related matters
Date enacted: 27/11/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Ordnance Survey Ireland Act, 2001
Number: 43/2001
Contents note: Provides for the establishment of the Ordnance Survey Ireland (OSI) as a state body to operate on a commercial basis, its general function being the creation and maintenance of the definitive national mapping and related geographic records of the state

Date enacted: 5/12/2001
Commencement date: 5/12/2001; establishment day order to be made (per s2 of the act)

Protection of Employees (Part-Time Work) Act, 2001
Number: 45/2001
Contents note: Implements the provisions of directive 97/81/EC concerning the *Framework agreement on part-time work*; provides for the removal of discrimination against part-time workers where such exists; aims to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time; clarifies the effect certain enactments relating to employees have in cases where the employee concerned is a posted worker (within the meaning of directive 96/71/EC concerning the posting of workers in the framework of the provision of services) or is otherwise posted in the state
Date enacted: 15/12/2001
Commencement date: 20/12/2001 (per SI 636/2001)

Referendum Act, 2001
Number: 53/2001
Contents note: Amends the functions of a Referendum Commission established under the *Referendum Act, 1998* in relation to the preparation of an explanatory statement on a referendum proposal. Includes a function of promoting awareness of a referendum and encouraging the electorate to vote
Date enacted: 22/12/2001
Commencement date: 22/12/2001

Social Welfare (No 2) Act, 2001
Number: 51/2001
Contents note: Provides for increases in the rates of social insurance and social assistance payments, and improvements in the family income supplement scheme as announced in the budget. Also provides for the changes in PRSI announced in the budget, including a reduction in the higher rate of employer social insurance and an increase in the annual earnings/income ceiling above which contributions are not payable by employed or optional contributors. Also provides for a once-off payment from the Social Insurance Fund to the Central Fund of the exchequer as announced in the budget
Date enacted: 20/12/2001
Commencement dates: various – see act

Transport (Railway Infrastructure) Act, 2001
Number: 55/2001
Contents note: Establishes an independent, commercial, statutory public body to be known as the Railway Procurement Agency whose main function will be the procurement of new railway infrastructure; enables the minister for public enterprise to authorise, by order, the construction, operation and maintenance of railways; allows for private sector participation in the construction, operation and maintenance of new railways; repeals the *Transport (Dublin Light Rail) Act, 1996* and re-enacts its provisions, in a modified form, to provide a single statutory railway order procedure; provides for the regulation of light railways when running on-street
Date enacted: 23/12/2001
Commencement date: 23/12/2001. 28/12/2001 appointed as the establishment day for the purposes of part 2 of the act (per SI 649/2001)

Youth Work Act, 2001
Number: 42/2001
Contents note: Provides for the provision of youth work programmes and services by the minister for education and science and the vocational education committees. Repeals the *Youth Work Act, 1997*
Date enacted: 1/12/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Animal Remedies Act, 1993 *(Section 32(1)(b)(i) (Commencement) Order 2001*
Number: SI 513/2001
Contents note: Appoints 1/11/2001 as the commencement date for section 32(1)(b)(i) of the *Animal Remedies Act, 1993* (repeal of the *Therapeutic Substances Act, 1932*)

Bankruptcy Act, 1988 *(Alteration of Monetary Limits) Order 2001*
Number: SI 595/2001
Contents note: Substitutes euro amounts for amounts expressed in Irish pounds in the *Bankruptcy Act, 1988*
Commencement date: 1/1/2002

Business Names Regulations 2001
Number: SI 572/2001
Contents note: Substitute a new regulation 5 (fees payable to the registrar) for regulation 5 of the *Business Names Regulations 1964* (SI 47/1964) (as amended by the *Business Names Regulations 1997* (SI 357/1997)) to set out the fees payable in euro amounts
Commencement date: 1/1/2002

Carriage of Dangerous Goods by Road Act, 1998 *(Commencement) Order 2001*
Number: SI 495/2001
Contents note: Appoints 1/4/2002 as the commencement date for the *Carriage of Dangerous Goods by Road Act, 1998*

Circuit Court (Fees) (No 3) Order 2001
Number: SI 598/2001
Contents note: Provides for an amendment to the fees to be charged in Circuit Court offices with effect from 1/1/2001. Amends the *Circuit Court (Fees) (No 2) Order 2001* (SI 486/2001)

Circuit Court Rules 2001
Number: SI 510/2001
Contents note: Replace the *Circuit Court Rules* in revised and consolidated form
Commencement date: 3/12/2001, save for proceedings pending in the court on that date, which proceedings shall be continued and completed as if these rules had not been made

Companies Act, 1963 *(Section 24) Regulations 2001*
Number: SI 571/2001
Contents note: Set out the form of the statutory declaration of compliance which is required to be made where a company or proposed company wishes to be exempt from the provisions of the *Companies Acts* relating to the use of the word 'limited' or 'teoranta' as part of its name
Commencement date: 13/12/2001

Companies (Fees) (No 2) Order 2001
Number: SI 569/2001
Contents note: Amends the *Companies (Fees) Order 2001* (SI 477/2001) in relation to the fee 'for the provision of an uncertified copy of any matter entered in a register aforesaid'
Commencement date: 1/1/2002

Company Law Enforcement Act, 2001 *(Commencement) (No 3) Order 2001*
Number: SI 523/2001
Contents note: Appoints 28/11/2001 as the commencement date for sections 7 to 24, 25(b), 26 to 39, 72 to 74, 96, 97, 112 and 113 of, and the schedule to, the act; appoints 1/3/2002 as the commencement date for section 88 of the act

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Import of Sheep for Fattening and Breeding from Northern Ireland) Order 2001*
Number: SI 503/2001
Contents note: Permits the import of sheep for fattening and breeding from Northern Ireland under certain conditions
Commencement date: 12/11/2001

Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Imports from the United Kingdom) (No. 3) (Amendment) Order 2001*
Number: SI 555/2001
Contents note: Amends the Diseases of Animals Act, 1966 *(Foot and Mouth Disease) (Restriction on Imports from the United Kingdom) (No 3) Order 2001* (SI 490/2001) in accordance with recent decisions of the Commission of the European Communities
Commencement date: 7/12/2001

European Communities (Award of Public Supply Contracts) (Amendment) Regulations 2001
Number: SI 611/2001

Contents note: Make provision for the submission of tenders for public supply contracts by means other than writing, directly or by post. Give further effect to directives 93/36/EEC and 97/52/EC
Commencement date: 17/12/2001

European Communities (Award of Public Works Contracts) (Amendment) Regulations 2001
Number: SI 612/2001
Contents note: Make provision for the submission of tenders for public works contracts by means other than writing, directly or by post. Give further effect to directives 93/37/EEC and 97/52/EC
Commencement date: 17/12/2001

European Communities (Data Protection) Regulations 2001
Number: SI 626/2001
Contents note: Bring into operation articles 4, 17, 25 and 26 of directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. These provisions deal mainly with transfers of data to third countries and provide that such transfers may only take place where an adequate level of protection for such data is deemed to exist
Commencement date: 1/4/2002

European Communities (Environmental Impact Assessment) (Amendment) Regulations 2001
Number: SI 538/2001
Contents note: Amend the *European Communities (Environmental Impact Assessment) Regulations 1989 to 2000* by reducing the EIA thresholds in relation to initial afforestation from 70 hectares to 50 hectares, and in relation to peat extraction from 50 hectares to 30 hectares and provide for related matters. Gives further effect to Council directive 85/337/EEC as amended by Council directive 97/11/EC
Commencement date: 10/12/2001

Finance Act, 2001 *(Section 57) (Commencement) Order 2001*
Number: SI 596/2001
Contents note: Appoints 1/1/2002 as the commencement date for section 57 of the *Finance Act, 2001*. Section 57 amends the *Taxes Consolidation Act, 1997* in relation to the tax treatment of credit union dividends and in relation to tax exemptions for certain medium and long-term accounts held in credit unions and other financial institutions

Health (In-Patient Charges) (Amendment) Regulations 2001
Number: SI 582/2001
Contents note: Set out the charges in the *Health (In-Patient Charges) (Amendment) Regulations 1999* (SI 401/1999) in euro amounts – €33 a day, subject to a maximum payment of €330 in any period of 12 consecutive months
Commencement date: 1/1/2002

Health (Out-Patient Charges) (Amendment) Regulations 2001
Number: SI 583/2001
Contents note: Set out the charge in the *Health (Out-Patient Charges) (Amendment) Regulations 1999* (SI 402/1999) in a euro amount – €31.70 in respect of attendance at accident and emergency or casualty departments where the person concerned has not been referred by a medical practitioner
Commencement date: 1/1/2202

Health Insurance (Amendment) Act, 2001 *(Commencement of Certain Provisions) Order 2001*
Number: SI 514/2001
Contents note: Appoints 19/11/2001 as the commencement date for sections 1, 2, 3(b) to 3(f), 4, 5 (except in so far as it relates to the amendment of the principal act by section 6), 9, 10, 11, 12, 13(a) to 13(g) (except in so far as section 13(b) relates to the amendment of the principal act by section 6), 14 and 15

Income Tax (Employments) (Consolidated) Regulations 2001
Number: SI 559/2001
Contents note: Revise and consolidate, subject to certain changes, the existing regulatory provisions which prescribe the manner in which the deduction of tax from salaries and wages under the PAYE system operates
Commencement date: 1/1/2002

Limited Partnership Regulations 2001
Number: SI 570/2001
Contents note: Substitute a new rule 3 (fees to be paid to the registrar) for rule 3 of the *Limited Partnership Rules 1907* (SR&O 1907/1020) to set out the fees payable in euro amounts
Commencement date: 1/1/2002

Local Government Act, 2001 *(Commencement) (No 2) Order 2001*
Number: SI 551/2001
Contents note: Appoints 1/1/2002 as the commencement date for section 142 of the act; appoints 1/1/2002 as the date on which section 51 of the *Local Government Act, 1991* shall be repealed

Local Government Act, 2001 *(Commencement) (No 3) Order 2001*
Number: SI 588/2001
Contents note: Appoints 1/1/2002 as the commencement date for various provisions of the act, and for certain repeals listed in the schedule to the order – see order for details

Local Government Act, 2001 *(Establishment Day) Order 2001*
Number: SI 591/2001
Contents note: Appoints 1/1/2002 as the establishment day for the purposes of the act

Local Government (Planning and Development) (Amendment) Regulations 2001
Number: SI 539/2001
Contents note: Remove initial afforestation from the planning control system to coincide with the introduction of a separate statutory consent system by the minister for the marine and natural resources under the *European Communities (Environmental Impact Assessment) (Amendment) Regulations 2001* (SI 538/2001). Reduce the planning threshold for peat extraction from 50 hectares to 10 hectares
Commencement date: 10/12/2001

Local Government (Planning and Development) (Fees) Regulations 2001
Number: SI 525/2001
Contents note: Set out in euro amounts, operative from 1/1/2002, the existing planning fees payable to planning authorities and An Bord Pleanála. Also provide, as of 30/11/2001, for a quarter fee to apply to planning applications in respect of housing development authorised by a permission which is subject to the two-year withering rule under section 96(15) of the *Planning and Development Act, 2000*. Amend the *Local Government (Planning and Development) Regulations 1994* (SI 86/1994) and revoke the *Local Government (Planning and Development) (Fees) (Amendment) (No 2) Regulations, 1998* (SI 128/1998)

National Treasury Management Agency (Amendment) Act, 2000 *(Part 2) (Commencement) Order 2001*
Number: SI 526/2001
Contents note: Appoints 30/11/2001 as the commencement date for part 2 of the *National Treasury Management Agency (Amendment) Act, 2000* (provisions relating to the State Claims Agency)

Offences Against the State Acts, 1939 to 1998 *(Special Criminal Court Rules) 2001*
Number: SI 536/2001
Contents note: Amend the *Special Criminal Court Rules 1975* (SI 234/1975) to provide that in any place where the words 'the chief state solicitor' occur in the 1975 rules they shall be taken to refer to 'the chief prosecution solicitor' in lieu thereof, and that any proceedings conducted or matters required to be done by or in relation to or on behalf of the director of public prosecutions by the chief state solicitor may be done by the chief prosecution solicitor
Commencement date: 3/12/2001

Planning and Development Act, 2000 *(Commencement) (No 3) Order 2001*
Number: SI 599/2001
Contents note: Appoints 21/1/2002 and 11/3/2002 as the commencement dates for all remaining provisions of the

Planning and Development Act, 2000 and for the repeal of those provisions of the *Local Government (Planning and Development) Acts, 1963 to 1999* which had not previously been repealed – see order for details of sections coming into operation on, and for repeals operative from the two dates. Appoints 11/3/2002 as the date on which the *Local Government (Planning and Development) Regulations 1994 to 2001* are revoked

Planning and Development Regulations 2001
Number: SI 600/2001
Contents note: Implement the *Planning and Development Act, 2000*. Consolidate and revoke all previous regulations made under the 2000 act. Replace the *Local Government (Planning and Development) Regulations 1994 to 2001*, subject to transitional provisions
Commencement date: 21/1/2002 and 11/3/2002 – see regulations for details

Prevention of Corruption (Amendment) Act, 2001 *(Commencement) Order 2001*
Number: SI 519/2001
Contents note: Appoints 26/11/2001 as the commencement date for the act, other than section 4(2)(c)

Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2001
Number: SI 581/2001
Contents note: Prescribe revised formats of the forms and certificates used in connection with the submission of claims under section 6 of the *Protection of Employees (Employers' Insolvency) Payments Acts, 1984 to 2001*. Amend the *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 1984* (SI 356/1984) (as amended by the *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 1991* (SI 349/1991)
Commencement date: 1/1/2002

Rules of the Superior Courts (No 4) (Chief Prosecution Solicitor) 2001
Number: SI 535/2001
Contents note: Amend the *Rules of the Superior Courts,* order 125, rule 1, by the insertion of the following definition: 'The "chief state solicitor" means the chief prosecution solicitor where the director of public prosecutions is a party or an intended party to proceedings or in respect of functions conferred on the director of public prosecutions by section 3 of the *Prosecution of Offences Act, 1974* or otherwise'
Commencement date: 3/12/2001

Rules of the Superior Courts (No 4) (Euro Changeover) 2001
Number: SI 585/2001
Contents note: Provide for the conversion to euro amounts of amounts expressed in Irish pounds in the *Rules of the Superior Courts* or in any of the appendices and forms attached thereto. In relation to the fees payable to commissioners for oaths (or other persons duly authorised to take affidavits) provided in part VI of appendix W of the *Rules of the Superior Courts* (as inserted by the *Rules of the Superior Courts (No 4) of 1990* (SI 281/1990)), the fee payable on the taking of an affidavit, affirmation or declaration or on attesting the execution of a bond shall be €4 and the fee on marking exhibits shall be €1.30
Commencement date: 1/1/2002

Solicitors Acts, 1954 to 1994 *(Apprenticeship and Education) Regulations 2001*
Number: SI 546/2001
Contents note: Set out the procedures for the apprenticeship and education of trainee solicitors. Revoke the Solicitors Acts, 1954 to 1994 *(Apprenticeship and Education) Regulations 1997* (SI 287/1997) as from the commencement date, subject to exceptions in relation to continuing complaints of alleged misconduct made pursuant to regulation 26 of SI 9/1991 or regulation 25 of SI 287/1997
Commencement date: 1/1/2002

Standards in Public Office Act, 2001 *(Commencement) Order 2001*
Number: SI 576/2001
Contents note: Appoints 10/12/2001 as the commencement date for the act, except in so far as it relates to either house of the Oireachtas, or members, or the clerk, of either house, or committees of either such house or joint committees of both such houses or sub-committees of any of the committees aforesaid, or their members or clerks

Taxes Consolidation Act, 1997 *(Commencement of Chapter 3 of Part 23) Order 2001*
Number: SI 505/2001
Contents note: Appoints 31/10/2001 as the commencement date for the coming into operation of chapter 3 of part 23 of the *Taxes Consolidation Act, 1997* (new scheme of capital allowances for the purchase of a milk quota under the national quota restructuring scheme)

Prepared by the Law Society Library

Practice notes

Euro changeover: *Rules of the Superior Courts* Conversion of statutory amounts and commissioners' fees

Practitioners should note that SI no 585/2001 (operative from 1 January 2002) sets out the euro conversion amounts for statutory amounts appearing in the *Rules of the Superior Courts* and the appendices and forms attached thereto.

The statutory instrument provides, among other things, for the fees payable to commissioners for oaths (or other persons duly authorised to take affidavits), as follows:

- For taking an affidavit, affirmation or declaration or on attesting the execution of a bond – €4
- For marking exhibits – €1.30.

It also provides that in any place in the *Rules of the Superior Courts* or the appendices and forms attached thereto, where an amount stands specified therein in pounds and the amount represents an amount fixed by or contained in legislation, such amount shall be converted to the equivalent euro rate, that is, at the rate of 1 euro equals 0.787564 pounds. Any reference to any statutory sum or statutory limit hereafter shall be taken to refer to the equivalent euro amount or such euro amount as shall, for the time being, stand specified by law.

In relation to any figure or amount not provided for in the tables contained in SI 585/2001, the same shall be converted to euro by reference to the fixed conversion rate and the second decimal of the resultant amount shall be rounded down where the digit in the third decimal place is .4 or below and shall be rounded up where it is .5 or above.

Litigation Committee

Change in stamp duty rates payable by investors on new and second-hand residential property

Investors in new and second-hand residential property will now pay the same stamp duty rates as apply to non-first-time owner-occupiers who purchase second-hand property. The new single stamp duty structure for investors in new and second-hand residential property is as follows:

Up to IR£100,000	Exempt
(Up to €127,000)	
IR£100,001 to IR£150,000	3%
(€127,001 to €190,500)	
IR£150,001 to IR£200,000	4%
(€190,501 to €254,000)	
IR£200,001 to IR£250,000	5%
(€254,001 to €317,500)	
IR£250,001 to IR£300,000	6%
(€317,501 to €381,000)	
IR£300,001 to IR£500,000	7.5%
(€381,001to €635,000)	
Over IR£500,000	9%
(Over €635,000)	

The new rate structure will apply to the transfers of such residential property executed on or after 6 December 2001. The euro amounts quoted will be operative from 1 January 2002.

Probate, Administration and Taxation Committee

New form C1 replaces form 47 for registration of mortgages/charges in the Companies Office

Practitioners are reminded that a new form C1 replaced form 47 with effect from 23 October 2001. Details of certain mortgages/charges created by a company must be delivered to the Companies Registration Office on form C1 (form 8E for an external company) within 21 days of the date of creation of the charge. The filing fee on form C1 is €30 with effect from 1 January 2002.

Form 47 is no longer the appropriate form for registration of charges and will be rejected if submitted.

A copy of the new form C1 and information on completion thereof can be obtained from the Companies Office website at www.cro.ie.

Conveyancing Committee

VAT: increase in standard rate from 20% to 21%

The standard rate of VAT will be increased from 20% to 21% with effect from 1 March 2002. This increase will apply to all goods and services which are currently subject to VAT at 20%.

Probate, Administration and Taxation Committee

Revenue certificates in assurances between spouses on separation or divorce

Practitioners have sought guidance as to the appropriate certificates to use in deeds of assurance between spouses consequent upon separation or divorce.

Separation

Spouses do not, of course, cease to be spouses as a result of a deed of separation or decree of judicial separation. Assurances between spouses in these circumstances are exempt from stamp duty. The appropriate certificate is the following:

'It is hereby certified that section 96 of the *Stamp Duties Consolidation Act, 1999* applies to this instrument'.

No other *Finance Act* certificates are necessary.

Divorce

After divorce, spouses cease to be such, and therefore enjoy an exemption from stamp duty in only one circumstance, that is, if the provisions of section 97 of the *Stamp Duties Consolidation Act, 1999* apply. This section provides that stamp duty shall not be chargeable on an instrument by which property is transferred pursuant to an order under part III of the *Family Law (Divorce) Act, 1996* or pursuant to a relief order within the meaning of section 23 of the *Family Law Act, 1995*, made following the dissolution of a marriage by either or both of the spouses who were parties to the marriage concerned to either or both of them. This exemption does not apply in relation to an instrument by which any part of or beneficial interest in the property concerned is transferred to a person other than the spouses concerned.

The appropriate certificate is the following:

'It is hereby certified that section 97 of the *Stamp Duties Consolidation Act, 1999* applies to this instrument.'

No other *Finance Act* certificates are necessary.

Conveyancing Committee

Capital acquisitions tax: new base date for aggregation

At present under CAT rules, gifts or inheritances taken on or after 2 December 1988 are aggregated within the same group threshold for the purposes of arriving at the amount of tax on a current gift or inheritance. This base date for aggregation is now being brought from 2 December 1988 to 5 December 1991. This measure takes effect for all gifts or inheritances taken on or after 5 December 2001.

Probate, Administration and Taxation Committee

Criminal legal aid fees: euro conversion

Practitioners should note that all claims for fees should be made in euro with effect from 1 January 2002. This includes payment dates arising from pre-1 January 2002 claims. Tables of rates of fees in relation to the Criminal Legal Aid Scheme (District Court) and the Garda Station Legal Advice Scheme are available from Courts Policy Division, Department of Justice, Equality and Law Reform, tel: 01 602 8202 or from Colette Carey, Secretary, Criminal Law Committee, Law Society of Ireland, tel: 01 672 4800.

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AGRICULTURAL

Milk quota

Constitutional law – administrative law – European law – licensing – delegation of legislation – ministerial powers – statutory instrument – allocation of quota – whether legislation improper interference with property rights – whether passing of regulations necessitated by membership of European Union – European Communities (Milk Quota) Regulations 2000 – Bunreacht na hÉireann 1937, *articles 15.1, 29.4.3, 40.3.1, 43*

The applicants initiated proceedings seeking to challenge the validity of certain regulations dealing with 'milk quota'. Carroll J held that the regulations in question sought to regulate milk production and had taken into account the legitimate interests of parties. The proceedings would be dismissed. On appeal to the Supreme Court, the chief justice held that the making of the regulations governing the milk quota scheme were a permissible exercise of the legislative function. The fact that the regulation of the milk production market could result in disadvantage to the applicants could not be described as a violation of property rights. Mrs Justice Denham (with Mr Justice Murphy agreeing) held that once principles and policies had been established by Community regulations, there was no meaningful role for the national legislature. The milk quota scheme had arisen to regulate the European market, the terms and conditions of which were constantly changing. Mr Justice Murray held that the potential opportunity being sought by the applicants to sell their milk quota at 'market value' was not a property right. The minister had a right and duty to exercise his lawful regulatory powers to ensure the proper functioning of the system. Mr Justice Fennelly held that the applicants' complaint that their fundamental rights, whether or not described as property rights, had been infringed by the 2000 regulations was unsustainable as a matter clearly decided in the constant case law of the Court of Justice. The appeal would be dismissed.

***Maher v Minister for Agriculture*, Supreme Court, 30/03/2001** [FL4376]

CHILDREN AND YOUNG PERSONS

Detention, guardianship

Social Services – detention – health boards – secure accommodation – guardianship – inquiry by High Court – whether proper procedures followed – whether failure to inform Garda Síochána – Guardianship of Infants Act, 1964 – Child Care Act, 1991 – Bunreacht na hÉireann 1937

The judgment concerned the detention of a young girl into the care of the Social Services and her subsequent escape from care and her subsequent death from a drugs overdose. Mr Justice Kelly was satisfied that there had been a failure by the health board to inform the court that the health board was going to allow the girl take up employment which would mean lengthy periods without supervision. There should have been a procedure worked out between the place of employment (a nursing home) and the health board to regulate the girl's working conditions and to set out a procedure should the girl abscond. There was a serious failure by the health board to inform the Garda Síochána of the contents of a letter written by the girl after she had absconded. The holding of a case conference without the gardaí was a waste of time and resources. The health board should appoint a liaison officer to collate all relevant information in the case of children who abscond and there should be regular contact with police liaison officers. In addition, any letters written by children to the High Court should not be impeded. Such recommendations might help to minimise the risk of such an event re-occurring.

***East Coast Area Health Board v O'Donovan*, High Court, Mr Justice Kelly, 12/10/2001** [FL4445]

COMPANY

Practice and procedure

Security for costs – amount of security – receivership – order for costs made against first and second defendants – plaintiff company in liquidation – meaning of 'sufficient security' – whether discretion possessed by court in fixing amount of security – whether court bound to make substantial order – Companies Act, 1963, *section 390*

The plaintiff was a building company which had been developing a housing estate and which had run into financial difficulties. As a consequence, the first defendant, who was financing the project, advanced further finance but only on the condition that certain parties be appointed to manage the project. The plaintiff primarily alleged that the persons so appointed ran the project in a negligent fashion and issued proceedings. In the present application, the court was being asked to fix the amount of security for costs to be given by the plaintiff in favour of the first two defendants. McCracken J held that the amount of costs per section 390 of the *Companies Act, 1963* would appear to be approximate to the probable costs of a defendant should it succeed and fixed the amount of security in this instance to be given in favour of the first and second defendant in the sum of £200,000 each. Both parties appealed against the judgment, the plaintiff arguing that the amount was too high and the defendants arguing that it was too low. Delivering judgment in the Supreme Court, Murphy J held that if a court ordered security to be given, this security must be sufficient. This involved making a reasonable estimate of the actual costs that a defendant would have to meet. The figures reached by the trial judge were as realistic an assessment as could be made. Both the appeal and cross-appeal would be dismissed.

***Lismore Homes v Bank of Ireland*, Supreme Court, 05/10/2001** [FL4433]

Directors' duties, liquidation

Restriction and disqualification of directors – fiduciary duty – application by liquidator – onus of proof – furnishing of accounts – whether proper records and accounts kept by directors – whether directors acted honestly and responsibly – whether companies traded while being unable to discharge liabilities – Companies Act, 1990, *sections 150, 160*

The liquidator of two companies sought orders of disqualification and/or of restriction in respect of two individuals. The individuals were directors of both companies. At the dates of the winding-up, substantial amounts were owed to the Revenue Commissioners. Mr Justice McCracken was satisfied that in respect of an order of disqualification under section 160 the onus was on the liquidator, whereas under section 150 the onus was on the director to satisfy the court as to his honesty and responsibility. Taking the overall behaviour of the directors, a disqualification order was not necessary to protect the public against their future conduct. However, the directors had been sufficiently irresponsible to warrant making a restriction order, particularly in allowing one of the companies to have traded insolvently for some four years and allowing Revenue debts to build up. A restriction order pursuant to section 150 would be made against both directors.

***In the matter of Newcastle Timber Limited*, High Court, Mr Justice McCracken, 16/10/2001** [FL4442]

Litigation, practice and procedure

Security for costs – summary judgment sought – plaintiff company ceased trading – whether appropriate to order plaintiff to furnish security for costs – Companies Act, 1963, *section 390*

The plaintiff company had brought an action for summary judgment, claiming that it was owed the sum of £377,191 for services rendered. The plaintiff company consisted of two former employees of the defendant and the only customer they had was the defendant company. The plaintiff company had ceased trading and stated that it would be unable to pay the costs of the defendants should the defendants successfully defend the action. The defendants sought an order for security for costs, which was refused in the High Court by Mr Justice Johnson and the defendants appealed. The chief justice was satisfied that special circumstances existed which would render the making of the order in question inappropriate. The High Court judge had properly exercised his jurisdiction in declining to make the order for security for costs. The appeal was dismissed.

***Irish Conservation and Cleaning Limited v International Cleaners Limited*, Supreme Court, 19/07/2001** [FL4474]

COSTS

Defamation, libel

Practice and procedure – costs – discharge of jury – libel – defamation – litigation – barristers – defence of fair comment – whether appropriate for counsel to refer to legal textbooks in addressing jury – whether submission of counsel unfair – whether discharge of jury by trial judge disproportionate response

The plaintiff, a District Court judge, had sued the defendant for libel. During the course of the trial, counsel for the defendant had addressed the jury and in the course of doing so referred to the applicable legal principles which included reference to a leading textbook and a paper produced by the Law Reform Commission. Counsel for the plaintiff had complained to the trial judge that the manner of the address to the jury was inappropriate and sought to have the jury discharged. The trial judge acceded to the application and awarded the plaintiff the costs of the trial. The defendant appealed. Delivering judgment, the chief justice held that what counsel for the defendant was doing was highlighting to the jury aspects of the law of fair comment which were favourable to his side of the case. This was a matter that was fully within the competence the trial judge to address and, if necessary, the trial judge could have clarified any issues by appropriate directions to the jury. In addition, the trial judge could remind the jury that they had heard a statement of the law advanced by one of the litigants and which might be disputed by the opposing party. The High Court judge, while entitled to exercise his discretion, had erred in the principles applied. The discharge of the jury had been a disproportionate response. The appeal would be allowed and the order of costs set aside. Counsel would be heard as to what the appropriate order of costs would be.

***Mangan v Independent Newspapers Limited*, Supreme Court, 25/07/2001** [FL4484]

CRIMINAL

Delay, extradition

Extradition – delay – fair procedures – corresponding offence – whether offence in extradition warrant corresponded to offence under Irish law – whether exceptional circumstances established prohibiting extradition of accused – whether delay in seeking extradition exceptional and extraordinary – Firearms Act, 1964 – Criminal Law (Jurisdiction) Act, 1976 – Criminal Justice Act, 1984 – Extradition Act, 1965, *section 50*

The plaintiff sought to challenge District Court orders authorising his extradition to England. The plaintiff had been convicted of offences in England relating to the possession of a firearm and a related offence of acquiring goods with the intent to defraud Her Majesty of duty payable. Thereafter, the plaintiff absconded and returned to Ireland where he resided openly at his former address. Some five years after his conviction, warrants were issued for his extradition to England and the District Court certified that the offences corresponded to offences under Irish law. The plaintiff challenged his extradition on the basis that no explanation had been provided for the delay and it would be unjust, oppressive and invidious to order his delivery. Additionally, the plaintiff argued that the offence specified in the warrant did not correspond to an offence known in Irish law. Mr Justice Kearns was satisfied that a significant lapse of time had elapsed which constituted exceptional circumstances. Fair procedures required that the prosecuting authorities should have moved with reasonable expedition and they had not done so. It would be therefore unjust to order the plaintiff's extradition. In addition, the offences specified did not correspond to any offences under Irish law. The plaintiff would be released.

***Long v Assistant Commissioner O'Toole*, High Court, Mr Justice Kearns, 19/10/2001** [FL4457]

Discovery, practice and procedure

Jurisdiction of High Court – jurisdiction of Central Criminal Court – whether jurisdiction existed to order discovery in criminal case – Courts of Justice Act, 1926 – Criminal Procedure Act, 1967 – Criminal Procedure Act, 1993, *section 11(1)* – Supreme Court of Judicature Act (Ireland) 1877 – Rules of the Superior Courts 1986, *orders 31, 49 and 125*

The High Court had made an order of non-party discovery against the Rape Crisis Centre in relation to a prosecution for rape. The Rape Crisis Centre appealed against the order. Geoghegan J, delivering judgment in the Supreme Court, was satisfied that the order was made as an order of the High Court and not as an order of the Central Criminal Court. The High Court judge was not entitled to make the order in question as such an order could not be made in connection with criminal proceedings. In so far as he was purporting to exercise jurisdiction, it was a civil jurisdiction and was governed by the *Rules of the Superior Courts*. The appeal was allowed and the order of the High Court set aside.

***DPP v Sweeney*, Supreme Court, 09/10/2001** [FL4434]

Evidence, fair procedures

Appeal – sexual offences – evidence – fair procedures – concept of restored memory – burden of proof – whether trial judge's charge to jury defective – whether trial conducted fairly – whether defence should have been permitted opportunity to introduce expert evidence regarding restored memory – Criminal Evidence Act, 1992

The applicant had been convicted of a number of sexual offences and sought leave to appeal against his conviction and sentence. In addition, he sought leave to introduce additional evidence relating to the concept of restored memory. It was claimed that the trial ought to have been adjourned to allow the defence to bring experts to the trial to deal with the issue of restored memory. In addition, it was contended that a warning similar to an *O'Casey* warning ought to have been given by the trial judge in the light of the evidence given by the complainant following counselling sessions. It was also alleged that the applicant's wife had given evidence in circumstances where she was not a compellable witness and that this non-compellability had not been brought to the wife's attention. Mr Justice Geoghegan, delivering judgment, held that the evidence demonstrated that it was not a recovered memory case. There was no evidence to suggest that the complainant remembered the sexual abuse only as a consequence of counselling. The court would not be prepared to make a formal order admitting additional evidence from an expert regarding recovered memory. There was no infirmity in the trial judge's directions relating to the onus of proof. The applicant's wife was entitled to give evidence if she so wished. The applicant's wife was both competent and compellable under the *Criminal Evidence Act, 1992*. A newspaper article concerning comments by the applicant's wife made after the trial could not be a basis for ordering a re-trial. Leave to appeal was refused.

***DPP v McKenna*, Court of Criminal Appeal, 19/10/2001** [FL4439]

Fair procedures, sentencing

Judicial review – certiorari *– fair procedures – order of prohibition sought – whether conviction should be quashed – whether trial judge had taken irrelevant considerations into account in determining sentence – whether unlawful interference in applicant's rights – whether applicant received fair trial – whether judicial review available on* quia timet *basis*

The applicant had been found guilty in the District Court of public order offences. The applicant had contended that one of the gardaí had assaulted him at the time and was considering bringing a complaint in this regard. A solicitor appearing on behalf of the accused had suggested that rather than record a conviction, the District Court judge might consider requiring the payment of money into the poor box. It was accepted by Ms Justice Carroll that it was indicated to the respondent that a payment would be made into the poor box and that would be the end of all matters (including any complaints) between the applicant and the gardaí. The District Court judge had then adjourned the matter before any sentence had been passed. The applicant changed his mind about giving an undertaking and sought an order of *certiorari* to quash the conviction and an order of prohibition restraining any further prosecution. The applicant contended that his decision whether or not to pursue complaints against the gardaí had an improper bearing on the nature of the sentence to be imposed. Ms Justice Carroll held that the trial judge had acted within jurisdiction when finding the applicant guilty. If the applicant was dissatisfied with the guilty verdict, the appropriate remedy was to appeal. There were no grounds for alleging that the guilty verdict was made for the improper purpose of preventing the applicant from pursuing his legal rights against the gardaí. Judicial review did not lie on a *quia timet* basis. The trial judge should be allowed to make his decision, leaving aside any irrelevant considerations about the exercise of the applicant's rights. The applicant could appeal against any sentence received.

***Mellett v Judge Reilly and DPP*, High Court, Ms Justice Carroll, 04/10/2001** [FL4448]

Judicial review

Sexual assault – complaints regarding conduct of trial – whether undue pressure put on accused to plead guilty – whether appropriate course to make complaint to Law Society – whether order of certiorari *to quash conviction should be granted*

The applicant had been convicted in the Circuit Court of a number of offences – incest, sexual assault and indecent assault – and applied to the High Court by way of judicial review for an order of *certiorari* quashing the order of the Circuit Court. The applicant claimed that the gardaí entered his house without a warrant on at least two occasions and also that the senior counsel retained on his behalf withdrew without his permission from the case. The applicant also indicated that his solicitor brought undue pressure on himself and his family to plead guilty. Mr Justice Kinlen in the High Court in his judgment delivered on 22 November 2000 held that the matters complained of should properly be made the subject of a complaint to the Law Society and the Bar Council, if necessary. The chief justice, delivering judgment, held that on the papers before the court the High Court judge was perfectly correct in declining to make an order for *certiorari* and the court would refuse the application.

***Meehan v DPP*, Supreme Court, 26/06/2001** [FL4482]

DAMAGES

Easements and rights of way

Land law – property – planning and development – easements and rights of way – damages – contract – plaintiff sold land to defendant and retained adjoining land – defendant applied to vary planning permission attached to purchased land – proposed development would leave plaintiff's property landlocked – whether right of way created by contract and transfer – whether right of way created by circumstances or necessity – whether defendant should buy plaintiff's lands – whether issue of damages should be tried

The proceedings had originally been determined and a judgment issued by Mr Justice Kinlen on 30 July 1998. The dispute centred on the plaintiff's lands which had been effectively landlocked by the defendant's development. Previously, the plaintiff was to apply for planning permission in order to extend an already existing road. However, An Bord Pleanála had refused the application that had been submitted. Mr Justice Kinlen was satisfied that with goodwill on both sides the issue could be solved with proper consultants and a joint application to the two local authorities. The court would make a declaration that there existed a right of way. However, as the plaintiff now wanted compensation, a hearing as to damages should take place. The third alternative could be that the defendant should buy the plaintiff's lands. The court would adjourn proceedings to enable pleadings to be filed before the matter could be re-listed. The matter would be expedited and both parties would be urged to try to co-operate. The question of costs was reserved.

***Dwyer Nolan v Kingscroft Developments*, High Court, Mr Justice Kinlen 04/07/2001** [FL4494]

Personal injuries

Tort – personal injuries – damages – appeal against assessment – loss of eye – damage to employment

prospects – whether damages awarded should be increased – whether necessary to assess damages under separate headings

The plaintiff had lost the sight in one eye when struck by a piece of wire from a lawnmower being operated by the defendant. Mr Justice Johnson in the High Court awarded the plaintiff £120,000. The plaintiff appealed against the award on the basis that it was too low. Mr Justice Fennelly, delivering judgment in the Supreme Court, the other judges agreeing, held that the Supreme Court should only interfere in an award of damages when it considered that there was an error so serious which amounted to an error of law. Considering the award as a whole, the sum of £120,000 did not bear a reasonable proportion to the compensation to which the plaintiff was entitled. In the circumstances, the award would be increased to a sum of £150,000.

***Rossiter v Dun Laoghaire Rathdown County Council*, Supreme Court, 31/10/2001** [FL4491]

DISCOVERY

Legal professional privilege

Practice and procedure – discovery – solicitors – notes made during the course of litigation – whether attendance notes covered by legal professional privilege – whether shorthand notes enjoyed claim of privilege – whether court should examine document to determine extent of disclosure

The proceedings concerned the status of notes made by the plaintiff's solicitors during the course of court proceedings. The plaintiff claimed that the attendance notes were prepared in the course of legal proceedings and were covered by legal professional privilege. Finnegan J was satisfied that the solicitor's note of the evidence and proceedings was not privileged. Insofar as it contained other material designed to assist the plaintiff in the prosecution of the action, it was privileged. The court proposed to examine the note to determine the extent that it should be disclosed upon inspection. The judge also stated that in general it was not likely that in the course of proceedings, unlike the instant proceedings, which would normally run without interruption, the court would lightly exercise its discretion and order such a discovery.

***MFM v PW*, High Court, Mr Justice Finnegan, 22/06/2001** [FL4458]

EMPLOYMENT

Health and safety

Employment law – health and safety – EAT appeal – parental leave – meaning of 'urgent, immediate and indispensable' – force majeure leave – whether appellant's presence at home indispensable – whether Employment Appeals Tribunal applied wrong principles in reaching decision – Parental Leave Act, 1998, *sections 13, 20*

The appellant had appealed against a determination of the Employment Appeals Tribunal which had found against his claim to be entitled to take *force majeure* leave from work pursuant to the provisions of the *Parental Leave Act, 1998*. The evidence was that the appellant had stayed at home in circumstances where his wife had become ill and there was a young baby at home. Mr Justice McCracken was satisfied that it was a question of fact as to whether the appellant's presence at home was indispensable. The tribunal, as the sole arbiter of fact, had heard evidence from witnesses who were cross-examined and had made a determination that the appellant's presence was not indispensable. There was nothing to suggest that the tribunal had applied wrong principles in making its decision. There was not a question of law involved which would warrant an appeal under the *Parental Leave Act, 1998* and the order sought was refused.

***McGaley v Liebherr Container Cranes Limited*, High Court, Mr Justice McCracken, 19/10/2001** [FL4446]

Judicial review, labour law

Certiorari – *labour law – trade union – rates of pay – electricians – amendment of registered employment agreement – whether applicant electrical contractor – whether amendment of agreement* ultra vires – *whether workers covered by agreement – whether error made within jurisdiction* – Industrial Relations Act, 1990 – Industrial Relations Act, 1946, *sections 25, 27, 30, 32*

The applicant, a facilities management company, employed a number of electricians as part of its labour force. The applicant had negotiated an agreement with the first notice party, the TEEU, concerning the terms and conditions of electricians under its employment. Subsequently, an official of the first notice party wrote to the applicant contending that the applicant was bound by the terms of another agreement (the NJIC agreement) as the applicant was engaged in electrical contracting work. This had a significance in relation to matters including rates of pay. The applicant disputed this assertion and claimed that it was not engaged in the electrical contracting industry. Thereafter, the official of the TEEU sought to amend the NJIC agreement so as to reflect what they believed was the true position and include electrical workers such as those employed by the applicant. The agreement was duly amended by the Labour Court and the applicant received a complaint that they were in breach of the agreement. The applicant initiated judicial review proceedings seeking to quash the variation of the NJIC agreement. Ms Justice Carroll was satisfied that the agreement had been varied to include employers who had previously not been included. The applicant was not part of the general electrical contracting industry. The Labour Court had acted *ultra vires*. This was not an error of law within jurisdiction but went to the root of its jurisdiction.

***Serco Services v The Labour Court and the TEEU*, High Court, Ms Justice Carroll, 12/07/2001** [FL4466]

EVIDENCE

Family law, privilege

Professional negligence – medicine – immunity from suit – extent of immunity – evidence given by court-appointed witness – privilege – whether witness enjoyed immunity from suit in respect of evidence given

A decree of nullity had been granted in proceedings involving the plaintiff. The plaintiff issued proceedings seeking to recover damages against the third defendant, a psychiatrist, who had tendered psychiatric evidence in the matrimonial proceedings. The plaintiff alleged that the third defendant was negligent in failing to conduct a careful and thorough psychiatric examination and alleged that the third defendant in reaching her conclusions relied upon inaccurate and incorrect information. O'Sullivan J held that the evidence given was protected by absolute privilege and the case against the third defendant would be dismissed. On appeal, Mr Justice Murphy, delivering judgment in the Supreme Court, held that the immunity from suit enjoyed by the third defendant derived from the impact of public policy on the administration of justice. The psychiatrist's evidence was dictated by the terms of reference of the High Court. The evidence was based upon her professional expertise and the investigations undertaken. These matters were open to examination and had been fully examined. Even if it could be shown that the psychiatrist was guilty of negligence, the law in

this jurisdiction conferred immunity upon a witness, whether expert or otherwise. This immunity was qualified somewhat in that if such a position was abused, then that immunity would be forfeited. The appeal would be dismissed.

***O'Keeffe v Kilcullen and others*, Supreme Court, 23/10/2001** [FL4479]

FAMILY

Divorce

Division of assets – property – policy of equal division – rule of equality – whether trial judge had erred in failing to have regard to separation agreement – whether trial judge misdirected himself as to legal principles applicable – whether 'clean break' principle existed in Irish law – whether matter should be returned to High Court – Family Law (Divorce) Act, 1996, *sections 5, 20*

The parties had been married in England and subsequently had returned to Ireland. Difficulties arose and the parties entered into a deed of separation which made provision for issues such as maintenance, custody of the children and residence of the family home. The respondent husband had applied for and had been granted a foreign divorce. The respondent had lost his employment shortly after he separated from his wife. However, in later years, the respondent had become president of an international undertaking and both he and his partner owned homes in the United States and in Ireland. It was not in dispute that the respondent had accumulated considerable wealth. The applicant wife initiated divorce proceedings in Ireland in 1998. Mr Justice Lavan, in an *ex tempore* judgment issued on 21 November 2000, ordered the respondent to transfer the entire family home to the applicant, increased the maintenance payments and ordered the respondent to pay the applicant a lump sum of £1,500,000. The respondent appealed against the judgment on a number of grounds. The primary grounds of appeal were that the trial judge had failed to have sufficient regard to the terms of the separation agreement which was still in force under the *Family Law (Divorce) Act, 1996* and that the trial judge had failed to have regard to the parties' 20 years of separation. Mrs Justice McGuinness held that the trial judge had relied upon the principle of equality (which had been raised in the English case of *White v White*). However, doubt was expressed as to whether the policy of equal division prevailed under common law. Division of matrimonial assets was now governed by statute with explicit mandatory guidelines. In this jurisdiction, the 'clean-break' solution was neither permissible nor possible. The overriding requirement was that of a fair outcome as set out in section 20(5) of the 1996 act. The trial judge had failed to give reasons for the way he exercised his discretion in the light of the statutory guidelines. In the circumstances, the case must be returned to the High Court so that the question of proper provision for the parties might be considered. The appeal would be allowed.

***K v K*, Supreme Court, 06/11/2001** [FL4477]

LANDLORD AND TENANT

Local authorities

Injunction – balance of convenience – damages – whether injunctions should have been granted – whether purchaser of premises had acquired vacant possession – whether defendant had established tenancy – Landlord and Tenant (Amendment) Act, 1980 – Registration of Title Act, 1964, *section 72*

The plaintiff wished to develop a shopping centre for housing purposes. The defendant maintained that he had a tenancy and a right to occupy certain premises. Injunctions had been issued by the High Court against the defendant and the defendant sought to challenge them. The defendant complained that his premises had been damaged and attempts had been made to prevent him trading. The defendant also claimed that he had been forced to bring a container onto the premises in order to trade. The plaintiff maintained that it had acquired vacant possession of the premises. Mr Justice Geoghegan was satisfied that it should have been clear to the plaintiff that the defendant was claiming a tenancy. The balance of convenience would lie in refusing the injunctions sought. The defendant had made a *prima facie* case to trade from the container. The appeal of the defendant would be allowed in full.

***Dublin Corporation v Thomas Burke*, Supreme Court, 09/10/2001** [FL4398]

Planning and development law

Property – planning and development – whether landlord entitled to order for possession – Landlord and Tenant Act, 1980, *sections 16, 17*

The applicants as tenants had sought a new lease of the premises they were occupying. The defendants as landlords had, however, sought to have the lease refused on the grounds laid out in section 17(2)(i) of the *Landlord and Tenant Act, 1980*, that is, that they planned to pull down and rebuild/reconstruct the premises in question. The applicants claimed that although planning permission had been obtained by the landlords, the conditions contained therein had not been complied with. Judge Buckley was satisfied that the building for which the landlords had got planning permission came within the meaning of the word 'reconstruct'. As certain conditions of the planning permission had not been complied with, the court could not at this stage make an order declaring that the tenants were not entitled to a new tenancy. The matter would be adjourned for a period so that the conditions of the planning permission could be complied with. If this had been done by the date of the adjourned hearing, the court would then propose to make the order sought.

***Johnston v Perrott*, Circuit Court, Judge Buckley, 03/05/2001** [FL4361]

LITIGATION

Dismissal of proceedings, *res judicata*

Practice and procedure – finality of litigation – res judicata – *issue estoppel – motion to dismiss proceedings – solicitors – legal profession – plaintiff seeking to re-litigate certain matters concerning land transaction – allegations of fraud and negligence – whether appropriate to dismiss action – whether pleadings disclosed cause of action*

The plaintiff had initiated proceedings against the defendants regarding a land transaction. The matter had originally been the subject of litigation by the first defendant, who had sued the plaintiff's father in relation to trespass and obstruction of a right of way. Judgment was given by Judge Kenny (12 June 1996) in favour of the first defendant and was upheld on appeal by Mr Justice Kelly in the High Court (22 July 1997). Thereafter, the plaintiff instituted the present proceedings challenging the original land transaction. The plaintiff made a number of allegations, including that there had been no natural justice in the original proceedings. In addition, the plaintiff alleged that his father had been the subject of undue influence. The plaintiff also made allegations of fraud and negligence against solicitors who had represented his father. Mr Justice O'Sullivan, in a judgment delivered on 16 May 2000, dismissed the plaintiff's claim and the plaintiff appealed. Mr

Justice Murphy, delivering judgment, held that a decision of the High Court on appeal from the Circuit Court was final and unappealable. It was clear that the plaintiff was attempting to reopen an issue raised by his father in the Circuit Court. Judge Kenny had determined the issue relating to the validity of the contract of sale of the lands and the matter had been reheard in the High Court. Any further claim in this matter would be an abuse of the process of the court. The case being made against the solicitors was nowhere clearly stated. Mr Justice O'Sullivan had correctly dismissed the proceedings. The appeal would be dismissed and the order of the High Court affirmed.

***Ewing v Kelly and others*, Supreme Court, 31/10/2001** [FL4489]

Taxation of costs

Judicial review – taxation of costs – practice and procedure – litigation – statutory interpretation – taxing master – costs of objections – certiorari – *whether taxing master had jurisdiction to make order in question – whether ruling of taxing master should be disturbed* – Courts and Court Officers Act, 1995, *sections 27(6), 27(7)* – Rules of the Superior Courts 1986, *order 99, rule 37(18), rule 37(22), rule 38(1), rule 38(3)*

An order of costs had been made against the applicant in favour of a third party with regard to the costs of a motion. The applicant had certain objections to the order of costs as taxed by the taxing master. The taxing master accordingly heard those objections and also heard submissions from the third party and reserved his ruling. On delivering his ruling, which disallowed the applicant's objections, the third party applied for and was granted by the taxing master the costs of the hearing of the objections. The applicant did not appear at the ruling and the measurement of the costs involved was adjourned. At the adjourned date, the applicant's representative argued that the taxing master had no jurisdiction under section 27(6) of the *Courts and Court Officers Act, 1995* to award the costs of the objections. The applicant sought a review of the entire ruling of the taxing master under order 99, rule 38(3), which was still pending. The applicant also initiated a judicial review action in respect of the order awarding the costs of the objections, which was the present application. Laffoy J held that the fact that the applicant had a review pending under order 99, rule 38(3) of the taxation decision did not preclude the seeking of relief via judicial review. The discretion of the taxing master was precise and limited and did not extend to the making of the order in question. The burden of the costs of retaining professional people with regard to the taxation of costs fell on the party retaining those people. Accordingly, the application was acceded to and an order of *certiorari* was issued. The taxing master appealed to the Supreme Court. Mr Justice Geoghegan, differing somewhat in his approach to the matter in comparison with the view of the High Court judge, held that under the terms of section 27(6) of the *Courts and Court Officers Act, 1995*, the taxing master did not possess the necessary jurisdiction to make the order in question. The appeal would be dismissed.

***Gannon v Taxing Master Flynn*, Supreme Court, 04/10/2001** [FL4395] G

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SPRING CONFERENCE 2002

8 – 10 March 2002 at Faithlegg House Hotel, Waterford

Friday 8 March

20.00 - 21.30	Registration
21.00	Welcome in hotel bar

Saturday 9 March

10.00 - 13.00	GUEST SPEAKERS

1. Neil Faris (Cleaver Fulton Rankin) *Developments in human rights legislation*
2. Kevin Langford (Arthur Cox) *Bullying and harassment in the workplace*
3. Eoin Dee (Nolan Farrell & Goff) *Discovery*
4. Patrick Harney (Matheson Ormsby Prentice) *Tax and property transactions*

Sunday 10 March

13.00	ACTIVITIES: Health centre, golf, walking, fishing, tennis, cycling
19.30 - 20.00	RECEPTION
20.00 till late	BANQUET and DJ (black tie)

Notes:

1. Solicitors wishing to attend must apply through SYS.
2. Accommodation at Faithlegg House Hotel 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 €216 pps and includes Friday and Saturday night accommodation, two breakfasts, reception, subsidised activities, banquet and conference materials.
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 18 February 2002 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. Cancellations must be notified to waylmer@efc.ie on or before 27 February 2002.
7. 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) _____

I enclose cheque payable to SYS, in the sum of €216 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

Environmental law developments in Ireland and future European imperatives

In June 2001, Eurostat (the statistical office of the European Communities) published its second edition of a report entitled *Environmental pressure indicators for the EU*. It notes that energy consumption continues to rise and that between 1985 and 1998 it grew by 48% in Ireland, well above the EU average of 16%. This was attributed mainly to the growth in demand for petrol and diesel fuel for use by road vehicles, and in Ireland sales were well above the EU average. In terms of greenhouse gas emissions, Ireland has already exceeded its agreed limits, which means that if the EU is to meet its target of reduction under the *Kyoto agreement*, these must be reduced. Air pollution is decreasing in the EU as a whole, but Ireland is a notable exception. Recycling increased almost unanimously throughout the EU, but municipal waste continued to grow. Ireland was among the countries that recycled the least and was one of the higher producers in terms of waste generation.

The EU perspective of 'gaining better knowledge of the pressures on our environment', combined with the goal of sustainable development and the call for a wider range of tools for environmental policy as expressed in the sixth environment action programme, reflect the direction of European environmental law and consequently Irish law.

The following details the areas of recent and prospective change in environmental law in Ireland.

Recent developments

Air pollution. Unless covered by the IPC process, certain air emission must be licensed under the *Air Pollution Act, 1987*. The license is granted by the relevant local authority, with provision for an appeal to An Bord Pleanála. In assessing an application, the local authority must ensure compliance with all applicable environmental standards and adoption of the best practical means to prevent air emission. Local authorities have wide powers to enforce the *Air Pollution Act*. These powers are vested in the EPA for activities subjected to IPC. The Air Pollution Act, 1987 *(Sulphur Content of Heavy Fuel Oil and Gas Oil) Regulations 2001* implement directive 1999/332/EC providing for a reduction in the sulphur content of certain liquid fuels.

Car emissions. The *European Communities (Consumer Information on Fuel Economy and CO2 Emissions of New Passenger Cars) Regulations* give effect to Council directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO2 emissions of new passenger cars. The regulations specify the requirements for consumer information to be displayed on new car labels and posters at points of sale. A consumer information guide is required to be produced by an authorised body (the Society of the Motor Industry in Ireland) and to be made available centrally and at all points of sale. Promotional literature and material must also include relevant consumer information and may not contain information that may confuse customers. These regulations came into operation on 24 August 2001.

Dangerous substances. Council directive 94/55, dealing with the transport of dangerous goods by road, applies to Ireland. In addition, the transport of dangerous substances is mainly governed by regulations made under the *Dangerous Substances Acts, 1972-1979* and EC regulations. The National Authority for Safety and Health has approved a code of practice for the carriage of dangerous substances. The *EC (Safety Advisors for the Transport of Dangerous Goods by Road and Rail) Regulations 2001* implement Council directives regarding standards for safety advisors. The transfrontier movement of most hazardous wastes is regulated by the EPA under the *EC (Transfrontier Shipment of Waste) Regulations 1998* (SI 149 of 1998) that give effect to EC regulations on the supervision and control of shipments of waste within, into and out of the European Communities.

Eco-labelling. Regulation EC No 1980/2000 on a revised Community eco-label award scheme amends the voluntary accreditation scheme established in 1992 for organisations whose products are environmentally friendly. The 2000 regulation aims to increase the effectiveness of the scheme. The National Standards Authority of Ireland arranges certification in Ireland of eligible candidate products.

Environmental management. There is no Irish or EU legislation requiring mandatory environmental auditing. However, in its sixth environment action programme, the EU continues to focus on sustainable development and the importance of integrating environmental concerns into all relevant policy areas. It adopts a more strategic approach and calls for the active involvement and accountability of all sections of society in the search for innovative, workable and sustainable solutions to environmental problems. EC Council regulation 1836/93/EEC, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme, provides that a scheme, commonly known as EMAS, be established to promote competition between industrial activities on environmental grounds. In Ireland, the National Accreditation Board is the competent body for the scheme, which allows companies to demonstrate their environmental expertise in relation to a particular production site.

Habitats protection. Council directive 92/43/EC on the conservation of natural habitats and of wild flora and fauna, commonly known as the *Habitats directive*, and also the Council directive 97/62/EC adapting it to technical and scientific progress, have been implemented in Ireland by the *EC (Natural Habitats) Regulations 1997 and 1998*. Directive 79/409/EEC, as amended, on the conservation of birds (the *Birds directive*) has been implemented in Ireland by the *EC (Conservation of Wild*

Birds) Regulations 1985-1999. Sites of Community Importance must be designated under the *Habitats regulations* by June 2004. A list of proposed sites has been prepared and extensive land use controls affecting these sites have been introduced. Habitats and certain species of flora and fauna are protected under the *Wildlife Acts, 1976 and 2000* and by orders made under the *Planning Acts*. The *Wildlife (Amendment) Act, 2000* in particular represents significant progress. The location of major new developments must be carefully considered in areas subject to habitat-protected legislation.

Planning and sustainable development. The *Planning and Development Act, 2000* consolidates the legislative code for planning in Ireland and considerably strengthens the powers available to planning authorities in respect of controlling development and enforcing planning controls. Most new development of land or buildings, including material changes of use, continues to require planning permission under the act. The 2000 act now refers to 'sustainable development' without providing a definition of that phrase. The planning process is regulated by local authorities that may, on submission of an application to them, refuse permission or grant it subject to certain conditions. There is an administrative appeal from a local authority decision to the independent An Bord Pleanála (www.pleanala.ie).

The newer form of planning permission under the 2000 act seeks to incorporate extensive measures for environmental protection, an expression which includes habitat protection, protection of residential and scenic amenities, the proper planning and development of the area which might be affected by a proposed development, and, where there is no other appropriate legislation, polluting emissions from a development. All planning permissions are granted in the context of statutory land use development plans. Under the 2000 act, there are obligations on local authorities to develop six-yearly development plans which will include the concept of sustainable development (still not defined.) A new housing strategy requires developers to provide up to 20% of land zoned for housing and /or other uses to be set aside for social and affordable housing. This is novel.

Equally novel is the establishment of strategic development zones, sites selected by the government for the purposes of fast-track industrial development. And An Bord Pleanála can now take into account environmental matters, which it previously would have shied away from, by referring to them as matters not within its remit, or best left to the EPA under its IPC licensing function. Such will no longer be the case, and it remains to be seen whether objectors will be accordingly given two full bites at the cherry.

Seveso 2 directive. The *EC (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000* (SI 476 of 2000) implement Council directive 96/82/EC. Known as the *Seveso 2 regulations*, they apply to establishments where dangerous substances are present in amounts equal to or exceeding the application thresholds. Operators of establishments are required to take all necessary measures to prevent the occurrence of major accidents and to limit the consequences of accidents for people and the environment. The regulations impose duties in respect of safety management systems, preparation of safety reports and emergency preparedness and also affect development in the context of land use planning decisions. The regulations set out the arrangements for the appointment of competent authorities, enforcement and the provision of information. A number of authorities are involved in the administration of this law, particularly the Health and Safety Authority, the local authority, the fire authority and the EPA in relation to IPC licensed activities.

Hazardous waste. The primary objectives of the national hazardous waste management plan, released by the Environmental Protection Agency on 5 July 2001, are to prevent and minimise hazardous waste and to manage the hazardous waste that cannot be prevented in an environmentally sound manner. The main recommendations are to put in place an extensive prevention programme, to improve hazardous wastes infrastructure in Ireland, strive for self-sufficiency in recovery and disposal of hazardous waste, and ensure that funding and resources should be made available to achieve the measures detailed in the plan.

Waste licensing. Under the *Waste Management Act, 1996*, all significant waste disposal and recovery activities must be licensed by the EPA, which is the body charged with issuing and enforcing waste disposal licenses. A waste license is an integrated license required under the *Waste Management Act, 1996*. The *Waste Management (Licensing) (Amendment) Regulations 2001* provide that an application for the grant or review of a waste licence may be withdrawn only where the said application concerns a proposed waste activity.

Waste management. The *Waste Management (Amendment) Act, 2001* was signed by the president on 17 July 2001. It amends and extends the *Waste Management Act, 1996* and, in particular, amends that act with regard to the procedure for the making of waste management plans under it so that any obstacles to the state being able to comply fully with the provisions of certain acts adopted by institutions of the European Communities by reason of any failure of local authorities to make such plans are removed. It includes amendments to the first schedule to the *Environmental Protection Agency Act, 1992* and the *Litter Pollution Act, 1997*. The Waste Management Act, 1996 *(Prescribed Date) Order 2001* provides that 14 September 2001 was the prescribed date by which a waste management plan under section 22 of the *Waste Management Act, 1996* must be made.

The *Waste Management (Collection Permit) Regulations 2001* prescribe that on or after 30 November 2001 the collection of waste on a commercial basis requires a waste collection permit from a relevant local authority in accordance with section 34(1) of the *Waste Management Act, 1996*. The regulations set out procedures for the making of permit applications, public consultation, consideration by local authorities of submissions in relation to permit applications, and the grant, refusal and review of permits by local authorities. Certain waste collection activities that are subject to controls under other legislation are exempt from the permitting requirement.

The *Waste Management (Farm Plastics) Regulations 2001* revise and replace the 1997 regulations and are designed to assist the recovery of waste farm plastics. They impose obligations on importers and manufacturers of certain farm plastics for this purpose including an obligation to operate a deposit and refund scheme, to collect waste farm plastics, to take steps for the recovery of such waste, to register with and provide information to local authorities and to provide information to purchasers. An exemption from these obligations is available to persons who participate in a waste recovery scheme operated by an approved body.

The *Waste Management (Use of Sewage Sludge in Agriculture) (Amendment) Regulations 2001* amend the 1998 regulations by replacing the two tonne per hectare per year limit on the amount of dry matter to be added to soil, with limits based on absolute quantities of specified heavy metals which may be

introduced into soil per hectare per year subject to the carrying out of nutrient management plans. The regulations also require that sludge is used in accordance with a nutrient management plan and provide for the inclusion of additional technical parameters to be entered in the sludge register provided for in the 1998 regulations.

Water pollution. Unless covered by the IPC process, the discharge of all trade and sewage effluents to water and sewers requires a license from the relevant local authority with an appeal to the planning appeals board. Local authorities have wide powers to enforce the *Water Pollution Act*. These powers are vested in the EPA for activities which are subject to IPC.

The *Water Quality (Dangerous Substances) Regulations 2001* prescribe water quality standards in relation to certain substances in surface waters and give effect to certain provisions of the *Water framework directive* (2000/86/EC). The *Protection of Groundwater Regulations 1999* provides additional protection for groundwater against discharges of certain dangerous substances. The *EC (Drinking Water) Regulations 2000*, which do not come into operation until 1 January 2004, prescribe quality standards to be applied in relation to certain supplies of drinking water.

The *Urban Waste Water Treatment Regulations 2001*, which revoke and consolidate previous legislation and give effect to a number of EU directives, prescribe a further 30 water bodies as sensitive areas. These regulations prescribe requirements in relation to the provision of collecting systems and treatment standards and other requirements for urban wastewater treatment plants generally and in sensitive areas. They provide for monitoring procedures in relation to treatment plants and make provision for pre-treatment requirements in relation to industrial wastewater entering collecting systems and urban waste treatment plants.

Developments in progress

Environmental impact assessment. Council directive 97/11/EC of 3 March 1997 amending directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment was required to be transposed by 14 March 1999 at the latest, and is purportedly implemented by the complementary sets of Irish regulations SI 92 of 1999 (planning and development) and SI 93 of 1999 (EIAs).

The consolidated EIA procedure ensures that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion, and all results are taken into account in the authorisation procedure of the project. The consolidated EIA directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.

Following the signature of the *Aarhus convention* by the Community on 25 June 1998, the commission adopted on 18 January 2001 a proposal for a directive amending, among others, the EIA directives. This proposal intends to align the provisions on public participation in accordance with the *Aarhus convention* on access to information, public participation in decision-making and access to justice in environmental matters.

Strategic environmental assessment (SEA). Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment was adopted on 27 June 2001 and member states are required to bring into force laws to comply with the directive before 21 July 2004, three years after its entry into force. It requires that all plans and programmes that set a framework for the consideration of projects that are currently subject to EIA and all plans and programmes that require assessment pursuant to the *Habitats directive* will be made subject to systematic environmental assessment. The directive requires the preparation of an environmental report analogous to an EIS and will also require consultation with authorities/bodies that are likely to be concerned by the environmental effects of implementing plans and programmes. The directive is of a procedural nature and its requirements should be integrated to existing procedures. It will have significant effects on local authorities' implementation of their development plans.

IPPC licensing. The European directive on integrated pollution prevention and control (IPPC) of 1996 is yet to be implemented by way of regulation in Ireland but its introduction into our system will be relatively smooth, given that we have already successfully and quite comprehensively implemented the system of integrated pollution control (IPC) licensing. 30 October 1997 is the key date for compliance. The procedures envisaged under the *IPPC directive* will result in a review of current IPC licences and in a small number of new licences being issued as well as amendments to our principal legislation. The Environmental Protection Agency will continue to issue and enforce the IPPC permits.

Landfills. By way of stringent operational and technical requirements on waste and landfills, the *Landfill directive* (99/31/EC) provides for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment from landfilling of waste, during the whole lifecycle of the landfill. The deadline for implementation of the directive was July 2001.

Wind energy. The state's 18 wind farms produce 120 Megawatts of the national capacity of 4,750Mw. The government's renewable electricity programme, announced in June 2001 as part of the green paper on sustainable energy, has set targets of generating an extra 500Mw of wind-power by 2005. The programme is intended to help reduce greenhouse gases emissions by 1,000,000 tonnes a year.

Future developments

Environment action programme. The EU's sixth environment action programme 2001-2010 adopts a more strategic and integrated approach than previous programmes. It is expected to become operational early next year. It sets out the objectives for environmental policy in the Community over the next five to ten years and identifies four priority areas as follows:

- **Climate change:** to stabilise the atmospheric concentrations of greenhouse gases at a level that will not cause unnatural variations of the earth's climate
- **Nature and biodiversity:** to protect and restore the functioning of natural systems and halt the loss of biodiversity in the European Union and globally, and to protect soils against erosion and pollution
- **Environment and health:** to achieve a quality of the environment where the levels of man-made contaminants, including different types of radiation, do not give rise to significant impacts on or risks to human health
- **Natural resources and waste:** to ensure the consumption of renewable and non-renewable resources does not exceed the carrying capacity of the environment. To achieve a de-coupling of resource use from economic growth through significantly improved resource efficiency, dematerialisation of the economy, and waste prevention.

To achieve improvements in these areas, key approaches to be taken are ensuring the implementation of existing environ-

The Law Society of Ireland invites you to participate in a

public seminar

on ***July 2002 – The end of rent control: Mespil Flats revisited?***

Date: Friday 22 February 2001
Time: 2–5pm
Venue: The Law Society of Ireland, Blackhall Place, Dublin 7

Following the Supreme Court's 1981 ruling that parts II and IV of the *Rent Restrictions Act, 1960*, as amended, were unconstitutional, the *Housing (Private Rented Dwellings) Act, 1982* was enacted to bring about the eventual cessation of the right to retain possession of formerly rent-controlled dwellings and provide for a gradual phasing-out of the statutory protection. From 26 July 2002, many controlled dwellings will cease to be so, and rents may be fixed at market levels by the courts. The result for many of the tenants will be that they will no longer be able to afford to remain in their homes and some successor tenants may face eviction. Issues arise in relation to funding for the housing or rehousing of previously-controlled tenants, their legal representation, the appropriate courts or tribunals to deal with applications to fix rents, the dilemmas for landlords and the roles of the local authorities and the departments of the environment and of social, community and family affairs.

Attendance is free, but places are limited and will be allocated to those who register. Please register by sending your name and contact details, including e-mail address, to Abby Hassan, Law Society, Blackhall Place, Dublin 7, e-mail a.hassan@lawsociety.ie.

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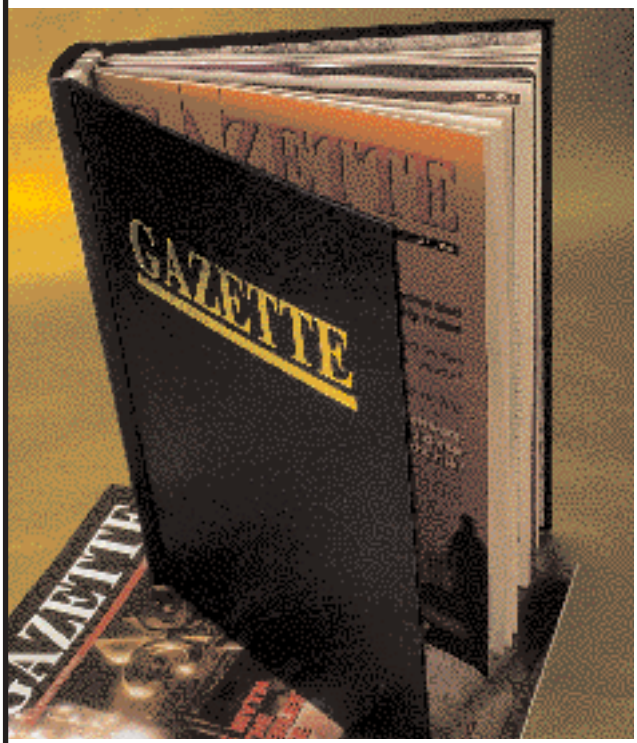

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mental legislation, integrating environmental concerns into all relevant policy areas, working closely with business and consumers to identify solutions, ensuring better and more accessible information on the environment for citizens, and developing a more environmentally conscious attitude towards land use.

World summit on sustainable development 2002. The European Commission has adopted a communication, which sets out priorities and actions in preparation for the world summit on sustainable development 2002. Its objectives include increasing global equity and partnership for sustainable development, adopting environment and development targets, and promoting more effective action at national level with stronger international monitoring.

Clean Air for Europe (CAFE). CAFE is a communication from the commission that provides for a programme of technical analysis and policy development leading to the adoption of a thematic strategy under the sixth environment action programme. It envisages five-year policy cycles with the first integrated clean air strategy being adopted in 2004. The programme's objectives include the collection of scientific information relating to the effects of outdoor air pollution, leading to the development and updating of air quality objectives and the identification of the measures required to reduce emissions.

Chemicals policy. The European Commission adopted a white paper on 13 February 2001 that attempts to balance the essential need to protect human health and promote a non-toxic environment with the requirement to maintain and enhance innovation and the competitiveness of the EU chemical industry. It proposes that the present regulatory distinction between existing and new substances will be removed. The proposed scheme would require the industry producing a particular substance to be responsible for supplying data about that chemical and the authorities would be called in to evaluate the data provided by this industry and would decide on substance-tailored testing programmes following industry proposals. Increased responsibility would also pass to users in the manufacturing chain (formulators and downstream users) who would have to supply data on the particular uses they make of a substance.

Kyoto protocol. At the UN climate-change summit in Bonn last June, both the EU and the G77 group of developing countries led the way to an agreement among all member countries of the UN, excluding only the United States, to proceed with the implementation of the *Kyoto protocol*. The key priority for the EU's sixth environment action programme is the ratification and implementation of the Kyoto protocol to cut greenhouse gas emissions by 8% over 1990 levels by 2008-12, as a first step to the long-term target of a 70% reduction.

Environmental liability. The European Commission adopted a white paper on environmental liability on 9 February 2000. The objective of the white paper was to consider how the 'polluter pays' principle, one of the key environmental principles in the *EC treaty*, can best be applied to serve the aims of Community environmental policy. It addresses the issue of responsibility for remedying environmental damage. It is concerned to promote better prevention and ensure that the restoration of environmental damage would result in an increased internalisation of environmental costs, which means that the costs of preventing and restoring environmental damage will be paid by the parties responsible for the damage rather than being financed by society in general, in other words, the taxpayer.

The Environment Directorate general working paper on environmental liability proposed a directive on prevention and restoration of significant environmental damage and a draft directive is expected before the end of this year. The working paper proposes that the person controlling an activity that causes significant environmental damage would be held liable for that damage. A 30-year limitation period is proposed on liability and it is proposed that liability would not be retrospective. It is also proposed that liability should be strict for damage caused by dangerous activities and fault-based for biodiversity damage caused by a non-dangerous activity, and these categories would be defined in an annex to the proposed directive. Member states would be obliged to enforce compliance with the obligations under the proposed directive. It is proposed that certain bodies with an interest in the protection of the environment would be entitled to bring legal proceedings to review these responses of competent authorities in each member state.

Waste. On 19 December 2000, the European Commission published proposals for directives of the European Parliament and of the Council on both waste electrical and electronic equipment (WEEE) and on the restriction of the use of certain hazardous substances in electrical and electronic equipment (HSEEE). A further proposal relating to the design and production of electrical and electronic equipment is planned.

These two proposals provide for the prevention/reduction of waste from electrical and electronic equipment and also for the promotion of re-use, recovery and recycling of such equipment. The obligations under the proposed directives are placed on 'producers' of the equipment, which includes manufacturers, sellers and importers.

The obligations under the *WEEE directive* comprise requirements to collect a specified amount of such equipment per year and the facility for returning equipment at the end of its life without charge. Producers will also be required to meet the costs of the collection of WEEE from private households and share the cost of managing historical waste. The *HSEEE directive* will require the substitution of substances like lead, mercury and cadmium in this equipment. G

FURTHER INFORMATION
www.epa.ie
www.enfo.ie
www.europa.eu.int/comm/environment

Deborah Spence is a solicitor with the Dublin law firm Arthur Cox.

Recent developments in European law

ENVIRONMENTAL LAW

Case C-324/99 *DaimlerChrysler AG v Land Baden-Württemberg*, 13 December 2001. A decree of the respondent requires that waste produced in that region must be offered to an agency for special waste which sends it to a treatment centre. The decree provides for two treatment centres – a discharge centre and an incinerator. Waste that cannot be treated in those centres is sent by the agency to an establishment suggested by the producer of the waste, if the waste can be treated there in accordance with German environmental protection legislation. The applicant argued that that it was harmed by the decree as it could have the waste produced by its factories in that region incinerated more cheaply abroad, particularly in Belgium. Shipping the waste to the incinerator in Hamburg caused it to incur additional costs of €1 million. It argued that this obligation was contrary to the treaty rules on free movement of goods, the directive on waste and the regulation on the supervision and control of shipments of waste within, into and out of the EU. The directive seeks to harmonise national legislation on waste disposal and establishes the need to observe principles of proximity, priority for recovery and self-sufficiency in relation to waste. The ECJ said that the regulation defines in a harmonised manner at an EU level the rules relating to shipments of waste in order to ensure the protection of the environment. Thus, any national measure relating to shipments of waste must be assessed in the light of the provisions of the regulation and not the treaty articles on free movement of goods. The German decree is subject to the condition that the circumstances in which the waste is disposed of should satisfy German environment protection legislation. The regulation does not authorise a member state to impose such a condition. The cases in which a state can object to a shipment of waste are listed exhaustively in the regulation. Where restrictions are laid down in legislation of general application, they must be based exhaustively on the principles of proximity, priority for recovery and self-sufficiency. The German legislation does not implement the principle of proximity, as it takes no account of the proximity of the treatment installation. Likewise, the German legislation makes no contribution to the principle of self-sufficiency.

FREE MOVEMENT

Goods

Case C-30/99 *Commission of the European Communities v Ireland*, 21 June 2001. The commission brought an action against Ireland under article 226 of the treaty. Ireland prohibits the marketing in Ireland of articles made from precious metals from other member states unless they comply with Irish provisions concerning standards of fineness and obliges some imports to replace their hallmarks with those for the appropriate lower official Irish standard of fineness. The commission argued that by failing to recognise hallmarks from other member states, Ireland was failing to fulfil its obligations under article 28 of the treaty. The ECJ examined whether the Irish rules were capable of hindering intra-Community trade and could therefore be considered as a measure having equivalent effect to a quantitative restriction. The Irish legislation made importing these articles into Ireland more difficult and costly. The court considered that the Irish rules could not be justified on grounds of consumer protection. An Irish consumer is given equivalent and intelligible information from a hallmark on an item from another member state as he is given by an Irish mark. Therefore, Irish legislation goes further than is required for consumer purposes. It was held to be in breach of article 28.

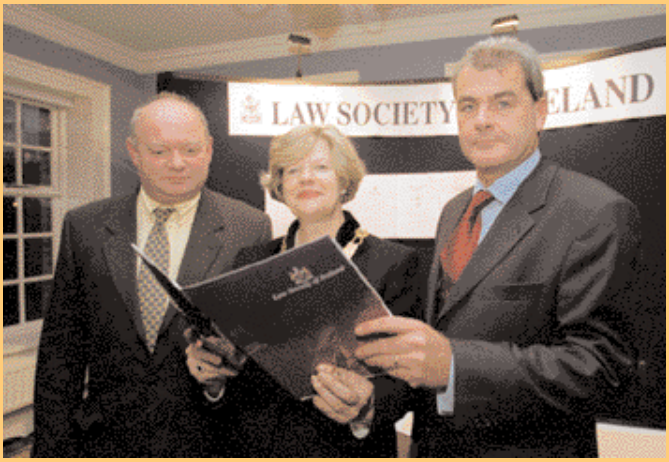
Persons

Case C-212/99 *Commission of the European Communities v Italian Republic*, 26 June 2001. The commission argued that universities in Italy discriminated between native foreign language assistants and those from other member states. A new regime had been introduced for foreign language assistants in Italy that was fairer than the one which preceded it. Experience gained by foreign language assistants prior to this new law was not taken into account in terms of pay and social security. The ECJ held that this discrimination failed to fulfil Italy's obligations under article 39 of the *EC treaty*.

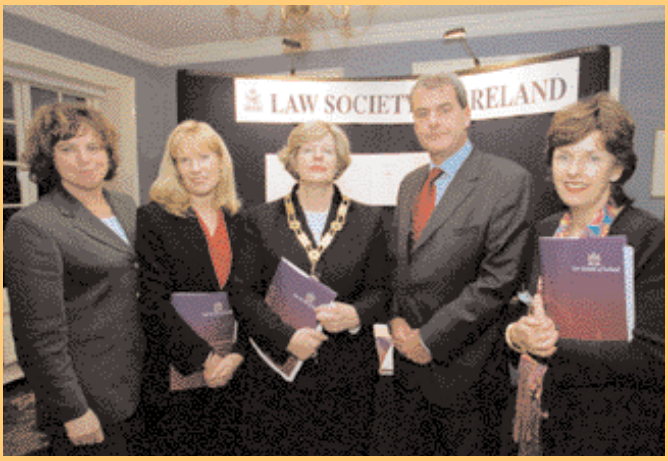
FREEDOM TO PROVIDE SERVICES

Case C-17/00 *François De Coster v Collège des bourgmestre et échevins de Watermael*, 29 November 2001. A Belgian municipal council imposed an annual tax on satellite dishes between 1997 and 2001. The tax regulation had been abolished from 1 January 1999 after the commission had questioned its compatibility with EU law. De Coster disputed the tax for 1998. The municipality defended the tax on the basis of protection of the urban environment – the need to restrict the proliferation of satellite dishes in its area. De Coster argued that the tax was an obstacle to the free reception of television programmes from other member states and created a disparity between cable broadcasting companies and satellite broadcasters. The ECJ held that national taxation does not fall with the scope of the EU but the member states must nevertheless exercise their powers in a manner consistent with EU law and especially with the freedom to provide services. Broadcast and transmission of television comes within the rules relating to the provision of services. Any national rules which impede the activities of operators in other member states or which make the provision of services between member states more difficult than the provision of services purely within one member state must be abolished. The introduction of a tax like the one discussed imposes a levy on the reception of television programmes transmitted by satellite with does not apply to the reception of programmes transmitted by cable. This tax had the effect of dissuading residents of the municipality from picking up programmes broadcast by satellite from other member states. Thus, satellite broadcasters established in other member states are at a disadvantage compared to cable distributors operating in Belgium. The need to protect the environment could be achieved by other methods less restrictive of the freedom to provide services, such as requirements relating to the size or position of the dishes. G

New conveyancing documents launched



Launching the revised 2001 edition of the building agreement are *(left to right)* Noel O'Connor of the Construction Industry Federation and the Irish Home Builders' Association, Law Society President Elma Lynch and Patrick Dorgan, chairman of the society's Conveyancing Committee



At the launch of the 2001 edition of the requisitions on title are *(left to right)* Vivienne Bradley and Susan Ryan of the Law Society's Requisitions Taskforce, Law Society President Elma Lynch, Conveyancing Committee chairman Patrick Dorgan and the task-force's Marjorie Murphy

Launching the 2001 edition of the contract for sale are *(left to right)* Gabriel Brennan and Patrick Sweetman of the Contract Taskforce, Law Society President Elma Lynch, Conveyancing Committee chairman Patrick Dorgan and the taskforce's Deirdre Morris

At the launch of the new pre-contract checklists are *(left to right)* Vivienne Bradley, Law Society member of the taskforce; President Elma Lynch; Conveyancing Committee chairman Patrick Dorgan; Helen Sheehy, president of the Dublin Solicitors' Bar Association; and Marjorie Murphy, DSBA member of the taskforce

Scholarly work

Athlone law firm Tormeys sponsors an annual scholarship for post-primary students in the Athlone and surrounding areas to pursue a career in law. Pictured at the recent award presentation to the 2001 scholarship winner Niamh Conway are Catherine Murphy-Flynn, practice manager at Tormeys, Mr Justice Richard Johnston, and Barra Flynn, principal of the firm

History in the making

The Irish Legal History Society recently awarded a £1,000 bursary to assist research in Irish legal history. Presenting the cheque to the recipient, Sean Donlan, is Law Society President Elma Lynch, in the company of UCD's Dean of Law Paul O'Connor *(right)* and Professor Nial Osborough *(left)*, president of the Irish Legal History Society

Medal of honour
Former Law Society president Moya Quinlan was recently awarded life membership and a citation of honour by the Dublin Solicitors' Bar Association. Pictured at the event are *(left to right)* DSBA president Helen Sheedy; Kevin O'Higgins, DSBA PRO; Moya Quinlan, who was president 1980/81; and Law Society President Elma Lynch

New face at the LRC
Solicitor Marian Shanley has been appointed by the government as a part-time member of the Law Reform Commission. Shanley also teaches company and commercial law at the Law Society's law school

Outgoing President's Dinner

Pictured at the recent Outgoing President's Dinner at Blackhall Place were *(top left, from left to right)* past-president Andrew Smyth, Judge Frank O'Donnell and past-president Laurence K Shields; *(top right, from left to right)* past-president Moya Quinlan and outgoing president Ward McEllin; *(bottom left, from left to right)* Council members Tom Murran and Patrick Casey with junior vice-president Philip Joyce; and *(bottom right, from left to right)* past-president Patrick Glynn, Council member Owen Binchy and past-president Bruce St John Blake

DSBA honours veteran solicitors
Then president of the Law Society, Ward McEllin, with members of the Dublin Solicitors' Bar Association at a lunch to honour Dublin solicitors who have been qualified for 50 years. At the lunch was the late Gerry Hickey, president of the Law Society for 1978/79, who passed away recently

In good company at CLE seminars

Pictured at the recent CLE seminar on the *Company Law Enforcement Act, 2001* were *(above left, from left to right)* William Prentice of Matheson Ormsby Prentice; Patricia McGovern of LK Shields; Paul Appleby, the director of corporate enforcement; Paul Egan of Mason Hayes & Curran; Jane Marshall of McCann FitzGerald; and Hugh Garvey of LK Shields. At the seminar on defamation law were *(above right, from left to right)* Garrett Cooney SC, Mr Justice Adrian Hardiman, Michael Kealey of McCann FitzGerald, and the Law Society's CLE co-ordinator Barbara Joyce

Time, please
The second edition of *Cassidy on the licensing acts*, was launched by the tánaiste in December 2001. Pictured at the launch are Philippe Savinel, chief executive of Irish Distillers, Tánaiste Mary Harney, the author Constance Cassidy; and Elanor McGarry, managing director of Round Hall Sweet & Maxwell, the publisher

Overend award
A&L Goodbody recently awarded the fifth annual Rodney Overend Educational Trust Fund grant to Bairbre O'Neill, who is now at Yale Law School. Pictured at the presentation are *(left to right)* Marcus Beresford, chairman of A&L Goodbody; Bairbre O'Neill; Mr Justice Thomas Finlay and Law Society Director General Ken Murphy, advisors to the trustees

Society team thrashes Scots 41-29

The Law Society of Ireland rugby team defeated their Scottish counterparts in an epic and entertaining encounter in Edinburgh on 22 September 2001. To a raucous reception from the significant Irish support in the huge crowd, the society's team took to the field led by captain and back-row supremo Colin Kavanagh. Straight from the kick off, Kavanagh's dynamic and youthful pack tore into the opposition, winning quick first-phase ball. This was to be the recurring theme throughout the opening period of the game, as the Irish pack maintained possession of their own ball and, more often than not, turned over possession during periods of opposition attack. The first half culminated with the Irish taking a 7-17 lead. Mark Woodcock's use of the ball was excellent in the final period of the game and produced two unconverted tries, scored by Ronnie Neville and Jason Teahan. A consolation try by the Scots in the final minutes saw matters finish at 29-41. In his post-match interview with the *Daily Record*, Kavanagh expressed his delight with the performance of the team and singled out Conor Bass and replacement half-backs Woodcock and Michael McElligott for particular praise. *Michael McElligott is a solicitor with the Dublin law firm Mason Hayes & Curran.*

Cyber ceremony: Recipients of the first diplomas in e-commerce, which were conferred in November

SADSI
Solicitors Apprentices Debating Society of Ireland

Message from the auditor

The 2001 committee did an excellent job in advancing the interests of Irish trainee solicitors. I congratulate Claire O'Regan and her committee on their highly successful year. It is the incoming committee's main objective to build upon and consolidate the achievements of our predecessors. To this end, we will seek to act as a non-contentious diplomatic forum to advance your views and interests in the most constructive manner.

In recent years SADSI has increasingly leaned towards welfare issues. The new committee will focus on working as closely as possible with the Law Society to assist in the drafting of a code of conduct for training and trainee solicitors in order to ensure that all aspects of the modern training experience are addressed in a well-balanced and applicable way. With regard to issues such as the *Minimum Wage Act*, we will conduct an in-depth study of all employment legislation relevant to our training period.

Last year's careers day was an outstanding success. The planning of this year's event has already begun. Please let us know if there are any areas you would like to see dealt with in the event, be it inside or outside the legal profession. We also welcome any suggestions you may have about other training or career development events that you would like to be held over the year. However, it is not all business – we hope to balance the more practical endeavours with plenty of social events. I am honoured to have this opportunity to act as auditor of SADSI, the only representative organisation for trainee solicitors in Ireland. SADSI is your organisation – it can only function with your involvement. I sincerely look forward to meeting you at the various social events around the country over the coming months.

Martin Hayes
sadsi2002@yahoo.com

Greetings from the new committee

As most of you are aware, as and from 1 January 2002, we are all now trainee solicitors. This change of terminology from 'master' and 'apprentice' to 'training' and 'trainee' solicitors should be embraced by all in the legal profession. However, as we are now no longer 'apprentices', the question arises as to whether SADSI should consider changing its name. A number of new names have been suggested, such as the Trainee Solicitors' Association, Association of Trainee Solicitors, Association of Trainee Solicitors of Ireland, Trainee Solicitors' Representative Association. Please feel free to express your opinion on these names or any alternatives to any member of the committee. The debate on the issue has only just begun, and it will be each and every trainee solicitor who will ultimately decide the fate of the title 'SADSI'.

- A new position on this year's committee is that of sports liaison officer. Noel Devins is currently organising both Dublin and regional sporting events and has also begun contact with our colleagues across the water in Scotland with a view to organising a friendly soccer match. Of particular relevance to many trainee solicitors is the issue of discounted membership rates with their local gym, golf club, and so on. We hope to make significant inroads into the issue in the coming year.
- As there are a large number of trainee solicitors qualifying in the next few years, we intend to contact law societies in the UK, Europe, Australia, the US and Canada with a view to forging better links and also with a view to establishing a database of information on the necessary qualifications and the availability of work placements for newly-qualified solicitors.
- We will, of course, be organising the events that are so popular with trainee solicitors, such as a careers day, advocacy training, regional social events, debates and the annual SADSI ball.

Our e-mail address for this year is sadsi2002@yahoo.com.

SADSI officers and committee, 2001-2002

Auditor: Martin Hayes (Landwell Solicitors)
Vice-auditor: Áine Matthews (LK Shields, Solicitors)
Honorary secretary: Claire Foley (William Fry, Solicitors)
Honorary treasurer: Donncha O'Conchúir (Philip Lee, Solicitors)
Public relations officer: Laurence Cleary (PC Moore, Solicitors)
Debating co-ordinator: Ronan Feehily (McCann FitzGerald, Solicitors)
Sports liaison officer: Noel Devins (Mason Hayes & Curran, Solicitors)
Western representative: Dawn Carney (Lewis C Doyle & Co, Solicitors)
Southern representative: Ken Hegarty (TJ Hegarty & Son, Solicitors)
Mid-western representative: Dermot McKeon (McMahon, O'Brien Downes, Solicitors)
Eastern representative and welfare officer: Christian Victory (William Fry, Solicitors)
Eastern representative: Julie Brennan (McCann FitzGerald, Solicitors)

Moot court

The Law Society's European court team has reached the regional final of this year's European Moot Court Competition, which will be hosted in Portugal on 28 February. The Law Society is represented by Aideen Ryan (McCann FitzGerald), Niamh Counihan (Matheson Ormsby Prentice), Grainne Finn (William G Glynn) and Billy Brophy (Dorsey & Whitney). The team coach is the Law Society's Bríd Moriarty.

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 1 February 2002)

Regd owner: Francis and Ann Rogers; Folio: 13137F; Lands: Pollerton Big and Barony of Carlow; **Co Carlow**

Regd owner: John Monaghan; Folio: 9808; Lands: Rantavan; Area: 0.274 hectares; **Co Cavan**

Regd owner: Patrick V McCabe; Folio: 19121; Land: Greagharue; Area: 1 acre; **Co Cavan**

Regd owner: Alexander Rountree; Folio: 21063; Lands: Lisball; Area: 0.55 acres; **Co Cavan**

Regd owner: Robert and Kathleen Johnson; Folio: 25786F; Lands: Townland of Tromracastle and Barony of Ibrickan; Area: 50186 hectares; **Co Clare**

Regd owner: Cornelius Ahern; Folio: 32788F; Lands: Known as the townland of Ballyknock situate in the Barony of Imokilly; **Co Cork**

Regd owner: Mary Josesphine Fleming and Helen O'Donovan; Folio: 41867 (TIC Entry no 1 and 2); Lands: Known as the townland situate in the south of Brown Street and at the east of Allan's Quay, in the town of Youghal situate in the Barony of Imokilly; **Co Cork**

Regd owner: Donal and Suzanne Forde; Folio: 73081F; Lands: Known as the 'Marina' situate on the east side of Hartlands Avenue in the parish of St Finbars; **Co Cork**

Regd owner: Patrick O'Hehir and Catherine Esther O'Hehir; Folios: 29485 and 33393; Lands: Known as part of the lands of Reenadisert situate in the Barony of Bantry; **Co Cork**

Regd owner: Jermiah Cahalane; Folio: 222123; Lands: Known as the townland of Ionafora situate in the Barony of Carbery east (west division); **Co Cork**

Regd owner: Michael and Mary Green; Folio: 239; Lands: Lougherbraghy; Area: 12.7687 acres; **Co Donegal**

Regd owner: The county council of the county of Dublin; Folio: DN16553F; Lands: Property situate in the townland of Balally and Barony of Rathdown; **Co Dublin**

Regd owner: Martha May Gray; Folio: DN98535F; Lands: Property situate in the townland of Rush and Barony of Balrothery East; **Co Dublin**

Regd owner: Thomas Moran; Folio: DN2350F; Lands: a plot of ground situate to the east side of the Rise in the parish of Glasnevin and district of Clonturk; **Co Dublin**

Regd owner: Niamh McMahon; Folio: DN128133F; Lands: Property known as 52 The Way, Hunters Run, off Navan Road, Blanchardstown; **Co Dublin**

Regd owner: John and Catherine Rowan; Folio: DN17108F; Lands: a plot of ground situate on St Canice's Road in the parish of Glasnevin and district of Glasnevin; **Co Dublin**

Regd owner: Paul Butler and Tara Kernan; Folio: DN133310F; Lands: a plot of ground known as site 7, Foxborough Meadows, Balgaddy, situate in the townland of Balgaddy and Barony of Uppercross; **Co Dublin**

Regd owner: Noel Cullen; Folio: DN7924F; Lands: a plot of ground situate to the east of River Side Drive, in the parish of Coolock and district of Coolock; **Co Dublin**

Regd owner: Thomas Power and Pauline Power; Folio: DN6568; Lands: Property situate in the townland of Drimnagh and Barony of Uppercross; **Co Dublin**

Regd owner: Desmond Boyle; Folio: DN14841L; Lands: Property situate on the east side of Watermill Close in the town of Tallaght; **Co Dublin**

Regd owner: Thomas Clement Mangan; Folio: DN8632; Lands: Property situate in the townland of Newtown and Barony of Balrothery west; **Co Dublin**

Regd owner: Diarmuid Conway and Caitriona McGarrigle; Folio: DN119448F; Lands: Property situate in the townland of Balgaddy and Barony of Uppercross; **Co Dublin**

Regd owner: Allied Irish Banks Plc; Folio: DN3696; Lands: Property situate on the north-east side of the road in the village of Blanchardstown; **Co Dublin**

Regd owner: Allied Irish Banks Plc; Folio: DN163F; Lands: Property situate on the north side of Main Street in the townland of Blanchardstown; **Co Dublin**

Regd owner: Gerard Hoare and Sheila Lawlor; Folio: DN35567L; Lands: a plot of ground known as 4 Cul na Greine being part of the townland of Oldbawn and Barony of Uppercross; **Co Dublin**

Regd owner: Timothy and Noreen Cronin; Folio: DN9215L; Lands: Property situate to the east of Clonshaugh Road in the parish of Coolock, district of Coolock west; **Co Dublin**

Regd owner: Timothy and Noreen Cronin; Folio: DN7983F; Lands: a plot of ground situate to the north of Riverside crescent in the parish of Coolock east; **Co Dublin**

Regd owner: Norman and Elizabeth Lenihan; Folio: DN81896F; Lands: Property situate in the townland of Raheen and Barony of Newcastle; **Co Dublin**

Regd owner: Jack and Nuala Eising; Folio: 22763F; Lands: Townland of Caherawoneen south and Barony of Kiltartan; Area: 9.413; **Co Galway**

Regd owner: Eileen O'Sullivan; Folio: 451F; Lands: Townland Dromhale and Barony of Magunihy; **Co Kerry**

Regd owner: Brendan Sexton; Folio: 35589; Lands: Townland of Rusheen and Barony of Iraghticonnor; **Co Kerry**

Regd owner: Patrick Leane (deceased); Folio: 22187F; Lands: Townland of Coolroe and Barony of Dunkerron North; **Co Kerry**

Regd owner: Dermot Burke; Folio: 1296F; Lands: Common and Barony of Connell; **Co Kildare**

Regd owner: Michael Corley; Folio: 23877F; Lands: Kerdiffstown and Barony and Naas north; **Co Kildare**

Regd owner: Mary Carroll; Folio: 6233F; Lands: Ballyring Upper and Barony of Galmoy; **Co Kilkenny**

Regd owner: James Kearney (deceased); Folio: 2253; Lands: Caherlesk and Barony of Kells; **Co Kilkenny**

Regd owner: Thomas Greene (deceased) and Margaret Greene; Folio: 4101; Lands: Ballyvoulera or Moulerstown and Barony of Ida; **Co Kilkenny**

Regd owner: Stephen Kennedy; Folio: 6525F; Lands: West side of Fatima Place and Barony of parish of St Mary; **Co Kilkenny**

Regd owner: Daniel and Mary Lynch; Folio: 61F; Lands: Belline and Rogerstown (part) and Barony of Iverk; **Co Kilkenny**

Regd owner: John Joseph Tighe; Folio: 11135; Lands: Corderry (Peyton) parts and Laheen (Peyton) part; Area: 6.1687 acres and 5.4687 acres; **Co Leitrim**

Regd owner: John and Rita Fitzgerald; Folio: 34610F; Lands: Dooneen Upper and Barony of Pubblebrien; **Co Limerick**

Regd owner: James Flavin and Kathleen Flavin (deceased); Folio: 1392F; Lands: Townland of Ballyan and Barony of Shanid; **Co Limerick**

Regd owner: Patrick Dunne; Folio: 11076; Lands: Moneyfad; **Co Longford**

Regd owner: Christopher Mallon; Folio: 1860; Lands: Molly; Area: 10.4875 acres; **Co Longford**

Regd owner: Frederick Makim; Folio: 3849; Lands: Derryveagh; Area: 125.7375; **Co Longford**

Regd owner: Anthony Gargan; Folio: 8335; Lands: Callystown; Area: 3.844 acres; **Co Louth**

Regd owner: Timothy Carpenter; Folio: 12087; Lands: Jenkinstown; Area: 0.525; **Co Louth**

Regd owner: Malachy Kelly; Folio: 34734; Lands: Corraveggaun west and Barony of Tirawley; Area: 7.6637 hectares; **Co Mayo**

Regd owner: Patrick Joseph Smyth; Folio: 19211; Lands: Castletown; **Co Meath**

Regd owner: Michael Gleeson; Folio: 15619F; Lands: Bowling Green and Barony of Eliogarty; **Co Tipperary**

Regd owner: Edmond Nolan; Folio: 21834; Lands: Reardnogy More and Barony of Owney and Arra; **Co Tipperary**

Regd owner: Stuart and Catherine Piepenstock; Folio: 30931; Lands: Derry and Barony of Ormond Lower; **Co Tipperary**

Regd owner: Mary Ann Brophy; Folio: 2297; Lands: Derry and Barony of Lower Ormond; **Co Tipperary**

Regd owner: Richard O'Donnell (deceased), Folio: 14483; Lands: Nodstown and Barony of Middlethird; **Co Tipperary**

Regd owner: David Flangan; Folio: 18280F; Lands: Townland of Roanmore Park and Barony of Trinity Without; **Co Waterford**

Regd owner: Philip and Kathleen Harrington; Folio: 11247; Lands: Monksland; Area: 0.0875 acres; **Co Westmeath**

Regd owner: Edward N Smith; Folio: 3233F; Lands: Ballinacoola More and Barony of Shelmaliere east; **Co Wexford**

Regd owner: Edward N Smith (deceased); Folio: 23371; Lands: Tarahill and Barony of Ballaghkeen north; **Co Wexford**

Regd owner: Desmond Byrne (deceased); Folio: 871F; Lands: Donaghmore and Barony of Ballaghkeen north; **Co Wexford**

Regd owner: Michael McCormack; Folio: 10014; Lands: Killincarrig and Barony of Rathdown; **Co Wicklow**

WILLS

Clinch, Eamonn (deceased), late of Kilcoskan, The Ward, Co Dublin. Would any person having knowledge of a will made by the above named deceased, who died on or about 22 December 2001, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3, tel: 01 833 3097 or fax: 01 833 2515, Ref: MOD/4893

Cowley, Nuala (deceased), also known as Fionnghuala Nic Amhaghlaidh, late of Coolavokig, Macroom, Co Cork. Would any person having knowledge of a will executed by the above named deceased who died on 16 August 2001, please contact Brian McLoughlin & Company, Solicitors, 3 Herbert Road, Bray, Co Wicklow, tel: 01 286 8211/2 or fax: 01 282 8143

Daly, Michael (deceased), late of 29 Seapark Road, Clontarf, in the county of Dublin. Would any person having knowledge of the whereabouts of the original will dated 8 July 1994 of the above named deceased who died on 23 November 2000, please contact Nora Gallagher & Company, Solicitors, 4 Ranelagh, Dublin 6, DX: 10 001, tel: 01 497 6884/496 7606 or fax: 01 497 6872

Hayes, Desmond James (deceased), late of Innisfallen, Aghadoe, Killarney, Co Kerry and formerly of 1 Parnell Road, Bray, Co Wicklow, retired doctor. Would any person having knowledge of a will executed by the above named deceased who died on 28 September 2001, please contact O'Leary & Co, Solicitors, Muckross Road, Killarney, Co Kerry, tel: 064 31090 or fax: 064 37244, reference AOC

Kane, Maura (deceased), late of Doneraile Place, Tramore, Co Waterford. Would any person having knowledge of the original will made by the above named deceased dated 15 May 1990 and codicil dated 30 June 1990 who died on 14 January 2001, please conact Dobbyn & McCoy, Solicitors, 5 Colbeck Street, Waterford, tel: 051 874087 or fax: 051 855249

Murphy, Denis (deceased), late of 2 Ross Barra, Deerpark Road, Greenmount, Cork. Would any person having knowledge of a will made by the above named deceased who died on 27 October 2001, please contact David J O'Meara & Sons, Solicitors, Bank Place, Mallow, Co Cork, ref: CM.HB, tel: 022 21539 or fax: 022 42164. Mr Denis Murphy worked for the Irish Land Commission and had a number of addresses throughout the country. Later in life he qualified as a solicitor

O'Dwyer James (deceased), late of 4 Kelly Street, Mareeba, North Queensland, 4880 Australia and formerly of Flat no 1, 60 Lower Georges Street, Dun Laoghaire, Co Dublin. Would any person having knowledge of a will made by the above named deceased who died on 14 August 2000, please contact Patrick J O'Meara & Company, Solicitors, Liberty Sq, Thurles, Co Tipperary, tel: 0504 223333 or fax: 0504 23054

Simon, So (deceased), otherwise known as Kin Hung So, late of the Square, Claremorris, Co Mayo and 3 Riverside, Galway. Would any person having knowledge of a will made by the above named deceased who died on 11 November 2000, please contact Keane Solicitors, Hardiman House, Eyre Square, Galway, tel: 091 566767

Woods, Mary (deceased), late of Jerpoint Hill, Thomastown, Co Kilkenny. Would any person who knows the whereabouts of a will made by the above named deceased who died on 26 November 1986, please contact O'Shea Russell, Solicitors and Auctioneers, Main Street, Graignamanagh, Co Kilkenny, tel: 0503 24106/24642

EMPLOYMENT

Experienced family law solicitor seeks part-time employment in Dublin North/Meath South area. Contact Ms Rose Walsh, Solicitor, Baldwinstown, Garristown, Co Dublin, tel: 01 835 4333 or e-mail: rosewalsh@esatclear.ie

Mullingar, Co Westmeath: solicitor required for full-time position; litigation/conveyancing/probate; great opportunity with long-term possibilities for the right candidate. Contact Sally-Ann O'Donnell or Paddy Crowley at 044 40887/8 or send CV to JJ Macken, Bishopsgate St, Mullingar, Co Westmeath

Solicitor required for busy expanding Limerick city office. Please reply with CV to Ted McCarthy, Wyvern House, 2 Newenham Street, Limerick, tel: 061 461024

Solicitor wanted for young and expanding Donegal practice. Litigation, conveyancing, district court and some probate. Might suit newly qualified. Apply with CV to Carter & Co, Solicitors, Bank Place, Carndonagh, Co Donegal. carterco@eircom.net

Locum solicitor required for conveyancing and probate work for period April to mid-September, 2002. Apply in writing with CV to Donal Farrelly & Co, Solicitors, Tullagh House, High Street, Tullamore, Co Offaly

Solicitor: Are you a solicitor keen to try a new environment in the West of Ireland – within 25 minutes of Galway City? Immediate position available in technologically efficient general practice for applicant with experience in conveyancing, litigation, probate and taxation. Please send CV to Messrs KM Coleman & Company, Certified Accountants and Registered Auditors, Clonfert South, Maynooth, Co Kildare

Commercially-minded Irish solicitor, mid-30s, with quality litigation experience and excellent manner, currently a partner in prominent regional UK practice, seeks a suitable position in established practice. Reply to **Box no 107**

Post-advanced course PPC2 apprentice qualifying in September 2002 seeks new challenging position with a view to securing solicitor's position. **Reply to Box no 108**

Solicitor required for conveyancing, litigation family law and probate. Flexible working hours offered. Telephone DC Shaw & Co, Solicitors, 200 Kimmage Road West, Dublin 12, on 01 456 1344 or 086 811 6147

Experienced locum solicitor for office in County Galway to cover maternity leave. Must be experienced in conveyancing. Mid-March 2002. Reply in writing to JC Murphy & Company, Solicitors, Gort, Co Galway

Solicitor currently working in Galway, experienced in litigation, commercial and EU law, seeks employment anywhere in Irish Republic, will consider all offers. Reply to **Box no 111**

Assistant solicitor required for practice in Killarney, Co Kerry. Three years required. Work primarily in conveyancing, probate and civil litigation area. Reply with CV to **Box no 112**

Locum solicitor required for a busy office in the north-west for a period of four months commencing in April. Some experience in probate, district court and conveyancing required. May suit recently-qualified solicitor. Salary commensurate with experience. Please reply to **Box no 113**

Solicitor: recent NUI (BCL) graduate looking to commence apprenticeship with a solicitor/law firm. Willing to act as master for start of October 2002. Professional practice course 1 and Irish exams acquired. Available for immediate start. Reply to **Box no 114**

Accounts Manager: Busy solicitor's office in Dundalk seeks experienced person to manage all aspects of practice accounts. Experience of computerised legal accounts essential. Duties to include WIP management and credit control, payroll, preparation of regular management information etc. Attractive salary and benefits. Reply with full details of relevant experience to: Russell & Associates, 37 Castle Street, Dalkey, Co Dublin

CARE OF OLDER PEOPLE

LONG-TERM CARE/ RESIDENTIAL NURSING CARE NEGLIGENCE

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MSC, BSC (HONS), DIPIIE, RGN, RM, HV
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CO ANTRIM
BT41 4QT

TEL: 048 9336 6194
MOB: 0044 77783 73496
E-MAIL:
resemarystrange@hotmail.com

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

EYE INJURIES AND OPHTHALMOLOGICAL NEGLIGENCE

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

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

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

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

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 web-site at www.levenes.co.uk

Offices to let: Arran Quay, Dublin 7. Office units from c33 sq m (355 sq ft). Refurb period building. Excellent location adjacent Four Courts. Contact Douglas Newman Good Commercial on tel: 01 673 1400

Well-established practice with emphasis on family law for sale or merger. Replies to **Box no 106**

Wanted: publican's ordinary seven-day licence, contact O'Carroll & Co, Solicitors, 19A Merchants Road, Galway, tel: 091 565516, 091 562393

Information sought regarding the early legal career of Mr Peter O'Connor, solicitor, Olympic gold medallist and long-jump world record holder, 1901. Legally active 1895–1957. Particularly interested in early years in Clifden, Galway and Mullingar. **Please reply to Box no 109**

Solicitor with own clientele to share suite of offices with two other solicitors in Dublin 2. Reply to **Box no 110**

Wanted: ordinary seven-day publican's licence. Reply to James O'Connors, Iveragh Road, Killorglin, Co Kerry, tel: 066 976 1611 or fax: 066 976 1013

Residue of practice, Dublin, available on terms to be agreed. Sole practitioner retiring. Reply to **Box no 115**

TITLE DEEDS

Sheridan, James (deceased), Ballina House, Ballyhellin, Kilnaleck, Co Cavan. Would any solicitor holding any deeds or documents regarding lands at Ballina, Co Cavan, please contact Smyth O'Brien Hegarty, Solicitors, 24 Lower Abbey Street, Dublin 1, tel: 01 876 6130 or fax: 01 876 6071

Captain James Kelly, of Kelly & Malone, Ulster Bank Chambers, O'Connell Street, Dublin 1. Could anyone please help me locate old papers and records held by the above named. Both are now dead and the Law Society is unable to track their records. Kelly became a district judge in 1976 and died in the early 90s. Please contact **Box no 105**

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

–1994 and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the purchase of the freehold estate of property situate at Church Street, Scariff, Co Clare: an application by Gerard O'Sullivan, personal representative of Mary O'Sullivan (deceased)

Take notice that any person having any interest in the freehold estate of the property known as Church Street, Scariff, Co Clare and also known as Main Street, Scariff, Co Clare held under an indenture of lease dated 16 June 1943 and made between Ms Annie Hare, Helena Hare, Mary Finn, John F Scanlan, Frances Ryan, Jermiah Scanlan and Thomas Scanlan of the one part and Helena Scanlan of the other part, subject to the yearly rent of £3 thereby reserved and the covenants of the part of the lessee and the conditions in the said indenture of lease contained. Which said premises is described in the aforesaid recited indenture of lease as being 'all that and those the plot of ground with the dwelling house and premises thereon … situate in the Main Street, Scariff in the county of Clare and more particularly delineated and described on the map or plan endorsed hereon and thereon coloured red'.

Take notice that Gerard O'Sullivan, personal representative of Mary O'Sullivan (deceased) intends to submit an application to the county registrar for the county of Clare at the Court House, County Clare for the acquisition of the freehold interest in the aforesaid property and that any party ascertaining that they hold superior interest in the aforesaid property is called upon to furnish evidence of title to the said property to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received, Gerard O'Sullivan, personal representative of Mary O'Sullivan (deceased), intends to proceed with this application before the county registrar for the county of Clare at the end of 21 days from the date hereof for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion are known or unascertained.

Date: 30 November 2001

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

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

Take notice that any person having any interest in the freehold estate of the following property being all that and those the hereditaments and premises known as 28A, Shelton Park, off Kimmage Road West, Dublin 12.

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

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

Date: 27 November 2001

Signed: Denis I Finn, solicitors for the applicant, 5 Lower Hatch Street, Dublin 2

***Landlord and Tenant (Ground Rents) Acts, 1967–1987*: notice of intention to acquire fee simple (section 4)**

All that and those the premises at Main Street, Borrisokane in County Tipperary known as the garda station held under lease dated 28 August 1903 made between Thomas Higginbotham and others of the one part and Patrick Cleary of the other part for a term of 99 years at the yearly rent of £12.

Take notice that Orsigny Limited, being the person entitled under section 3 of the *Landlord and Tenant (Ground Rents) Act, 1967* as amended by the provisions of sections 8-16 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, proposes to purchase the premises described in paragraph 1 hereof.

And further take notice that this application will be made before the county registrar on 4 March 2002 at Clonmel Courthouse, Clonmel County Tipperary.

Date: 11 December 2001

Signed: J Brendan Quigley and Co, solicitors for the applicant, Borrisokane, Co Tipperary

Notice in the matter of the *Landlord and Tenant (Ground Rents) Acts, 1976–1989*: premises known as 43/44 Patrick Street, Templemore, Co Tipperary

Take notice that any person who has any knowledge of the Willington estate or claming to have any right title or interest under the Willington estate which affects the premises know as 43/44 Patrick Street, Templemore, Co Tipperary should contact the undersigned solicitors on or before 27 February 2002.

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

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises known as the Lantern, Borrisoleigh, Co Tipperary

Take notice that any person having any interest in the freehold estate of, or superior interest in the following premises: all that and those the licensed house and premises with paddock attached thereto situated at Upper Street, Borrisolegigh, in the Barony of Kilnamanagh in the county of Tipperary, held as a yearly tenancy on the estate of Rupert Palmer Colomb of the yearly rent two pounds and nine shillings.

Take notice that the applicants, Martin Costello and Joe O'Connell, intend to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest and any intermediately interest in the aforesaid properties and any parties asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named before 18 February 2002. In default of any such notice being received, Martin Costello and Joe O'Connell intend to proceed with the application before the county registrar at 18 February 2002 at Clonmel at 2.15pm at Clonmel Courthouse for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion on the premises are unknown or unascertained.

Dated: 5 December 2001

Signed: Butler Cunningham & Molony, solicitors for the applicants, Templemore, Co Tipperary

In the matter of the *Landlord and Tenant Acts, 1967–1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by James O'Toole of Ballon, Co Carlow

Take notice that any person having any interest in the freehold of the estate of the property held under an indenture of lease dated 19 July 1920 made between Aliastair Forbes of the one part and Thomas Jeffers and Mary Jeffers of the other part for the term of 50 years from 25 March 1957, subject to the yearly rent of £40 thereby reserved and to the covenants on the part of the lessee and the conditions contained know being the property contained in folio 1409l of the register of leaseholders, Co Carlow (being the property more particularly described in the schedule hereto) (hereafter called 'the property').

All that and those the dwelling house messuage or tenant situate at Athy Street in the town of Carlow with the out-office and buildings, yards and garden attached thereto and therein described as now occupied by Thomas Stoyte esq, containing an area of 2 roods and 20 perches statute measure or thereabouts as also all that field or piece of land at the rear said herein before mentioned premises with the small house or building thereon and lately in possession of Thomas Whelan esq (deceased) and containing 2 acres and 20 perches of the like statue measure or thereabouts, all which several premises are bounded on the east by Athy Street on the west by the Bank of Ireland field, on the south by the Club House concern and on the

north by the Bank of Ireland concerns, are situate lying and being in the town, parish, barony of County Carlow.

Take notice that the applicant has submitted an application to the county registrar, Courthouse, Carlow for the acquisition of the freehold interest in the said property and that evidence of title to the property within one month form the date of this notice to the undermentioned solicitors for the applicant.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar after the expiry of the said period of one month from the date of this notice and will apply to the county registrar for the county of Carlow for directions as may be appropriate on the basis that the person/s beneficially entitled to the superior interest including the freehold reversion in the said property are unknown or unascertained.

Date: 16 January 2002

Signed: AB Jordan & Company, Solicitors, College Street, Carlow, solicitors for the applicant

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967–1994*: notice of intention to acquire fee simple

To any person or persons for the time being entitled to or having an interest in the freehold estate in the lands of Butterfield situate in the Barony of Rathdown and county of Dublin and in particular the property now known as Lisheen, 72 Butterfield Avenue, Rathfarnham, in the city of Dublin being part of the property held under a lease dated 26 June 1912 made between James Valentine Nolan Whelan of the first part and the Yorkshire Insurance Company Limited of the second part and Thomas Henry Boyd of the third part for the term of 800 years from 1 June 1912 subject to yearly rent of £39.40

Take notice that Charles Owens, being the person entitled under sections 8–10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* to purchase the fee simple, intends to submit an application to the country registrar for the county/city of Dublin for the acquisition for the freehold interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named with 21 days from the date of this notice.

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

Date: 17 January 2002

Signed: Kelly Kennedy, solicitors for the applicants, 22 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967–1994*: notice of intention to acquire fee simple

To any person or persons for the time being entitled to or having an interest in the freehold estate in the lands of Butterfield situate in the Barony of Rathdown and county of Dublin and in particular the property now known as 1 Washington Wood, Washington Lane, Rathfarnham in the city of Dublin being part of the property held under a lease dated 26 June 1912 made between James Valentine Nolan Whelan of the first part and the Yorkshire Insurance Company Limited of the second part and Thomas Henry Boyd of the third part for the term of 800 years from 1 June 1912 subject to yearly rent of £39.40

Take notice that Charles Owens, being the person entitled under sections 8–10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* to purchase the fee simple, intends to submit an application to the country registrar for the county/city of Dublin for the acquisition for the freehold interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named with 21 days from the date of this notice.

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

Dated: 17 January 2002

Signed: Kelly Kennedy, solicitors for the applicants, 22 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967–1994*: notice of intention to acquire fee simple

To any person or persons for the time being entitled to or having an interest in the freehold estate in the lands of Butterfield situate in the Barony of Rathdown and county of Dublin and in particular the property now known as 2 Washington Wood, Washington Lane, Rathfarnham, in the city of Dublin being part of the property held under a lease dated 26 June 1912 made between James Valentine Nolan Whelan of the first part and the Yorkshire Insurance Company Limited of the second part and Thomas Henry Boyd of the third part for the term of 800 years from 1 June 1912 subject to yearly rent of £39.40

Take notice that Charles Owens, being the person entitled under sections 8–10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* to purchase the fee simple, intends to submit an application to the country registrar for the county/city of Dublin for the acquisition for the freehold interest in the aforesaid property (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named with 21 days from the date of this notice.

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

Date: 17 January 2002

Signed: Kelly Kennedy, solicitors for the applicants, 22 Upper Mount Street, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967–1984* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Patrick and Mary McInerney of 28 Main Street, Cashel, Co Tipperary

Take notice that any person having an interest in the freehold estate of the following property all that and those the dwelling house, shop and premises with the appurtenants thereinto to situate at 28 Main Street, in the city of Cashel in the Barony of Middlethird and county of Tipperary.

Take notice that Patrick and Mary McInereny intends to submit an application to the county registrar of the county of Tipperary for the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold in superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named solicitors within 21 days from the date of this notice.

In default of any notice being received, Patrick and Mary McInerney intend to proceed with the application before the county registrar on 4 March 2002 at 2.30pm and will apply to the county registrar for the county of Tipperary for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown and unascertained.

Signed: John P Whelan & Co, solicitors for the applicant, 68 Queen Street, Clonmel, Co Tipperary