Law Society Gazette

Regulars

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Cover Story

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NEW GUIDELINES FROM THE REVENUE

The Revenue Commissioners have issued new guidelines for calculating tax due and for completing declaration forms for investment undertakings and life assurance companies. Any questions on the content of these guidelines may be referred to the Direct Taxes International and Administration Division, Financial Services Unit, Blocks 8-10, Dublin Castle, Dublin 2 (tel: 01 674 8018, fax: 01 679 3314). The guidelines are available on the Revenue website at www.revenue.ie under *Publications* and *Technical guidelines*.

PRIVATE EQUITY CONFERENCE

Inter*Trade*Ireland, the development body set up to facilitate cross-border trade, is running a conference entitled *Private equity: an island and international perspective*. The conference will be held in Belfast on 24 April and aims to create a greater awareness of private equity finance and ultimately a greater demand for its use. For further information, visit the organisation's website at www.intertradeireland.com or call Nicola McGuinness on 028 3083 4154.

Record numbers entering the legal profession

Last year saw over 475 solicitors enter the profession, the highest number in the Law Society's history. This is substantially higher than the previous record of 385 in 1999 and the figure of 350 new entrants last year.

According to Law Society Director General Ken Murphy: 'The enormous increases in the numbers of new solicitors qualifying every year gives the lie to any suggestion that the system is being used to suppress numbers entering the profession. The society accepted as far back as the 1980s that it has no role to play in controlling the numbers entering the profession. The market for legal services reigns supreme in this'.

The statistics also show that the gender balance within the profession has changed. In every year since 1993, the number of women entering the profession has exceeded the number of men. Typically, a professional training course will now comprise 60% women and 40% men. In terms of the profession as a whole, the figures are reversed: 60% men and 40% women. In addition, just under half of the profession (47% to be exact) are under 40 years of age.

The Law Society's new Education Centre: home to 475 trainee solicitors last year

NUMBERS ENTERING THE PROFESSION OVER LAST 50 YEARS

1951 – 22	1998 – 318
1961 – 12	1999 – 385
1971 – 79	2000 – 350
1981 – 187	2001 – 473
1991 – 203	

ONE TO WATCH: NEW LEGISLATION

Dormant Accounts Act, 2001

This act was passed last July and was brought into effect by SI 593/01 on 1 January 2002. It provides a mechanism for transferring funds held in accounts which are dormant for 15 or more years from the financial institutions in which they are held to a new Dormant Accounts Funds Disbursement Board. This board will make schemes for disbursement of funds which are unlikely to be reclaimed to benefit *'projects that are designed to assist the personal, educational and social development of persons who are economically, educationally or socially disadvantaged or persons with a disability ... and, in particular, programmes or projects that are designed to assist primary school students with learning difficulties'* (section 41). There are an estimated 840,000 accounts to an estimated value of £130 million.

The following are the key points of the act:

- The financial institutions affected are listed in part 1 of the schedule (section 8). They include banks, building societies, An Post and licensed persons. They exclude accounts held by bodies listed in part 2 of the schedule, including the courts, the Companies Liquidation Account, the Bankruptcy Dividend Account, and any account over which there is a lien held by the holding institution, or a right of set-off
- Accounts include deposit, share and current accounts, whether personal, corporate, charitable, resident or non-resident, deposit receipts, petty balances accounts, savings certificates or bonds, instalment savings schemes and fixed deposits
- Section 10 provides for notification of account-holders of accounts which are dormant, to last known addresses, this year in early April, and thereafter annually in early October. Omission to notify is an offence. If the amount in the account is under €100, or it is a non-correspondence account, or notification in writing has not been successful, the financial institution must advertise the existence of dormant accounts in two or more daily newspapers and the *Iris Oifigiúil* that if a transaction is not effected on the account on or before the following 31 March, the monies in the account will be transferred to the Dormant Account Fund. The first notice is due to be published on 30 April 2002, and thereafter annually on the first working day in October. Notices to this effect must be displayed in the institution's place of business, brochures and any relevant code of conduct (section 11)
- Monies from any dormant accounts must be transferred, not later than 30 April of the following year, to the Dormant Account Fund, the first such transfer to take place by 30 April 2003. They must be accompanied by a written statement specifying the total amount of money transferred and accounts concerned. If an organisation does not hold any dormant accounts, this too must be reported (section12)
- Each financial institution is obliged to keep a record of dormant accounts, which will include details of notifications under section 10 and details of transfers to the Dormant Accounts Fund. Such registers

Court puts kibosh on MDPs

Plans by the 'big five' accountancy firms to establish multi-disciplinary partnerships with law firms suffered a huge set back last month when the European Court of Justice upheld a decision by the Dutch bar to prohibit the establishment of such an arrangement. The court found that the activities of lawyers and accountants were 'incompatible' and that the professional ethics of the two professions in Holland were different. As a result, the ECJ ruled that it was reasonable for the Dutch bar to ban MDPs with accountants.

Commenting on the ECJ decision, Law Society Director General Ken Murphy said: 'We are extremely pleased with the judgment in this case. It has confirmed the legal profession's core values of independence, confidentiality and the avoidance of conflict of interest. An independent legal profession is essential to underpin an independent judiciary, and an independent judiciary is essential to democracy. This decision of the Court of Justice should not be seen as a victory for lawyers over accountants. It is a victory for the fundamental freedoms of all citizens'.

The ruling was also warmly welcomed by CCBE President John Fish, who said: 'We are delighted by the outcome, which we think is clearly in the public interest'.

THE ECJ'S KEY CONCLUSION:

A regulation prohibiting multi-disciplinary partnerships of lawyers and accountants '... adopted by a body such as the bar of The Netherlands does not infringe article 85(1) of the treaty, since that body could reasonably have considered that the regulation, despite effects restrictive of competition that are inherent in it, is necessary for the proper practice of the legal profession, as organised in the member state concerned'.

Solicitor advocacy course details

The Law Society's new *Advanced advocacy for solicitors* course (see last issue, page 7) will begin with a series of weekly seminars/workshops on evidence led by Dr Paul Anthony McDermott, taking place from April to June. This will be followed by a practical five-day, full-time intensive course from 16 to 20 September.

The course is based on the highly successful model offered by the Law Society of Northern Ireland and was set up in response to a growing demand for solicitor advocacy. Further details about the course can be found in the CLE brochure included with this issue of the *Gazette*. Anyone interested in the advocacy course should contact Lindsay Bond at the Law School, Law Society, Blackhall Place, Dublin 7, DX 79, fax: 01 672 4803 or e-mail: lawschool@lawsociety.ie.

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, e-mail: a.clissmann@lawsociety.ie.

TECHNOLOGY AND THE LAW SEMINAR

The International Bar Association is running a conference in Dublin on 29 May entitled *The impact of technology on the practice of law*. The conference aims to 'consider the impact of technological advancement and its role in creating a better-managed legal world'. For further information, contact the IBA's membership services section on tel: +44 (0)20 7629 1206, fax: +44 (0)20 7409 0456 or by e-mail at member@int-bar.org.

are not to be open to public inspection, but any valid account-holder is entitled to inspect the register as concerns that account
- The National Treasury Management Agency (NTMA) is to establish the Dormant Accounts Fund, to be managed and controlled by it. It will consist of a reserve account and an investment and disbursement account
- Section 19 makes provision for money from an account transferred to the fund to be reclaimed by the person entitled, with interest. It will typically take two months and is done through the original institution, which reclaims the money from the NTMA. A fraudulent claim is an offence
- Each financial institution has to furnish a certificate of compliance within a month of the end of each financial year, the form of the certificate to be prescribed by the minister (section 20)
- Sections 21 to 27 set up a system of inspectors, whose reports are privileged and who have the necessary powers to inspect documents and systems, to ensure they are adequate. Entry onto premises requires a District Court warrant, and an inspector may request a garda escort in the exercise of any of his powers. Obstruction or giving misleading information is an offence, as is non-compliance with a direction to comply or rectify a material defect
- Sections 30 to 40 deal with the establishment of a Dormant Accounts Fund Disbursement Board, which is charged with preparing a plan for disbursing the money in accordance with the criteria set out in section 42 and mentioned above. The board is to be independent and consist of nine members. Disclosure of confidential information is an offence
- The board is charged with producing a plan for disbursement, and must to do so within three years, and at least every three years thereafter. Any disbursement over €300,000 must have the minister's prior consent (section 44)
- The NTMA must report annually to the board, by the end of March, and the board must report to the minister by the end of June
- The NTMA's accounts are subject to review by the comptroller and auditor general, and the NTMA's chief executive is to account to the Public Accounts Committee, as is the board chairman
- Section 48 provides for confidentiality for individual account-holders
- Section 9 empowers the minister of social, community and family affairs, in consultation with the Central Bank, to extend the application of the act to other classes of account, account-holder and institution
- Section 6 sets out criminal penalties of fines and imprisonment for summary and indictable offences, which apply to companies as well as individuals, and those involved in the companies' offences. Anyone convicted may be required to pay the costs of prosecution. G

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

COURTS SERVICE
An tSeirbhís Chúirteanna

WORKING GROUP ON THE JURISDICTION OF THE COURTS

Invitation to make observations: criminal jurisdiction

The Working Group, which is chaired by Mr Justice Nial Fennelly of the Supreme Court, has been established by the Board of the Courts Service. The terms of reference of the Working Group are as follows:

" **I.** 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;

II. With a view to I., 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;

III. 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;

IV. To make such interim reports as it considers appropriate."

The Working Group will be examining the jurisdiction of the Courts in a series of modules, the first of which is concerned with the jurisdiction of the courts in criminal proceedings, followed by modules on jurisdiction in civil proceedings and changes in court structures. Further modules may be established if considered necessary.

To assist it in the process of public consultation which it has commenced under Module I, the Working Group invites written observations on the jurisdiction of the courts in criminal proceedings from interested bodies and individuals, and may invite any party making written observations to attend before it to provide further assistance. Observations made to the Working Group may be subject to disclosure on submission of the Working Group's reports to the Board of the Courts Service.

Observations should be addressed to:
The Secretary, Working Group on the Jurisdiction of the Courts, Green Street Courthouse, Dublin 7
or by e-mail to: wgjuris@courts.ie

The Working Group would hope, without imposing a deadline, to receive observations within four weeks.

Successful seminar series on accounts regulations

The *Solicitors' Accounts Regulations 2001* (statutory instrument no 421 of 2001) came into effect on 1 January 2002 and replace the *Solicitors' Accounts Regulations 1984* (statutory instrument no 304 of 1984). As part of the society's programme for acquainting the profession with the main provisions of the new regulations, a number of seminars have been arranged throughout the country.

These kicked off in Dublin on 28 January, followed by Cork on 11 February, Kilkenny on 18 February and Sligo on 25 February. In view of the high demand for places, the society intends to hold two further seminars: in Dublin on Monday 11 March and in Limerick on 26 March.

Further seminars may be arranged if there is sufficient demand for them. Anyone interested in attending the seminars should contact Tina Beattie, executive officer (regulatory department), Law Society, Blackhall Place, Dublin 7 on tel: 01 672 4800 or by e-mail on t.beattie@lawsociety.ie.

Nearly 300 solicitors attended the recent seminar in Cork

SBA GENERAL MEETING

Notice is hereby given that the 138th annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Friday 12 April 2002 at 12.30pm to consider the annual report and accounts for the year ended 30 November 2001, to elect directors and to deal with other matters appropriate to an AGM.

UK BARRISTERS WIN DIRECT ACCESS TO PUBLIC

The Bar Council in England has unanimously voted to relax its rule barring its members from having direct access to the public from next year. The move follows a report by the UK's Office of Fair Trading which found that there are 'undoubtedly cases in which a barrister can usefully give legal advice or draft a document without the intervention of a solicitor'.

Postcard from the past

In July 1845, a bill was introduced in Westminster for the appointment of a taxing master for the Court of Chancery in Ireland, with the appointment open only to barristers. The Committee of the Society of Attorneys and Solicitors in Ireland made representations to the attorney general seeking amendments to the bill to provide for the appointment of solicitors or attorneys to the position (as applied to the appointment of taxing masters in England) and for the appointment of more than one taxing master.

The vice-president of the society, William Goddard, travelled to London and met the attorney general and the Lord Chancellor to advance the views of the society. His efforts were unsuccessful. A petition was prepared by the society and presented to the House of Commons by George Alexander Hamilton proposing the desired amendments, but these were 'negatived without a division'.

A similar petition was presented to the House of Lords on the society's behalf by the Earl of Wicklow, supported by the Marquis Clanrickard and Lords Cottenham, Campbell and Langdale. A division was called by Lord Wicklow, but the amendments were lost by 30 votes to 19.

However, as a 'result of their exertions' the bill was subsequently altered to provide for the appointment of 'a barrister at law of not less than ten years' standing … or a solicitor with not less than ten years' practise as a solicitor' to the position of taxing master for the Court of Chancery in Ireland.

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

Calcutta Run goes for the record

The Calcutta Run, the annual charity event organised by solicitors and supported by the Law Society, will take place on Sunday 19 May. It comprises a 10k fun run/walk, followed by a barbecue at Blackhall Place. The participants raise money through sponsorship for their participation.

Last year's event was the biggest yet, with 1,400 runners and walkers taking part, raising a total of €185,000 for two charities, GOAL's project for street children in Calcutta and Fr Peter McVerry's shelters for homeless youths in Dublin. The three runs to date have so far raised over €400,000. This year the target is €220,000. It is hoped that this year's event will be even bigger and better, and the organisers are looking for participants and also for reps who will recruit and organise participants within their own firms. For further information, visit the website at www.calcuttarun.com.

Letters

Clarification on the new *Competition Bill*

From: Marco Hickey, LK Shields, Solicitors, Dublin

I refer to the letter published in the December issue of the *Gazette* entitled *Competitive streak* (page 9), commenting on the *Eurlegal* article in the November issue entitled *General scheme of the* Competition Bill *published*. This letter comments that head 6, section 1(e)(ii) of the heads of the *Competition Bill* provides that 'if you can show that your agreement, decision or concerted practice benefits from an individual or block exemption by the European Commission, or if, though it is caught by article 81(1) of the treaty, it is saved by article 81(3), then this will be "a good defence". '

Head 6, section 1(d) (ii) of the heads of bill has now been incorporated into section 6(5) of the *Competition Bill, 2001* and stipulates that it is 'a good defence' in any proceedings for an offence under sub-section (1) '*in which it is alleged that an agreement, decision or concerted practice contravened the prohibition in article 81(1) of the treaty*' (italics added for emphasis) that the agreement, decision or practice is covered by an individual or block exemption under article 81(3) of the treaty or that article 81(3) of the treaty is otherwise applicable to it. The latter is contained in the bill so as to cater for the direct applicability of article 81(3) of the treaty which is envisaged in the proposed council regulation on the implementation of the rules of competition laid down in articles 81 and 82 of the treaty and amending regulations (EEC) no 1017/68, (EEC) no 2988/74, (EEC) no 4056/86 and (EEC) no 3975/87 (OJ 2000 C365, p284).

Please note that the scope of the defence in head 6, section 1(d)(ii) and section 6(5) of the bill is confined to situations in which it is alleged that article 81(1) of the treaty has been breached. Section 6(1) of the bill renders it an offence to enter into or implement an agreement or make or implement a decision or engage in a concerted practice that is prohibited by article 81(1) of the treaty. The defence provided for in section 6(5) of the bill does not apply where it is alleged that the purely Irish law prohibition contained in section 4(1) of the bill has been breached. Section 4(1) mirrors the existing provisions contained in section 4(1) of the *Competition Act, 1991* and prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in Ireland or in any part of Ireland.

As a result, an agreement, decision or concerted practice may be subject to the prohibition in section 4(1) of the bill even though the agreement, decision or concerted practice benefits from an individual or block exemption regulation under article 81(3) of the treaty. There seems to have been quite some debate on the issue of whether or not the national competition authorities can apply stricter domestic competition law in circumstances where an agreement, decision or concerted practice benefits from an exemption under article 81(3) of the treaty. The fact that certain block exemption regulations have expressly provided that member states are allowed to apply stricter national competition laws suggests that ordinarily member states are not permitted to apply their more stringent national rules.

The commission has expressed the view that stricter national laws should not be applied to prohibit an agreement, decision or concerted practice exempted under article 81(3) of the treaty (commission notice on co-operation between national competition authorities and the commission in handling cases falling within the scope of articles 85 or 86 of the *EC treaty* [1997] OJ C313/3). The commission stated in this notice that if the national competition authorities were allowed to apply more stringent national competition laws, the uniform application of community law would be frustrated and the full effectiveness of an act giving effect to the treaty would be disregarded.

The Irish Competition Authority has in the past expressed a contrary view to the effect that Irish law can override a block exemption if it does not frustrate the main purpose of the exemption and if there are special reasons (which only apply to Ireland) for doing so. It appears that neither the European Court of Justice nor the European Court of First Instance has, as yet, ruled on this issue. The current draft of this bill does not appear to address this question. Article 3 of the proposed regulation specifically provides that where an agreement, decision or concerted practice may affect trade between member states, 'community competition law shall apply to the exclusion of the national competition laws'. As a result, this issue will be laid to rest once the proposed regulation comes into effect.

In summary, the defence provided for in section 6(5) of the bill is confined to proceedings in which it is alleged that article 81(1) of the treaty has been breached and is not applicable to proceedings involving an allegation that section 4(1) of the bill (which mirrors section 4(1) of the 1991 act) has been contravened. There appears to be much debate on the issue of the ability or jurisdiction of the national competition authorities to apply stricter domestic competition law where an agreement, decision or concerted practice benefits from an individual or block exemption regulation and the European courts have yet to rule on this issue.

The proposed regulation specifically deals with this issue, clarifying that national competition laws would be inapplicable once an agreement, decision or concerted practice may affect trade between member states. G

Crilly v Farrington and those hospital fees

From: John G Murphy, Enniscorthy, Co Wexford

I made some enquiries with the Law Society library and, apart from the Supreme Court judgments themselves, I have not yet come across any article or publication which sets out in a particular way the result or consequences of what is commonly known as the *Crilly v Farrington* Supreme Court decision. As you know, that was the case which interpreted section 2 of the *Health Amendment Act, 1986* concerning the amount of rate of hospital charge which injured parties/hospitals can expect to recover from defendants/insurance companies in road traffic accident cases.

There are written judgments from Murray J, Fennelly J, McGuinness J and Denham J. If you wish to go into chapter and verse, Denham J is the judgment to read. The 'practical effect', with which you will be concerned in day-to-day management of road traffic accident cases, appears to be as follows. Section 2 of the *Health Amendment Act, 1986* enables health boards to make charges on an injured person (or his personal representative or dependant) who has received or is entitled to receive compensation concerning the negligent use of a vehicle.

Over the last number of years, everybody worked on what was called the 'Kinlen rate', a rate decided by Mr Justice Kinlen and which for a period was accepted as being £100 a day and later moved to £150 a day. At the moment, the general view appears to be that the hospital bill must be paid 'in full'.

Why was it difficult for health boards/hospitals to set out their charges or to recover their charges fully? The hospitals attempted to set out the daily cost on an average basis – that is, the total hospital costs for the year divided by the number of occupied beds. Obviously, this was quite an artificial way of doing it, as it would result in the hospital charging the same daily rate for treating a patient with a broken toe as would be charged to a patient undergoing complex brain surgery. Clearly the insurance company picking up the tab in the broken toe case would feel a little aggrieved. (As a point of information, the percentage of total patients who are road traffic accident victims numbers less than 1%. I thought you might like to know that!)

Beaumont Hospital: took the *Crilly v Farrington* judgment to heart?

While the 1996 act imposes an obligation on the health authority to charge the patient/defending insurer for treatment provided arising out of a road traffic accident, the act does not set out how the charge is to be made. The hospitals were using the ADC system – that is, the average daily cost as described above. You can see that the average daily cost probably lagged behind the actual cost because it would be based on the previous year's costs. Judge Denham stated: 'I am satisfied that the ADC falls within the range of *reasonable*. It is charged by the year in arrears. The capital cost is not included. Of course, it is not the only scheme possible under the section. However, the ADC is within the scope of *reasonable*'. Later she said: 'A charge need not be the precise charge for the actual services rendered. An average is a reasonable basis for a charge. The ADC is reasonable and *inter vives* section 2(1) of the act of 1986'.

Contrary to popular belief, *Crilly v Farrington* does not lay down precise daily rates for hospital charges: it simply finds that the ADC system used by hospitals was appropriate, and thus the practical effect is that the hospital bill must be paid in full. (In saying this, I am assuming that the hospitals will continue to furnish bills calculated on an ADC basis.) I would not propose that a plaintiff's solicitor should make enquiries of a hospital in that regard, but I would suggest that he or she should simply disclose the hospital bills at an early date to the defence/insurer's solicitors, and if the insurance company feels like challenging it, so be it. The plaintiff can settle his action either including full payment for the hospital bill or, if accepting partial payment only, then with a full written indemnity from the insurance company itself for the balance of the hospital bill outstanding.

I have already seen one case where Beaumont Hospital, having already furnished a bill to a plaintiff's solicitor, then (following the *Crilly v Farrington* decision) wrote again to the plaintiff's solicitor and sent a new, increased bill. In my view, there is nothing whatsoever in the *Crilly v Farrington* judgment which authorises the hospital to do this and it seems to me that some bright spark in Beaumont may have latched on in a rather blinkered way to the words of Judge Denham quoted above, where she says 'of course, it is not the only scheme possible under the section. However, the ADC is within the scope of *reasonable*'. I do not think any court is going to look favourably on a hospital which has already sent out its bill to a plaintiff/plaintiff's solicitor and then many months later decides to send out an amended or increased bill. Again, however, from a plaintiff's solicitor's perspective, full payment or an indemnity from the insurer is essential.

As a side issue, it is worth noting that all of the written judgments in *Crilly v Farrington* deal at some length with the question of the admissibility of ministerial statements/Dáil debates and so on.

In cases concerning the interpretation of statutes and the general exclusionary rule concerning admissibility of such materials, some practitioners might be interested in reading the very detailed written judgment by Fennelly J on that point. G

Letters

Great expectations

From: Seán MacCann, Co Tyrone

I originally wrote to the Law Society in 1998 to suggest that we drop the terms 'master' and 'apprentice'. Mr O'Herlihy (*Letters*, Jan/Feb issue) may feel that such terminology is part of a 'fine old tradition'. Apart from the fact that I've yet to hear of an apprentice's 'mistress' (at least, not outside of a divorce court), my objection to this Dickensian language has more to do with the 19th century attitudes towards the cynically-underpaid young graduates entering our profession that such out-dated language perpetuates in too many Irish law firms.

A turnip for the family law books

From: Niall G Murphy, Kilkenny Law Centre

I have just read in the January 2002 issue of the English journal *Family law* that the European Commission has already started a project to harmonise the financial provisions in the family law of the EU states (*Brussels III*). Not only that, but there are also plans to harmonise the laws on succession, probate and inheritance (*Brussels IV*). It appears to me that most Irish practitioners had to rush to educate themselves after *Brussels II* came into effect, it having slipped in so quietly. I am wondering what input the profession will have into the legislative process apparently now under way. Hopefully, we will get some warning before the new laws come into effect.

DUMB AND DUMBER

From: MJ O'Connor, Solicitors, Wexford

The following is a quote given by a client while discussing the circumstances of an accident where the client attempted to overtake at a junction: 'it's not even a junction, it's a main road with a lesser road on either side'.

MJ O'Connor, Solicitors, win the bottle of champagne this month. But they would, wouldn't they? They were the only entrants, after all. Send your examples of the wacky, weird and wonderful in the legal world to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 672 4877 or e-mail us at c.oboyle@lawsociety.ie.

Justice requires more judges

In the interests of justice, the government must replace the High Court judges who have been seconded to tribunal and other duties, argues Ken Murphy

The government's decision earlier this week to appoint the former president of the High Court, Mr Justice Frederick Morris, to conduct an inquiry into the conduct of certain gardaí in Donegal in what has become known as 'the McBrearty affair' is unusual only because the individual involved has retired as a judge. Much more frequently, individuals who are still serving as judges have been taken away from their courtrooms to chair tribunals or perform a range of other difficult tasks; roles where judicial independence, analytical skills, knowledge of fair procedures and the ability to draft thorough and balanced reports have been much needed in non-courtroom contexts.

But what happens in the courtrooms and to the caseloads that the judges leave behind? Do governments ever consider the level of disruption to the justice system that results from so many key personnel being seconded to non-courtroom duties?

It seems not. A very serious problem of increasing and unconscionable delay has emerged in the High Court and in other courts as a result of an already over-stretched justice system being deprived for lengthy periods of substantial numbers of judges.

The High Court at full strength, according to current statutory provisions, has 24 judges. Even if all 24 were available, there are good grounds to argue that the number of judges is inadequate to match the ever-rising tide of litigation of various forms that our increasingly complex society produces. The trouble is that for years it has never been the case that all of the High Court judges have been available to sit as judges because the government has called individual judges away for other duties without replacement.

Ken Murphy: citizens' access to justice is denied through delay

At present, Mr Justice Moriarty is in his fourth year in Dublin Castle, chairing the tribunal of inquiry into the finances of certain politicians following on from the earlier tribunal report of another High Court judge, Mr Justice McCracken. Ms Justice Laffoy is in her third year chairing the Commission of Inquiry into Child Abuse. Mr Justice Quirke is in his second year dealing with benchmarking of public service pay. Mr Justice Pat Smith has recently been seconded for what is expected to be a period of years to oversee the new systems created under the standards in public office legislation.

In addition, the vacancy created by the retirement of Mr Justice Morris has not yet been filled, with the new High Court judge, already nominated by the government, not due to take up office until next month – leaving the High Court short of a replacement judge for the not untypical period of four months.

Nor has the Circuit Court escaped. Judge Lindsay has spent years chairing a tribunal of inquiry into contaminated blood products and Judge O'Leary has been dealing with the Ansbacher account-holders and, before that, the Luas inquiry.

The consequence is that a High Court judiciary which today is 20% under-strength is falling further and further behind. Apart from the obvious further deterioration if a judge or two were to fall ill, the increasing phenomenon of lengthy cases such as the *Master Meats* case which settled suddenly very recently – having been at hearing for approximately a year – can render judges unavailable to take other cases for very lengthy periods.

Objectionable delays

Acute consequences are felt in the Central Criminal Court, where the most serious criminal cases such as murder and rape are tried. What makes delay in such cases particularly objectionable is the fact that the accused, though presumed innocent, will often be in prison during this period. If on bail, he may well be walking the same streets in the same neighbourhood as the victim and family of the victim of the alleged crime.

In the judicial review list, where legal challenges are brought to decisions of various administrative bodies, the situation is also deteriorating. Instead of cases receiving a hearing date next term, they are now being put back to the following term. Many of these cases are extremely urgent, as in the asylum list where decisions of the Refugees Appeals Commission are challenged by people facing deportation. Delays are growing in the family law lists in the High Court (although to an even greater extent in the Circuit Court, where divorce and judicial separation cases are now taking much longer than previously) and even major commercial law cases which have been specially fixed with witnesses travelling from abroad frequently cannot begin, often after days of waiting, because no judge is available.

Worse is to come. Company law enforcement and EU competition law cases are on the way and extradition cases are about to be moved from the District to the High Court. Yet as things already stand, in almost every area of work (although not as yet in personal injury work) court delays are growing, despite the enormous hard work and creativity of judges and court staff.

The solution is simple. The government should appoint half a dozen new High Court judges and a number of additional judges also in other courts. Failure to do so is a false economy. In many respects, the judge is the cheapest element in the whole system. Delays and postponements in the courts waste economically and socially valuable personnel and resources of all kinds.

Citizens' access to justice is denied through delay, the dynamism of the Irish economy is blunted and all who deal with the courts are frustrated by courtrooms lying idle because judges have been committed elsewhere by the government.

By all means continue to use judges in the other roles for which their skills well suit them. But replace them, as a minimum, when you do so. G

Ken Murphy is director general of the Law Society of Ireland.

Three years after closing its doors for renovations, one of the country's finest courthouses is still lying empty. Meanwhile, justice in Ireland's second city is being dispensed in conditions that have been branded 'sub-human' and 'intolerable' by practitioners. Conal O'Boyle reports

PHOTOGRAPHS: JANICE O'CONNELL/F22 PHOTOGRAPHY

CORK'S ROUGH

Imagine, if you will, a dungeon or cave, measuring perhaps nine feet by nine feet. Imagine, too, that the only source of light entering that dungeon comes through the floor-to-ceiling metal bars that make up the front wall. Now picture that dark, dirty cage holding nine or ten agitated men, each facing the most difficult day of their lives. And try, if you can, to imagine the stench of urine mingled with smoke, sweat and stale coffee that assaults the nostrils of anyone who has business here in this dank place. These are the holding cells that lie behind an insignificant white metal door at the back of courtroom number 1 in Cork's Camden Quay courthouse.

To call the conditions here Dickensian would be an insult to Dickens. This is Cork's black hole of Calcutta.

(Far left) One of the two unique courtrooms contained in the now empty courthouse on Cork's Washington Street *(left)*

'One of the finest courthouses in the country': the empty corridor above Washington Street's roundhall

MAIN POINTS

- **Inadequate facilities in 'temporary' courthouse**
- **'Sub-human' conditions in holding cells**
- **Anger and frustration among Cork solicitors**

S JUSTICE

Today is the first day of the Circuit Court criminal sessions in Ireland's second city, and all four cages are filled with men presumed innocent until found guilty. In one small sense they are lucky: if there were any female remand prisoners awaiting hearing, the men would lose one of the four cells through segregation. They began arriving by prison van at 9.30am and some will be there until the session closes at 4pm.

Sympathy is hard to come by in this place. After all, these are serious punters. And the accommodation is little better for the score of gardaí and prison officers milling around out of sight behind the door. Few have chairs to sit on in their spartan common room just round the corner from the cells; most drink their coffee standing up. It is doubtful whether the room would pass a health and safety inspection.

But for criminal law practitioners, the situation is, if possible, even worse. The 'consultation room' is a corridor outside the fetid toilet, just yards away from the cages. It is furnished only with a mop bucket and a broom. This is where solicitors must consult with their clients, many of whom will have life-altering decisions to make. This is rough justice, Cork-style.

'Sub-human' is how one criminal lawyer describes the accommodation. 'Unacceptable and intolerable', says another, who adds: 'You wouldn't even call it second-rate'.

'It's impossible to provide a proper service', says solicitor Frank Buttimer. 'It's just unimaginable that you could have any kind of coherent consultation with people who have important decisions to make'.

On the other side of the white door, the court is full to overflowing. It's standing room only as the court processes its workload efficiently, racing through the huge number of cases to be dealt with in the coming weeks. But poor acoustics and poorer air conditioning drive many people out into the public corridors, and their places are immediately taken by those who have been craning their necks at the door because their elbows lacked the skill to get them inside in the first place.

To be fair, this is the first day of the criminal session and things are bound to improve as the days pass, but justice in Cork was never meant to be administered like this. On Washington Street, the city boasts one of the finest courthouses in the country, dating back to the 1830s.

Historically, Washington Street housed the District and Circuit courts, and also the High Court when it came to town. But by the early 1990s, even the dullest bureaucrat had come to recognise that the courthouse facilities were no longer adequate for the purpose. In 1995, the District Court was hived off to the newly-renovated Model School on Cork's Anglesea Street, while the city council began the search for a temporary replacement for the other courts.

Business continued in Washington Street while the building's facade was being cleaned and sandblasted, but in 1999 the old courthouse closed its doors, supposedly for one year, while interior refurbishment was to take place. By this time, Cork City Council had acquired the Camden Quay site as a temporary courthouse at an annual lease of £500,000 (€635,000). Three years and £1,500,000 later, the final design for the interior of Washington Street has been agreed but the renovation seems as far away as ever. Camden Quay looks like it will be home to the Circuit Court and High Court until at least November 2004.

Meanwhile, the original budget for renovating Washington Street has been revised upwards. Current estimates suggest that the cost has jumped from €8.89 million (£7 million) in 1997 to €19.05 million (£15 million) when the work is scheduled to be completed in 2004. And three years after the courthouse closed its doors, a contractor has still not been appointed to carry out the job.

Not surprisingly, practitioners and their clients are angry and frustrated at the lack of progress. As one solicitor put it: 'You could put up with it for 12 months when you thought that it was only going to be 12 months, but we're two-and-a-half years in here with the prospect of another three years down the line'.

And they're not the only ones feeling the pinch. Visiting judges are reported to have expressed grave reservations about sitting in Camden Quay. Last November, for example, a jury trial was temporarily abandoned because the courthouse flooded so much that jurors were trapped in their jury room and had to be ferried out by boat.

For Cork solicitors, the issue is not simply one of better surroundings in which to ply their trade; they are worried about the impact that such poor facilities have on their clients. This is particularly true when it comes to family law.

As one practitioner puts it: 'Family law cases are chaotic in Camden Quay. Both parties should be kept away from each other, but when the courthouse is crowded, that's just impossible. Mind you, even in Washington Street that was a serious problem'.

There are a number of consultation rooms in the temporary courthouse, but solicitors are quick to

Cork's temporary courthouse on Camden Quay

point out that they're pretty basic, to say the least. The rooms are airless and barely furnished, with no tables and a few plastic chairs. Perhaps people facing into the trauma of a court case may have other things on their minds than furniture, but practitioners here argue that their clients deserve more than the most basic facilities on offer.

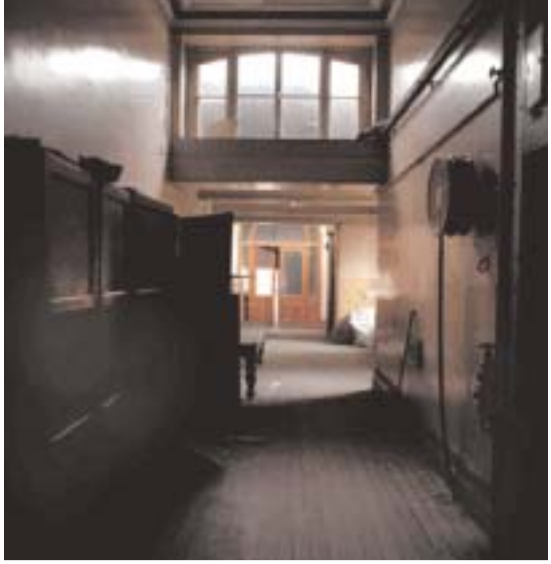
'I think the profession has shown a lot of forbearance and restraint up to now', says Frank Buttimer, 'but this situation is causing us more and more concern. And it's not because we have a vested interest in being any more comfortable than anybody else doing their jobs; it's just that at the end of the day this building is used by the public and as citizens they're entitled to reasonable accommodation.

'The end users have no-one to speak for them because they are just a group of individuals who happen to be using the court facilities, and that's typically a voiceless grouping. It's a pretty big grouping, but they don't have occasion to use the court facilities more than once or twice. They look at it, they think its outrageous, their business is dealt with and they're gone'.

The Southern Law Association, the representative body for solicitors in Cork city and county, has been

(Right) Delusions of grandeur: images from the deserted courthouse on Washington Street

'Last November a jury trial was temporarily abandoned because the courthouse flooded so much that jurors were trapped in their jury room and had to be ferried out by boat'




A6
Good lawyers always check the small print.
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pressing for action on the Washington Street courthouse, while highlighting the appalling inadequacies of the Camden Quay site. In the words of one SLA member: 'It's an issue that's been festering in the background as opposed to receiving the huge attention that it should have up to now. Everybody's been sitting around waiting for something to happen, but how long are you supposed to wait?'

According to the Courts Service, which only took over the management of the state's court facilities in November 1999, there is now some light at the end of this Jack Lynch Tunnel. A spokesman for the service told the *Gazette*: 'Our project manager has now set down a timetable and we will go out to tender for this project on 10 May, with a tender period of six weeks, so tenders should be back in by 21 June. We hope that the contractor will be on site in early August, after the builders' holiday. I won't say that's written in stone because things can always go slightly askew, but this is the timetable that everybody's working to now. I would hope that by 2004 we will be able to provide a proper court with the proper facilities in it for all court users'.

And there is some more immediate good news as well. The Courts Service says it will move immediately to improve conditions in Camden Quay by supplying tables and chairs for the 'consultation room' beside the holding cells. The lawyers' room in the courthouse will also be extended over the Easter recess. But the spokesman added: 'Structurally we're limited, and there's no point in saying that we'll put in three extra consultation rooms because physically we really can't. But cosmetically we can put in things like tables and chairs straight away. I've been on to our suppliers and we'll get that done'.

So will the move back to Washington Street mark an end to the rough justice experienced by those currently languishing in the remand cells at Camden Quay? 'Absolutely', says the Courts Service. 'There will be more space, and at least two sets of holding cells – one under each of the main courtrooms. In the new courthouse, there will be proper consultation facilities for solicitors and their clients'.

Sean Durcan of the SLA believes that the legal profession in Cork has learnt a few lessons from the move to Camden Quay. It's had architects examine the plans for the refurbished Washington Street courthouse and lobbied the Courts Service heavily to ensure that the appropriate facilities will be in place when the court finally opens its doors again. He's reasonably happy that the profession's concerns have now been taken on board.

And like the rest of his colleagues – and their clients – he won't be sad to see the back of Camden Quay. 'You do get used to it', says Durcan. 'There's nothing else you can do. You have to use what's there. But Washington Street is a fantastic building and it will be great to get back there'. G

VOYAGE of

Recent court decisions have led to several important developments relating to the rules of discovery and their interpretation. Eoin Dee explains

In the recent case of *Michael Swords v Western Proteins* (High Court, 1998, no 405P), the decision of Mr Justice Frederick Morris indicated that, unless a letter seeking voluntary discovery is in the strict statutory form as required by statutory instrument no 233 of 1999, discovery will not be granted.

Originally, applications for discovery before the Superior Courts were governed by order 31, rule 12 of the *Superior Court Rules*. This provided that a party seeking discovery might apply to the court for an order for it without the need to file any affidavit. The court might refuse or adjourn the application if satisfied that discovery was not necessary, or unnecessary at that particular stage of the proceedings, for disposing fairly of the cause or matter or for saving costs. Under these original rules, it was not necessary to specify precise categories of documents that were required to be discovered. Neither was the applicant required to set out reasons why discovery was being applied for.

Statutory instrument 233 changed all of this. It came into effect from 3 August 1999 and provided that the party seeking discovery must request it on a voluntary basis from the party against whom discovery is sought. This written request must specify the precise categories of documents required and must set out why these are necessary for disposing fairly of the cause or matter or for saving costs. Any notice of motion seeking discovery that subsequently issues must do likewise in an affidavit that must accompany the notice. The question therefore arises as to how these provisions are being interpreted by the courts. The decision in *Swords* is important because it shows that the courts are likely to apply a strict interpretation when considering applications for discovery.

This case was a personal injury action that arose from burns sustained by the plaintiff while employed by the defendant at its meat-processing plant in Ballyhaunis, Co Mayo. On 19 May 2000, the master of the High Court had ordered that within six weeks the defendant make discovery on oath of 'the accident report form and all documents relating to the reporting and investigation of the accident in which the plaintiff was involved up to 1 October 1997, when the defendant was made aware of the plaintiff's intention to bring legal proceedings arising out of the accident'. The plaintiff's solicitor initially sought voluntary discovery on 29 November 1999 by writing to the defendant's solicitor seeking documents from the defendant which 'touch on in any way the issue of liability in this case', particularly a list of documentation including the accident report book. The defendant's solicitor subsequently replied, indicating the requirement under the *Superior Court Rules* to specify why they were needed. The plaintiff's solicitor in turn replied that 'we would have assumed that the reason why we require discovery of these documents was self-evident'. Thereafter, a notice of motion seeking discovery was issued.

At the hearing, the master adjourned the case for the purpose of allowing the plaintiff's solicitor to file a supplemental affidavit outlining why the documents were required to be discovered. This affidavit stated that the documents were 'required to prove the defendant's state of knowledge at the time [of the accident] and its negligence as particularised in the second, third and fourth paragraphs of the particulars of negligence'.

Before Mr Justice Morris, counsel for the defendant objected to the order for discovery made by the master and submitted that the master misdirected himself in granting the order. Counsel submitted that statutory instrument 233 of 1999 specifically precludes the court from making an order for discovery unless:

- The applicant has previously sought discovery voluntarily, specifying precisely what is sought and the reason why, and
- A reasonable time has been allowed for discovery to be made and the person requested to make discovery has failed or neglected to do so.

Counsel submitted that the letters written by the plaintiff's solicitor made no attempt to specify the precise category of documents required and did not set out why these were required. Counsel submitted that in these circumstances, the master had no power to make the order.

The defendant made a further submission that there is an obligation on the party seeking discovery to file an affidavit verifying that the discovery is necessary to dispose fairly of the matter or to save

MAIN POINTS

- ***Swords v Western Proteins***
- **Effects of statutory instrument 233 of 1999**
- **Discovery letters to be in strict statutory form**

DISCOVERY

costs and giving the reasons why each category of documents is required to be discovered. It was submitted that, as this had not been done by the time the matter first came before the master, the master had misdirected himself in adjourning the matter. Counsel for the defendant submitted that the master should have determined the matter when it came before him on the first return date.

A thing of the past

As regards the first submission, Morris J held that statutory instrument 233 of 1999 imposed on the party seeking discovery a clearly-defined obligation to pinpoint the documents or category of documents to be discovered, and required that party to give the reasons why they were needed. In his ruling, the judge stated that 'blanket discovery became a thing of the past'. He went on to say that the purpose of SI 233 was so that 'the party against whom discovery was being sought would, upon receipt of the preliminary letter, be in a position to know the documents or category of documents referred to and be able to exercise a judgement on whether the reasons given for requiring these documents to be discovered was valid'. Morris J further stated that 'if the letter of application does not comply with the rules, then the issue is not identified and there is no power vested in the master to make a determination on any issue'. The judge was of the view that the master derived his jurisdiction to determine the issues from the identification of the issues in the originating letter and that even an elaborate affidavit filed subsequently could not make up for earlier deficiencies. In this particular case, Morris J was satisfied that there had not been any effort made by the plaintiff's solicitor to specify the precise category of documents sought and, accordingly, the master had no jurisdiction to make the order for discovery.

In response to the second submission by the defendant's counsel, Mr Justice Morris stated that it was within the master's jurisdiction to give the plaintiff an opportunity to file a supplemental affidavit to enable him to comply with the *Superior Court Rules*. He stated that there was no obligation on the master to determine the issue on foot of the affidavit before him, observing that 'there is vested in the master an overall jurisdiction to adjourn the case if the interests of justice require that such an order be made'.

Proceeding with care

For litigation, the important element to take from this decision is that, if you are seeking voluntary discovery, it is necessary that your request be in strict compliance with the provisions of SI 233 of 1999. In particular, the preliminary letter requesting voluntary discovery must be quite specific in outlining what is required and must clearly state the reasons why these are required and why they are necessary for disposing fairly of the matter or for saving costs. If a motion is subsequently filed, the motion's grounding affidavit must also specify these details. If the originating letter setting out what is required to be discovered is not in compliance with the *Superior Court Rules*, the master has no jurisdiction to make an order for discovery. If the affidavit fails to comply with the statutory requirements, the master has inherent jurisdiction to adjourn the matter to allow for the filing of any supplemental affidavit to remedy the defect in the motion papers.

The decision makes it quite clear that the rules governing the concept of discovery are to be construed strictly, so practitioners must be extremely careful. G

Eoin Dee is a solicitor in the Wexford law firm Nolan Farrell & Goff.

'The decision makes it quite clear that the rules governing the concept of discovery are to be construed strictly, so practitioners must be extremely careful'

The CCBE represents the interests of more than 500,000 lawyers throughout the European Union and the European Economic Area. This year's president is Irishman John Fish and here he talks to the *Gazette* about the role of the CCBE and what he hopes to achieve during his year of office

THE MAN WITH

The CCBE – which stands for the Council of the European Bars and Law Societies – maintains a secretariat in Brussels, at 45 Rue de Tréves. Its staff comprises a secretary general, together with legal assistants, secretaries and translators. The secretary general is Jonathan Goldsmith, who was a former international director for legal affairs in the Law Society of England and Wales. The remaining staff consists of young lawyers and assistants from various parts of the European Union, including Ireland's Peter McNamee.

What does the CCBE do?

There is a considerable proliferation of bars in continental Europe. The European institutions prefer to deal with a single entity such as the CCBE where consultation with the legal profession as a whole is required. This is the CCBE's primary role. The institutions with which the CCBE maintains regular contact are the European Commission, the European Court of Justice and the Court of First Instance in Luxembourg, the European Parliament and the European Court of Human Rights in Strasbourg.

For example, the CCBE is regularly consulted by the commission on any issues that affect the rights of lawyers to engage in cross-border practice. In this regard, the commission is currently examining whether there exist within the European Union any barriers to the provision of cross-border professional services (including legal services) throughout the union.

The CCBE has also been asked to examine ethical issues arising out of the application of the e-commerce directive. Currently, the CCBE *Common code of conduct* deals with ethical issues arising out of cross-border activities by lawyers, but it is a code that is likely to require revision.

A matter in which I was personally involved over the last two to three years was the extensive lobbying that the CCBE undertook regarding the commission's proposal to extend to the legal profession the obligations of financial institutions under the existing money-laundering directive. Although we would have preferred that the requirements of the directive – whereby lawyers would be obliged to disclose suspicious transactions to the authorities – had not been adopted, political pressure, particularly since the tragic events of 11 September, has resulted in the Council of Ministers and the European Parliament reaching a compromise agreed text.

As a result of extensive lobbying by the CCBE, significant qualifications were included in the agreed text whereby the obligation to report may not apply where the lawyer is acting on behalf of a client in judicial proceedings and during the course of giving legal advice. However, it remains to be seen how national governments implement this legislation. A list of 'action points' has been prepared by the CCBE and has been sent out to all the delegations. This list identifies the discretions vested in member states, so that bars and law societies can be forewarned of the issues on which they will need to be vigilant in dealing with national governments.

Were you happy with the outcome of the money-laundering debate?

I do not think any lawyer could possibly say that he was 'happy' with the result of that debate, insofar as lawyers will be obliged to report suspicious transactions to the authorities. The CCBE has maintained that, in the absence of proper safeguards, such disclosures would be in fundamental breach of European rules on the principle of lawyer/client confidentiality. Having said that, I believe that in the context of the fight against money laundering, the compromise eventually reached between the European Parliament and the Council of Ministers is probably the best that could be expected in the circumstances.

How is the CCBE organised?

Bars and law societies appoint national delegations to represent them individually. These delegations can comprise up to six delegates in the case of the larger bars and law societies, whereas two to three delegates is the norm for a number of the smaller ones. Each delegation has a person who is nominated as its head, who in turn attends regular standing committee meetings (usually in Brussels). All delegates attend bi-annual plenary sessions, one held in Brussels and the other in the country of the president. The Law Society

of Ireland and the Bar Council will have the pleasure of hosting the plenary session in Dublin in early December of this year.

The national delegations elect a first vice-president and a second vice-president who, together with the president, are collectively known as 'the presidency'.

How are you funded?

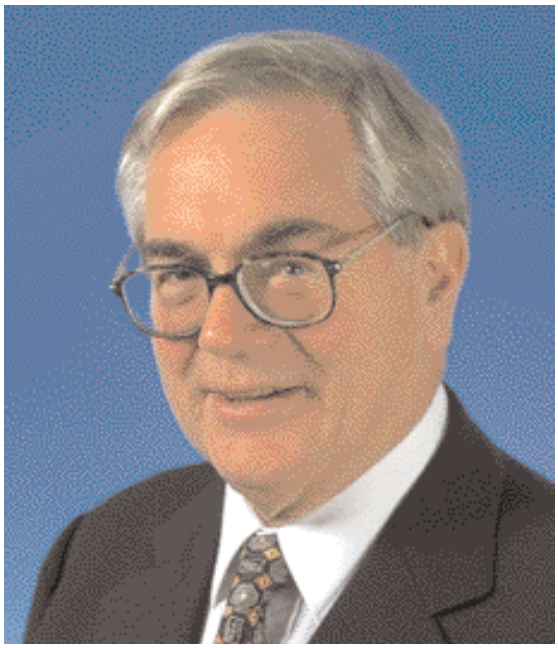
Each bar and law society pays a subscription to the CCBE which is calculated by reference to size. The subscription for this year, which is shared by the Law Society and the Bar Council, is €31,632. In the case of Germany it amounts to €92,627. In recent years, national delegations have sought, quite properly in my view, to get more 'value for money' in relation to the matters handled by the CCBE. Certainly, the CCBE has implemented procedures within the secretariat to ensure that it operates more efficiently and that delegations and their information officers are kept advised of all relevant developments. I believe that this is working well and it is my understanding that delegations generally are happy that they are being well served from Brussels.

What are your ambitions for 2002?

This year, issues will arise regarding the positions to be adopted by the European legal profession on the rights of European lawyers to provide legal services in jurisdictions other than Europe, and also of lawyers from such other jurisdictions to provide services in Europe. This is all being conducted under the aegis of the WTO. The European Commission is the negotiating body on behalf of the European Union and we are in regular contact with the relevant personnel within the commission so as to ensure that our views are properly promoted. For example, the CCBE would wish to see that where the United States government seeks access for their lawyers into the European Union, similar rights of access should be conferred in the US. The same principle applies for other jurisdictions.

On any issue, the CCBE tries to reach a common position within the bars and law societies. Sometimes this can be difficult to achieve. The dilemma for the CCBE, however, is that as more and more initiatives are developed by the European Commission both in relation to the practice of law and also in relation to substantive law, there needs to be a body such as the CCBE that can reflect the overall opinions of the European legal profession.

The CCBE has in the past focused the rights of lawyers to provide services within the European Union. I believe that the emphasis will now change towards a demand from the European institutions that the legal profession should have an input into new legal developments intended to harmonise the law and legal practice where it impacts on the internal market. For example, there are important new initiatives in the field of criminal law, especially with regard to proposals for minimum procedural standards in the member states following an extradition under the European arrest warrant.



John Fish: 'The CCBE has to work out how the voice of the European legal profession can be heard at every level within the European Union'

Another example where the CCBE should be actively involved arises out of the commission's proposals to review and harmonise aspects of contract law. The commission has just published a draft proposal for a directive on legal aid, which I am sure will give rise to considerable debate. To that extent I believe that the CCBE has to work out, in conjunction with the bars and law societies, how the voice of the European legal professional can be heard at every level within the European Union.

A matter of supreme importance to the profession is the long-awaited decision by the European Court of Justice in the so-called *Nova* case. The CCBE intervened in this case in support of the Dutch bar following a referral to the court by Arthur Anderson and PricewaterhouseCoopers against a decision of the Dutch bar to prohibit in the Netherlands a multi-disciplinary partnership with accountants. The court held that the Dutch bar was entitled to impose restrictions, as these were necessary 'for the proper practice of the legal profession'. We are delighted with the outcome, which we think is clearly in the public interest.

Developments at European level that will affect practitioners are moving ahead. It is not simply a question of the CCBE keeping abreast of such developments, but also of influencing them from the point of view of the practitioner and the consumer. G

John Fish is the president of the CCBE and a consultant with the Dublin law firm Arthur Cox.

EUROVISION

Coroner Rules
Public Advertisement
for Submissions

The Department of Justice, Equality and Law Reform is preparing new legislation arising from the publication of the Report of the Review Group on the Review of the Coroner Service (the Review Group). A Rules Committee has been established to develop detailed standardised procedures (Rules) for the work of the coroner. In accordance with the recommendations of the Review Group, the detailed Rules developed by the new Committee will be incorporated into regulations to be appended to the new legislation.

The work of the Rules Committee will include matters relating to:

- Definition of interested persons
- Definition of "sudden death"
- Deaths which must be legally reportable
- Persons who must report a death
- Preservation of post mortem records
- Post mortem reports
- Certificates of death
- Inquest jurisdiction
- Notices of inquest
- Circumstances where juries should be used
- Access to post mortem reports
- Records to be retained at inquest
- Procedures for documentary evidence
- Access to inquest documents
- Calling of witnesses
- Range of verdicts findings available

A full list of matters for consideration is set out in **Appendix J** of the Report of the Review Group, a copy of which is available by accessing the Department of Justice, Equality and Law Reform web site, ***www.justice.ie*** A hard copy is available on application to the Secretary to the Rules Committee at the address below.

The Rules Committee now invites submissions from interested groups and persons in relation to their work. Submissions should be confined to the matters set out in Appendix J and should arrive *not later than Tuesday 12 March 2002*.

Submissions in writing should be sent to:

Ms Justina Airlie
Secretary to the Rules Committee
Room 520
Department of Justice, Equality and
Law Reform
72-76 St. Stephen's Green
Dublin 2.

Submissions can also be made by e-mail to:

submissions@justice.ie

Department of Justice, Equality and Law Reform
An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí

Sticking it to the spammers

The United States has been leading the way in the fight against unsolicited e-mails and other nuisance communications. Recently, that fight took a new turn in the US Supreme Court. Paul Lambert discusses the latest development

In June 2001, the Washington Supreme Court upheld the constitutionality of a state law prohibiting unsolicited commercial electronic communications or 'spam' (see *Gazette*, October 2001, page 22).

Washington's attorney general had sued a man named Heckel after receiving complaints from people who had received his spam communications. Heckel contested the validity of the state's *Commercial Electronic Mail Act*, arguing that it violated the so-called 'commerce clause' of the US constitution. He argued that US states are not permitted to pass laws that regulate US inter-state commerce. The Washington Supreme Court upheld the act and referred the case back to the Superior Court of King County (the trial court) in Seattle. Heckel appealed to the US Supreme Court.

The US Supreme Court decision would be an important test for all anti-spam laws in the United States and also in relation to the legality of spam generally. While many appeals are filed with the US Supreme Court, the sheer volume (and the limited number of judges) means that, in practice, only a small selection of these cases are heard. In this instance, the court decided on 29 October 2001 that it would not hear Heckel's appeal. This means that the original decision of the Washington Supreme Court remains intact and the case against Heckel will revert to the King County Superior Court for hearing.

The case awaiting Heckel is a claim made by Washington's attorney general, originally filed in 1998. Heckel is being sued for spamming millions of e-mail users. The spam communications that were complained of sought to advertise a book that advised people how to use spam themselves. The Washington act proscribes the sending of commercial e-mails that contain misleading information in the subject line, use false e-mail return addresses or use third-party domain names as a return address without the permission of the third party.

Various parties are permitted to bring cases under the act. The state can bring actions against spammers seeking damages of up to $2,000 per violation. Consumers who receive spam are permitted to sue for up to $500 per spam communication or the amount of actual damage, if the damage is greater. Internet service providers (ISPs) are permitted to sue for $1,000 per spam message.

Heckel is alleged to have repeatedly used deceptive subject lines, such as 'did I get the right e-mail address?', which the attorney general feels deceived recipients of the communications into opening them. Heckel is also alleged to have used false return addresses as well as cancelling addresses as soon as each batch of spam had been sent. Ray Everett-Church (a spokesperson for the Coalition Against Unsolicited Commercial E-mail) is reported to have said, in response to the US Supreme Court decision, that this type of deception and falsehood took the appeal 'out of being a pure commerce clause issue to one of consumer protection … There is very little constitutional protection for deception, and that seems to be really the bottom-line to the case'.

It now remains to be seen what the trial court will decide. Will the allegations against Heckel be proved? What sanction or fine may the court impose? It should be remembered that it is possible for damages to be awarded in relation to each individual spam communication. It is also unclear if individual recipients or ISPs intend to sue Heckel if the present action is successful. The King County decision will be eagerly awaited by interested parties on both sides of the spam debate.

On 29 October 2001 on the other side of the world, a Japanese court granted an injunction to a mobile telecommunications company against a company that allegedly spammed hundreds of thousands of e-mail users. So many messages were being sent that it was beginning to affect the capacity of the communications network. This is just another example of network providers seeking the assistance of the courts against the initiators of spam. It is clear that the technological capabilities that permit spam, and wireless spam, will result in many more cases being taken by both communications companies and recipients. G

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

MAIN POINTS

- **Regulation of unsolicited commercial communi-cations**
- ***Washington v Heckel***
- **Recent case law in the United States**

LIQUOR Licensing Law

part of the *Butterworths Irish Annotated Statutes*

Michael McGrath BCL, MA, MCIArb, BL

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Book reviews

Towards a culture of human rights in Ireland

Ivana Bacik and Stephen Livingstone. Cork University Press, University College, Cork, in association with the Centre for Cross-border Studies, Armagh (2001). ISBN: 1-85918-313-1. Price: €11.17.

In a triumph of diplomacy over violence and following extensive multi-party negotiations, the *Good Friday agreement* was signed on 10 April 1998 by the British and Irish governments. One of the many historic elements of the agreement was the central role that human rights were given.

A number of common commitments were made by both governments, including the incorporation of the *European convention on human rights* (ECHR) into domestic law and the setting up of human rights commissions with similar mandates in each jurisdiction. While the Northern Ireland Human Rights Commission (NIHRC) is at least up and running, the commission in this jurisdiction, at the time of writing, still awaits the appointment of a chief executive and approval of its staff budget. Nor has the ECHR been passed into Irish law as yet and the bill has been subject to severe criticism by the Irish Council for Civil Liberties and the Law Society in relation to its exclusion of the applicability of convention principles to private law cases and the unsuitability of damages alone as a remedy in all cases.

Human rights are thus now very much to the fore in the legal and political arenas in both parts of this island, which means that the timing of this book could not be better. The publishers have produced a series of essays entitled *Crosscurrents*, which examines aspects of the relationship between the north and south of Ireland. *Towards a culture of human rights in Ireland* sets out, in extended essay format, the views of Ivana Bacik on whether a human rights culture can be created in the Republic and Stephen Livingstone on the future of a human rights regime in the North.

The writers reflect the different societies and human rights culture from which they come, and the contrast between them provides the reader with an insight into the changes in the human rights geography of this island since the agreement.

Bacik identifies the incorporation of the ECHR into domestic law as the best chance of creating a human rights culture in this jurisdiction and examines the likely effect of incorporation in light of the protection of human rights already contained in the constitution.

She emphasises the importance of economic and social rights as well as group rights and observes that the incorporation of the ECHR can still promote awareness of rights and so bring about some social change. However, she notes that most of the ECHR rights are already covered by the rights provisions of the Irish constitution. Essentially, she advocates the need for a change in our perception of human rights to include economic, social and group rights through a principled political debate – without this debate and consequent change, no culture of human rights can exist here.

Livingstone, in contrast, is less concerned with the ideology of rights and more involved in the enforcement of human rights in Northern Ireland. Equality, accountability, freedom and democracy are the values on which he believes the bill of rights for Northern Ireland should be based. He ponders the question of whether a truth commission should be set up and notes, with regret, the lack of any commitment to such a commission in the *Good Friday agreement*. Human rights, he believes, must not be viewed simply as assisting nationalists but should be perceived as helping both communities to assert their rights.

The role of the courts, the new police force and the NIHRC will be crucial in ensuring the enforcement of human rights in the North. He sees the NIHRC as having a pivotal role, but only if it is properly resourced and supported by the British government. Livingstone notes that human rights commissions in other jurisdictions generally function best when surrounded by independent judges, human rights lawyers and an active NGO sector. Human rights are not just related to unionists and nationalists but to women, children and all others disadvantaged by the situation in the North. If all are to benefit from the new approach to human rights, then a culture must be created in which the people of the North recognise their new duties as well as their new rights.

Cork University Press is to be admired for producing this volume. It is a fascinating insight into the current human rights situation on this island as articulated by two leading civil rights advocates. G

Keith Walsh is a solicitor with the Dublin law firm Anthony Harris & Co.

Civil liability for industrial accidents, volume 3

John PM White. Oak Tree Press (2000), Lower Merrion Street, Dublin 2. ISBN: 1-86076-197-6. Price: €210.

Readers will be familiar with Dr White's two earlier volumes on civil liability for industrial accidents, published in 1993. This volume, comprising 1,081 pages, updates the earlier work.

Each chapter of the principal work is updated by a corresponding chapter in this third volume, with additional chapters dealing with major developments since 1993. The present volume contains a cumulative table of cases, statutes and statutory instruments.

In his prefatory note, Dr White states that it is scandalous that, although the UK parliament required that compulsory insurance should be carried in respect of employer's liability as early as 1972, no corresponding obligation exists even now in this state. Dr White criticises the lack of resources to enable the relevant authority to enforce a statutory regime for the protection of workers imposed by the European Union on the state.

In a review of this nature, it is only possible to touch briefly

upon some topics considered by the author. Issues such as vicarious liability and whether an employee is on business on his own account (the determination whether a person is a servant or an independent contractor) – matters of practical significance in the law of civil liability – are considered in some detail. In the context of the *Statute of limitations*, terms such as the 'date of knowledge' and the meaning of 'injury' are examined.

Dr White's view on the extent to which actual or constructive knowledge of a solicitor or other expert may be imputed to a plaintiff are important, and will have significance in any actions in this regard in relation to the liability of solicitors in negligence, not only, as stated, in relation to what a solicitor knows but what he or she ought reasonably to have known.

The most recent legal principles in relation to the recovery for shock-induced injury and the *Occupiers' Liability Act, 1995* are also covered extensively by the author.

Civil liability for industrial accidents represents an outstanding and significant achievement. Dr White has produced a richly thoughtful commentary on a vital area of our law. His three volumes represent a project of enormous ambition, written with remarkable clarity and rigour. G

Dr Eamonn Hall is chief legal officer of Eircom plc.

Safety, health and welfare at work in Ireland: a guide

Raymond Byrne. Nifast (2001), 46 Airways Industrial Estate, Santry, Dublin. ISBN: 1-899047-88-3. Price: €49.

Safety, health and welfare at work in Ireland: a guide provides a very useful and practical guide to health and safety management in the workplace. This guide, which is divided into two parts, is clearly comprehensive as to breadth. It identifies practically every issue and topic that can arise in health and safety management.

A flavour of the practical nature of this work is to be found in part I, which reviews health and safety as part of the general management and business strategy of a firm. This guide will also assist in keeping the risk-management process simple and appropriate to the level of the risk presented. In addition to suggesting risk management strategies, one also receives guidance as to how such strat-egies can be effectively managed.

In part II, the guide reviews in detail specific hazards that exist in the working environment: the breadth of coverage of such hazards can be gauged from the fact that this part of the guide runs to more than 300 pages. One cannot help but feel that, no matter what hazard might arise, one will find at least some reference to it in the chapters contained here.

The author, in his preface, states that the guide describes the law as of July 2001. Since that date, the *Safety, Health and Welfare at Work (Construction) Regulations* (SI number 481 of 2001) have come into force, save for the provisions detailed in regulation 1(3). The 2001 regulations revoke the *Safety, Health and Welfare at Work (Construction) Regulations 1995* alluded to in chapters 10 and 11 of the guide. In light of the large number of deaths on construction sites, the new regulations require that training for construction workers be certified as per regulations 6, 9 and 14 and the eighth schedule of the *Safety, Health and Welfare at Work (Construction) Regulations 2001*. These regulations require that all site workers receive a basic safety course under the FÁS Safe Pass training programme and are in possession of a valid certificate.

Chapters 30 and 32 of the guide have a very interesting discussion on the identification of stress, bullying and harassment in the workplace. The author, at chapter 30.1, notes the detectable movement towards encouraging employers to manage health and safety issues. Such an approach involves, *inter alia*, the employer carrying out a risk assessment on an on-going basis. In the Scottish Outer Court of Session case of *Cross v Highlands and Islands Enterprise* ([2001] IRLR 336), Lord MacFayden alluded to the many publications and guidelines on stress at work which emphasise that 'stress should be treated like any other health hazard'. Consequently, he held that it is 'strongly arguable that today a reasonable employer would carry out assessments of the risk of injury to their employees of stress at work'. That said, workers claiming compensation for stress in England and Wales must satisfy strict new rules laid down by the Court of Appeal in February 2002 that make it clear that no job is inherently dangerous to an employee's mental health. In judgments that signpost a sea-change in compensation awards for stress, the Court of Appeal overturned damages claims by three workers totalling nearly £200,000. Lady Justice Hale opined that it should not be the responsibility of an employer to make exhaustive investigations into the mental health of employees. Instead, the onus was on the stressed worker to decide whether to leave the job or carry on working and accept the risk of a mental breakdown.

Consolidation of the legislation in the health and safety area continues to be a priority. We have witnessed a torrent of health and safety legislation in the last ten years. The practitioner in this area must now trawl through the *Factories Act, 1955*, the *Safety, Health and Welfare at Work Act, 1989*, the numerous regulations implemented under that act, and the *Organisation of Working Time Act, 1997* to determine his liabilities. Given the volume of legislation to be considered in the health and safety area at present, it seems appropriate to recall a portion of US President Abraham Lincoln's first State of the Union address in 1861:

'The statute laws should be made as plain and intelligible as possible, and be reduced to as small a compass as may consist with the fullness and precision of the will of the legislature and the perspicuity of its language'.

This guide assists, to a significant extent, in achieving what Lincoln propounded by making our way through the countless regulatory laws in the health and safety area much easier. In addition, the guide introduces considerable rationality into the current health and safety regime.

This is an excellent guide, indispensable to all involved with or connected to places of employment. It is a major contribution to one of the more complicated areas of employ-ment law and is a work that no employer, insurer, lawyer, mana-ger, health and safety officer or judge should be without. G

Geoffrey Shannon is a solicitor and the Law Society's deputy director of education. He is legal editor of A-Z of health and safety risk assessment in Ireland *(Round Hall Press).*

What time is the right time?

Davy STOCKBROKERS

Alan Murphy: 'There is a strong argument for more proactive trading in your portfolio'

How important is timing in picking the right investments? Alan Murphy outlines the arguments

Time versus timing is an age-old argument in investment circles. A noteworthy article appeared in the investment publication *Barron's* late last year, providing an interesting slant on the costs of timing the market incorrectly and the gains made when successful timing has been achieved.

The broad consensus of the fund management industry is that correctly timing the market is practically impossible as, historically, the best returns in any given year happen on average in just five days. The usual advice is that investors should not frustrate themselves wondering when is the best time to invest and should focus instead on picking quality companies at the lower end of their trading ranges. Time, it is argued – not timing – is what matters.

As investment professionals, we would broadly agree with this thesis, but there are certainly times when it pays to be more aggressively invested, especially during the seasonally strong out-performing period of November to January, where one can look to exploit the seasonal effects.

In general, it has also paid to reduce exposure to the market as the summer approaches. This has given rise to the ubiquitous phrase 'sell in May'. But more importantly, there are also times when we would consider reducing or increasing our exposure to the market on the basis of our fundamental view of the economy, sector and company specifics.

The *Barron's* article outlined the market timing case. It is their belief that while buying and holding the market is the correct strategy in prolonged bull markets, an entirely different approach is required in more uncertain times. According to market timers, staying fully invested all the time is not the best strategy; there are always peaks and troughs in the market which market timers believe they can exploit.

Market timers cite the last protracted bear market in US equities that started in February 1966 and lasted until August 1982 as an example. The Dow Jones index value in February 1966 was 995 and 16 years later it stood at 777. So any investor who stayed fully invested in the market in this period lost 22%. Yet over this time there were four periods in which equities experienced strong rallies which boosted the Dow by 32%, 66%, 76% and 38% respectively.

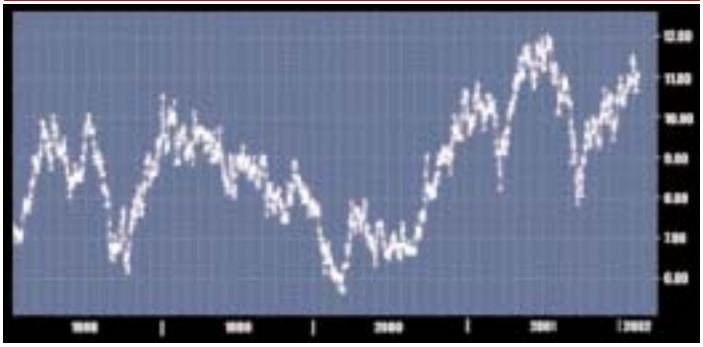
Those who do not accept the market timing case point out that much of any given year's profits is made during the five best-performing days and that anyone who is out of the market on those days – as an unsuccessful market timer might be – forfeits a huge opportunity.

According to *Barron's* research, the S&P 500's 19.5% gain in 1999 shrinks to only 3.9% if the five best trading days are excluded. And 1998's return of 26.7% slips to a mere 4.5% without the five best days of the year. The same applies in poor markets. For instance, the 29.7% loss that the US market suffered in 1974 balloons to 42.4% without the best five days.

Ironically, the market timing camp turns this analysis on its head and suggests that those dexterous enough to avoid the five worst days of market performance can significantly enhance their returns. For example, in 1987 the S&P 500 returned a meagre 2%, but those lucky enough to be out of the market for the five worst days ended up with a 60.2% return.

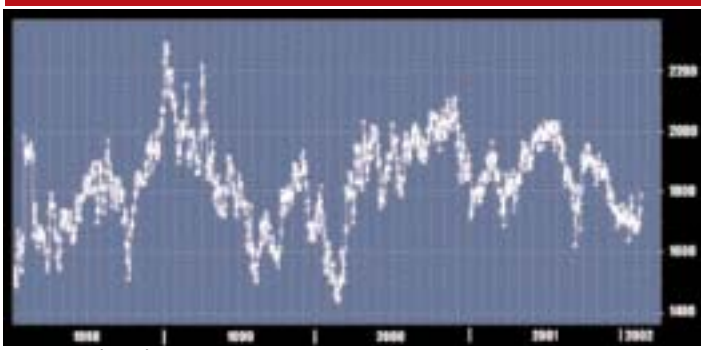
Closer to home – and supporting the market timers' view – the share prices of Bank of Ireland and GlaxoSmithkline are marginally above the levels they were at in early 1998. However, there have been numerous profitable trading opportunities during that time, providing an argument for more proactive trading in your portfolio. G

CHART 1: BANK OF IRELAND SHARE PRICE MOVEMENT, 1998 – 2002



Source: Bloomberg

CHART 1: GLAXOSMITHKLINE SHARE PRICE MOVEMENT, 1998 – 2002



Source: Bloomberg

Alan Murphy is a portfolio manager with Davy Stockbrokers' private clients unit.

Committee reports

BUSINESS LAW

No more Form 47

Practitioners are reminded that the prescribed form for furnishing of particulars of a charge is now a form C1. This is available at **http://www.cro.ie/c1.pdf**.

Annual return dates

The provisions of the *Company Law Enforcement Act* regarding companies' annual return dates will be in force from 1 March 2002. The key point to note is that the former flexibility as to when to file an annual return is now gone, with a fixed date changeable not more than once every five years. Practitioners seeking further information should refer to the Companies Registration Office website at **http://www.cro.ie/faq04.htm#FAQannualreturn6**.

Company Law Review Group

The first report of the statutory Company Law Review Group, chaired by solicitor and Business Law Committee member Tom Courtney was launched on 28 February. The focus of the report is simplification of a number of aspects of the law, including internal governance, incorporation and registration, creditor and shareholder protection and the law concerning prospectuses and public issues. Other focus areas include the law as to directors' duties and *ultra vires*.

More company law?

Yes, and most of it is coming from Europe. The *Regulation for the statute for a European company* is now enacted (**http://europa.eu.int/eur-lex/en/lif/dat/2001/en_301R2157.html**) and comes into force on 8 October 2004. The allied directive on employee participation has been adopted (**http://europa.eu.int/eur-lex/en/lif/dat/2001/en_301L0086.html**) and must be implemented by that same date. The Lamfalussy review of securities law continues apace, with a proposed *Market abuse directive* likely to be adopted later in 2002. This would replace and supplement the existing 1989 directive on insider dealing (enacted in Ireland by part V of the *Companies Act, 1990*). A bill dealing with the accounting profession arising out of the Oireachtas DIRT enquiry is expected during the spring.

New data protection regulations (*European Communities (Data Protection) Regulations 2001*, SI no 626 of 2001)

In 1995, the EU adopted the *Data protection directive* (95/46/EU). The Department of Justice, Equality and Law Reform is responsible for bringing forward proposals to the Oireachtas to amend the 1988 act and to implement the changes necessarily brought about by the directive.

The 2001 regulations, which will come into effect on 1 April 2002, bring into operation certain provisions of the directive and the protection of individuals with regard to processing of personal data and on the free movement of such data. The regulations bring into effect articles 4, 17, 25 and 26 of the directive, which deal mainly with transfers of personal 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.

'Third countries' are defined as being countries or territories outside the EU. Where a country is found not to have adequate data protection, the directive provides that the EU Commission will enter into negotiations with such countries with a view to reaching a practical solution to the issue. An example of such a practical solution would be the so-called 'safe harbour' agreements between the EU Commission and the USA authorities to facilitate transfer of personal data between the EU and the USA in certain circumstances.

There are some exceptions to the general prohibition on the transfer of personal data to third countries which do not provide adequate data protection. Article 26 of the directive, which is implemented by article 5 of the regulations, provides that, in general, member states should allow transfers of data to third countries provided that at least one of a number of conditions is met. These conditions include the unambiguous consent of the individual affected; the need to comply with the performance of a contract between the data subject and the data controller; a need or legal obligation involving grounds of important public interest; and the need to protect the individual's vital interests. Alternatively, a transfer to a third country may be permitted if the data controller can point to adequate safeguards, such as appropriate contractual clauses governing the transfer. In this regard, the EU Commission, and in consultation with the member states, may appropriate certain standard contractual clauses which can be regarded as offering sufficient safeguards.

Dormant Accounts Act, 2001

This act came into effect on 4 July 2001. 'Dormant accounts' are defined as accounts held with a financial institution in respect of which there has been no transaction for a period of 15 years ending on 31 March 2002 and 30 September of any subsequent year.

The act imposes an obligation on financial institutions to notify each holder of a dormant account as to the existence of such an account and that if a transaction is not effected on the account on or before the 31 March 2002 the monies in the account will be transferred to the Dormant Accounts Fund established under the act. Notification is by ordinary post to the last known address of the account-holder. A financial institution failing to notify an account-holder is guilty of an offence.

The act also transfers the Intestate Estates Fund Deposit Account to the Dormant Accounts Fund. It grants to the National Treasury Management Agency the administrative functions under the act in relation to the control and management of the fund.

The minister for social, community and family affairs is the minister responsible. An account-holder may apply to a financial institution seeking repayment of money transferred to the Dormant Accounts Fund and, if he can establish his entitlement, he will be repaid the sum together with appropriate interest. The act provides for the establishment of the Dormant Accounts Funds Disbursements Board, which is charged with the disbursement of the funds for the purposes of programmes or projects designed to assist the personal, educational and social development of persons who are educationally or socially disadvantaged or persons with a disability (within the meaning of the *Equal Status Act, 2000*) and, in particular, programmes or projects that are designed to assist primary school students with learning difficulties – or such other purposes as the minister may from time to time determine.

Asset Covered Securities Act, 2001

The purpose of this act, which was passed on 18 December 2001, is to enable (specifically designated) credit institutions to issue 'asset covered securities'. The act hopes to add to the versatility of the Irish capital markets and indeed the IFSC. Credit institutions which want

to issue these types of securities need to be specially designated by the Central Bank. Two types of securities may be issued, one being what are known as mortgage covered securities, and the second, public credit covered securities. Basically, these are securities (bonds, notes or other paper evidencing indebtedness) issued to investors which are secured in the case of mortgage covered securities by mortgages/charges on residential property or commercial property held by the credit institution or in the case of public credit covered securities secured on debt issued by the state or any other EEA country, Switzerland or the G7 states or certain other entities. Unlike a securitisation, the mortgages will continue to be held by the original owner/lender credit institution. However, the investors will have first priority over any other creditors on the credit institution's underlying mortgages (or public credit) covering the securities issued.

The act therefore marks a departure in that creditors will have priority without actually registering security interests in the Companies Registration Office against the issuer. At the time of writing, an order has yet to be made implementing the legislation. It is thought that an order will not be made until the Central Bank has drafted regulations prescribing the various requirements under the legislation; these regulations are likely to be available soon.

A list of designated credit institutions is to be kept by the Central Bank. The register will be open to public inspection. The list of designated credit institutions is due to be published in the coming months and will be published thereafter annually.

Certain amendments will be made to the *Building Societies Act*, section 61 of the *Companies Act, 1963* and the *Taxes Consolidation Act, 1997* (section 198). In addition, there is a stamp duty exemption to facilitate the use of these asset covered securities.

Business Law Committee

CONVEYANCING

Amendments to *Conditions of sale*, 2001 edition

The attention of practitioners is drawn to the following matter. The first print run of the new *Conditions of sale*, 2001 edition, at general condition 36, did not impose an obligation on the vendor to provide the purchaser with a certificate of compliance in appropriate cases in respect of the *Building Control Act* and regulations made thereunder. Subsequent print runs of the contract document contain appropriate amendments to address that situation. The principal amendment is the addition in the third sub-paragraph of condition 36(e)(ii) of the words 'and (where applicable) the requirements of the *Building Control Act, 1990* and regulations made thereunder'.

Practitioners using the first print run of the *Conditions of sale*, 2001 edition should provide for this matter by way of special condition.

Conveyancing Committee

LITIGATION

Costs penalty imposed by taxing master for failure to comply with SI 391/98

Practitioners should note that on taxation of costs in the case of *John Casey v Mid-Cork Electrical Limited and Others* (High Court, 1998, no 2387P) (Taxing Master Charles Moran, 23 May 2001), the taxing master accepted the defendant's submission that a doctor witness who had prepared a report and attended court on behalf of the plaintiff should not be allowed his court attendance fee on a party-and-party basis because his name had not appeared in the schedule furnished to the defendants, in compliance with SI 391 of 1998.

Objections were brought to the disallowance, including written submissions on the point. At the hearing of the objections, the taxing master confirmed his original ruling. The matter was not appealed to the High Court.

Litigation Committee G

PRACTICE NOTE

Time limits for notifying and referring discrimination claims

The Employment and Equality Law Committee wishes to draw the attention of all practitioners to:

- The strict time limits which are applied to claims under the *Equal Status Act, 2000* and the *Employment Equality Act, 1998*, and
- The restrictive conditions applicable to extensions of time.

The committee is aware that a number of practitioners have already run into difficulties by overlooking the dates applicable to their clients.

Notifying claims

Under the *Equal Status Act*, a person wishing to make a claim of discrimination in goods, services or facilities must first serve a written notification on the proposed respondent, within **two months** of the last occurrence of the discriminatory act. (No complaint can be referred unless this has been correctly done.)

Under section 21, the director of equality investigations may extend the time limit for notification from two months, up to a maximum of four months, after the last discriminatory act. But in order to do so, she must be satisfied, *inter alia*, that '*exceptional circumstances prevented*' the complainant from notifying correctly. **Practitioners should note that the director has taken a strict interpretation of this provision, and that no extensions of time for notification have so far been granted.** The act does not provide for any appeal.

The act also requires at section 21 that the written notification must specifically mention the claimant's intention to refer a claim to the director of equality investigations in the absence of a satisfactory response.

Practitioners acting for claimants are advised to ensure that any initial correspondence fulfils this requirement within the two-month time limits.

There is no equivalent notification requirement under the 1998 act.

Referring claims

Both the *Equal Status Act, 2000* and the *Employment Equality Act, 1998* require claims to be referred within six months of the last occurrence of the discriminatory act. This time limit can be extended to a maximum of 12 months from the last occurrence.

However, both acts provide that in order to extend time, the director of equality investigations must be satisfied that '*exceptional circumstances prevented*' the complainant from referring their case within the time limit. **Practitioners should note that the director has taken a strict interpretation of this provision, and should avoid the need to seek extensions.** Again, the acts do not provide for any appeal.

The Labour Court has so far considered the 'exceptional circumstances' test in two cases where it had original jurisdiction under the 1998 act, and extended time in each case.

Employment and Equality Law Committee

LEGISLATION UPDATE: ACTS PASSED IN 2001

This list was updated by the Law Society Library on 11 February 2002

ACC Bank Act, 2001
Number: 12/2001
Date enacted: 29/5/2001
Commencement date: Commencement order/s to be made (per s13(2) of the act): 15/6/2001 for all sections other than sections 6, 8, 10, 11(2) and 12 (per SI 278/2001)

Adventure Activities Standards Authority Act, 2001
Number: 34/2001
Date enacted: 16/7/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Agriculture Appeals Act, 2001
Number: 29/2001
Date enacted: 9/7/2001
Commencement date: 9/7/2001

Air Navigation and Transport (Indemnities) Act, 2001
Number: 48/2001
Date enacted: 19/12/2001
Commencement date: 19/12/2001 (see s19 for duration of the act)

Appropriation Act, 2001
Number: 52/2001
Date enacted: 20/12/2001
Commencement date: 20/12/2001

Asset Covered Securities Act, 2001
Number: 47/2001
Date enacted: 18/12/2001
Commencement date: Commencement orders to be made (per s1(2) of the act)

Aviation Regulation Act, 2001
Number: 1/2001
Date enacted: 21/2/2001
Commencement date: 21/2/2001. 27/2/2001 appointed as the establishment day for the purposes of the act (per SI 47/2001)

Broadcasting Act, 2001
Number: 4/2001
Date enacted: 14/3/2001
Commencement date: Commencement order/s to be made (per s1(4) of the act): 1/9/2001 for all sections of the act (per SI 362/2001)

Carer's Leave Act, 2001
Number: 19/2001
Date enacted: 2/7/2001
Commencement date: 2/7/2001

Children Act, 2001
Number: 24/2001
Date enacted: 8/7/2001
Commencement date: Commencement order/s to be made, subject to s2(2) (per s2(1) of the act); commencement order/s to be made for parts 2 and 3 (per s2(2)(a) of the act); commencement order to be made for s77 (per s2(2)(b) of the act); commencement order to be made for s88, insofar as it relates to junior remand centres (per s2(2)(c) of the act); commencement order/s to be made for part 10 (per s2(2(d) of the act); commencement order to be made for part 11 (per s2(2)(e) of the act)

Company Law Enforcement Act, 2001
Number: 28/2001
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s2 of the act): 4/8/2001 for part 1 (ss1-6) and s111 (per SI 391/2001); 1/10/2001 for ss47, 62, 66 to 71, 75 to 79, 80 to 83, 85 to 87, 89, 90, 91(b), 92, 93 (except insofar as it inserts subparagraph (ii) of paragraph (fa) into s213 of the *Companies Act, 1963*), 94, 95, 98, 100, 102 to 106, 108 and 114; 26/10/2001 for ss63(1)(b), 64 and 99; 1/3/2002 for ss59, 60, 61, 63(1)(a), 63(2), 65 and 84(a) (per SI 438/2001); 28/11/2001 for ss7 to 24, 25(b), 26 to 39, 72 to 74, 96, 97, 112 and 113 of, and the schedule to, the act; 1/3/2002 for s88 (per SI 523/2001)

Criminal Justice (Theft and Fraud Offences) Act, 2001
Number: 50/2001
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)

Customs and Excise (Mutual Assistance) Act, 2001
Number: 2/2001
Date enacted: 1/3/2001
Commencement date: Commencement order/s to be made (per s12 of the act)

Diseases of Animals (Amendment) Act, 2001
Number: 3/2001
Date enacted: 9/3/200
Commencement date: 9/3/2001

Dormant Accounts Act, 2001
Number: 32/2001
Date enacted: 14/7/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act): 1/1/2002 for all sections of the act (per SI 593/2001)

Electoral (Amendment) Act, 2001
Number: 38/2001
Date enacted: 24/10/2001
Commencement date: Commencement order/s to be made (per s1(9) of the act): 1/11/2001 for ss1 to 4, 9, 10, 14, 15, 24, 26, 28 to 48, 50, 51, 52, 54 (other than para (k)) and 55; 1/1/2002 for ss11, 16, 18 to 21, 23, 49, 56 to 58; 15/2/2002 for ss5 to 8, 12, 13, 25 and 27 (per SI 497/2001)

Electricity (Supply) (Amendment) Act, 2001
Number: 9/2001
Date enacted: 17/4/2001
Commencement date: 17/4/2001

Euro Changeover (Amounts) Act, 2001
Number: 16/2001
Date enacted: 25/6/2001
Commencement date: 25/6/2001

European Communities and Swiss Confederation Act, 2001
Number: 41/2001
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
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
Date enacted: 22/12/2001
Commencement date: 22/12/2001; establishment day order to be made (per s2 of the act)

Finance Act, 2001
Number: 7/2001
Date enacted: 30/3/2001
Commencement date: Various commencement dates – see act, and: 1/7/2001 for s169 (per SI 212/2001); 1/10/2001 for part 2 (ss96 to 153) (per SI 413/2001); 22/10/2001 for s50 (per SI 471/2001); 1/1/2002 for s57 (per SI 596/2001)

Fisheries (Amendment) Act, 2001
Number: 40/2001
Date enacted: 27/11/2001
Commencement date: 27/11/2001

Health Insurance (Amendment) Act, 2001
Number: 17/2001
Date enacted: 27/6/2001
Commencement date: Commencement order/s to be made (per s15(3) of the act): 19/11/2001 for ss1, 2, 3(b) to 3(f), 4, 5 (except in so far as it relates to the amendment of the *Principal Act* by s6), 9, 10, 11, 12, 13(a) to 13(g) (except in so far as s13(b) relates to the amendment of the *Principal Act* by s6), 14, 15 (per SI 514/2001)

Health (Miscellaneous Provisions) Act, 2001
Number: 14/2001
Date enacted: 5/6/2001
Commencement date: Commencement order/s to be made (per s5(4) of the act): 1/7/2001 appointed as the commencement date for section 1(1)(a) (per SI 305/2001); 1/8/2001 appointed as the commencement date for s2 of the act (per SI 344/2001)

Heritage Fund Act, 2001
Number: 44/2001
Date enacted: 10/12/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act): 21/12/2001 for all sections of the act (per SI 656/2001)

Horse and Greyhound Racing Act, 2001
Number: 20/2001
Date enacted: 2/7/2001
Commencement date: 2/7/2001 for sections other than ss8 and 19 for which commencement orders are required (per s8(2) and s19(2)): 29/7/2001 for s19 (per SI 363/2001); establishment day order to be made (per s3 of the act)

Horse Racing Ireland (Membership) Act, 2001
Number: 46/2001
Date enacted: 18/12/2001
Commencement date: 18/12/2001

Housing (Gaeltacht) (Amendment) Act, 2001
Number: 10/2001
Date enacted: 23/4/2001

Commencement date: 23/4/2001

Human Rights Commission (Amendment) Act, 2001
Number: 35/2001
Date enacted: 16/7/2001
Commencement date: 16/7/2001

Industrial Designs Act, 2001
Number: 39/2001
Date enacted: 27/11/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Industrial Relations (Amendment) Act, 2001
Number: 11/2001
Date enacted: 29/5/2001
Commencement date: Commencement order to be made (per s13(3) of the act): 31/5/2001 for all sections of the act (per SI 232/2001)

Irish National Petroleum Corporation Limited Act, 2001
Number: 26/2001
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s13(2) of the act): 16/7/2001 for all sections of the act (per SI 328/2001)

Irish Nationality and Citizenship Act, 2001
Number: 15/2001
Date enacted: 5/6/2001
Commencement date: Section 2(a)(iii) and (d) and section 3 shall be deemed to have come into operation on 2/12/1999, being the day of the making of the declaration by the government under article 29.7.3 of the constitution (per s9(3) of the act). Commencement order/s to be made for all other sections of the act (per s9(4) of the act)

Local Government Act, 2001
Number: 37/2001
Date enacted: 217/2001
Commencement date: Section 7 of the act provides that commencement order/s are to be made for all sections except for part 2 (ss9-11) for which an establishment day order is to be made (per s9), section 161 for which a commencement order is to be made (per s161(2)), and chapter 3 (ss39-45) (direct elections of cathaoirleach and leas-chathaoirleach) of part 5 of the act which will come into operation in 2004 (per s39(1)). 9/10/2001 for ss1(1), 1(6), 1(7), 2, 3, 4, 6, 7, 8 and 247; 9/10/2001 for s5(1) and part 1 of schedule 3 to the extent specified in the schedule to SI 458/2001 (repeals of certain enactments); 1/1/2002 for part 23 (ss238-242) (transfer of shareholding in Temple Bar Properties Limited to Dublin Corporation) (per SI 458/2001); 1/1/2002 for s142 of the act and 1/1/2002 for the date on which s51 of the *Local Government Act, 1991* shall be repealed (per SI 551/2001); 1/1/2002 for various provisions of the act and for certain repeals listed in the schedule to SI 588/2001 (per SI 588/2001); 1/1/2002 appointed as the establishment day for the purposes of the act (per SI 591/2001)

Mental Health Act, 2001
Number: 25/2001
Date enacted: 8/7/2001
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Ministerial, Parliamentary and Judicial Officers and Oireachtas Members (Miscellaneous Provisions) Act, 2001
Number: 33/2001
Date enacted: 16/7/2001
Commencement date: 16/7/2001 for all sections except for: ss37, 39(c) and (d) and 40 which are taken to have come into operation on 26/6/1997; ss7, 11 and 39(a) and (e) which are taken to have come into operation on 17/9/1997; and ss3, 4, 5, 6, 22, 23, 24, 27(1), 28, 31, 34(a) and 36 which are taken to have come into operation on 25/9/2000 (per ss1(2) to 1(5) of the act)

Motor Vehicle (Duties and Licences) Act, 2001
Number: 22/2001
Date enacted: 3/7/2001
Commencement date: 3/7/2001

Nitrigin Éireann Teoranta Act, 2001
Number: 21/2001
Date enacted: 3/7/2001
Commencement date: 3/7/2001 for all sections of the act, except ss5 and 6 for which commencement orders are required (per s5(2) and s6(2) of the act)

Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001
Number: 30/2001
Date enacted: 14/7/2001
Commencement date: 14/7/2001

Ordnance Survey Ireland Act, 2001
Number: 43/2001
Date enacted: 5/12/2001
Commencement date: 5/12/2001. Establishment day order to be made (per s2 of the act)

Prevention of Corruption (Amendment) Act, 2001
Number: 27/2001
Date enacted: 9/7/2001
Commencement date: Commencement order/s to be made (per s10(3) of the act): 26/11/2001 for all sections of the act, other than s4(2)(c) (per SI 519/2001)

Protection of Employees (Part-Time Work) Act, 2001
Number: 45/2001
Date enacted: 15/12/2001
Commencement date: 20/12/2001 for all sections of the act (per SI 636/2001)

Referendum Act, 2001
Number: 53/2001
Date enacted: 22/12/2001
Commencement date: 22/12/2001

Sex Offenders Act, 2001
Number: 18/2001
Date enacted: 30/6/2001
Commencement date: 27/9/2001 for all sections of the act (per SI 426/2001)

Social Welfare Act, 2001
Number: 5/2001
Date enacted: 23/3/2001
Commencement date: Various commencement dates – see act, and: 29/5/2001 for part 5 (ss29-31) (amendments consequent on the alignment of the income tax and the calendar year) (per SI 243/2001); 29/5/2001 for s38 (amendment to *Health Contributions Act, 1979* – alignment of tax and calendar year) (per SI 244/2001); 2/7/2001 for s22 (recovery of payments from financial institutions) (per SI 300/2001); 28/6/2001 for s26 (amendments to the qualifying conditions for entitlement to carer's benefit) (per SI 301/2001); 27/7/2001 for s25 (signature of certificate of debt where collector general initiates a prosecution for offences under the income tax and social welfare codes) (per SI 360/2001); various dates in the first week of September 2001 for ss13(1)(a)(iii), 13(2)(a)(iii), 13(3)(b), 13(4)(b) (per SI 407/2001); various dates in last week of December 2001 and first week of January 2002 for s37(6) (conversion of certain monetary amounts consequent on the introduction of the euro currency) (per SI 618/2001)

Social Welfare (No 2) Act, 2001
Number: 51/2001
Date enacted: 20/12/2001
Commencement dates: Various – see act

Standards in Public Office Act, 2001
Number: 31/2001
Dated enacted: 14/7/2001
Commencement date: Commencement order to be made subject to s29(2)(b) (per s29(2)(a) of the act): 10/12/2001 appointed 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 (per SI 576/2001)

Teaching Council Act, 2001
Number: 8/2001
Date enacted: 17/4/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Transport (Railway Infrastructure) Act, 2001
Number: 55/2001
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)

Trustee Savings Banks (Amendment) Act, 2001
Number: 6/2001
Date enacted: 28/3/2001
Commencement date: 28/3/2001

Valuation Act, 2001
Number: 13/2001
Date enacted: 4/6/2001
Commencement date: Commencement order to be made (per s2 of the act)

Vocational Education (Amendment) Act, 2001
Number: 23/2001
Date enacted: 5/7/2001
Commencement date: Commencement order/s to be made (per s1(3) of the act)

Waste Management (Amendment) Act, 2001
Number: 36/2001
Date enacted: 17/7/2001
Commencement date: 17/7/2001

Youth Work Act, 2001
Number: 42/2001
Date enacted: 1/12/2001
Commencement date: Commencement order/s to be made (per s1(2) of the act)

Personal injury judgment

Road traffic accident – bus colliding into vehicle – liability not disputed – extent of injuries and financial loss challenged – High Court judge's difficulty in ascertaining the nature of injuries – award of damages – appeal to the Supreme Court – medical evidence in notice of particulars in earlier accidents available to court – question of the extent to which reliance can be placed on replies to particulars – issue of who is personally responsible for replies to particulars – role of solicitors in relation to details of personal injuries and in communications in litigation – the question of whether it was the responsibility of trial judge to disentangle any contradictions – issue of whether exemplary damages apply to a plaintiff where his or her conduct merited the court's strong disapproval – desirability of written submissions to the court

CASE

***Patrick Vesey v Bus Éireann, Irish Bus*, Supreme Court (Denham, McGuinness and Hardiman JJ), judgment of Mr Justice Hardiman of 13 November 2001.**

THE FACTS

On 9 September 1996, Patrick Vesey was involved in a road traffic accident. He was stationary at traffic lights on the Stillorgan road in Dublin when a bus, the property of Bus Éireann, drove into the rear of his vehicle. Liability for the accident was not disputed by Bus Éireann, but the company denied the extent of the injuries and the financial loss claimed by Mr Vesey.

THE HIGH COURT

Mr Vesey's case against Bus Éireann was heard in the High Court on 7, 8 and 9 November 2000 before Johnson J. Judgment was reserved overnight and was delivered on 10 November 2000. The trial judge stated that despite the apparent simplicity of the issues, the trial was a difficult one. He stated that the only fact in the case about which he was absolutely certain was that the accident took place and he was only certain of that because Bus Éireann had admitted it. Had Bus Éireann not admitted it, the judge would have 'the gravest difficulty in coming to that conclusion'.

In the High Court, Johnson J stated that he would say something that he had never said about any plaintiff in the last 13½ years on the bench. The plaintiff had lied to the judge, he had lied to his own doctors and he had lied to the doctors of Bus Éireann in a manner which rendered the opinions of the doctors almost useless because the doctors themselves depend on the veracity of the history given to them by a plaintiff to form their opinions. In relation to Mr Vesey's work history, the trial judge stated that the work history in the case was 'one of the great mysteries'.

The trial judge accepted that Mr Vesey suffered some damage, but as to the nature of the damage he could only 'speculate'. The judge accepted the evidence of the doctors of Bus Éireann that Mr Vesey (a) had no psychiatric problems or demonstrated no sign of them and (b) 'he was shaken up and he had a bad condition beforehand', though he was able to work with it. The judge stated that he did not think that Mr Vesey was in any way really worse off than he was before the accident, but he certainly had not proved that to the judge's satisfaction on the balance of probabilities.

THE AWARD IN THE HIGH COURT

Damages awarded to Mr Vesey in the High Court were as follows:

• Special damages:	£7,500 (€9,523.04)
• Loss of earnings to date of trial and into the future:	£35,000 (€44,440.83)
• Pain and suffering to date of trial and into the future:	£30,000 (€38,092.14)
Total:	**£72,500 (€92,056.01)**

THE SUPREME COURT

Bus Éireann appealed to the Supreme Court on the following grounds:

- The trial judge erred in law and on the facts by making an award of general damages to Mr Vesey which was excessive and unsupported by the evidence
- The trial judge erred in law and on the facts in making any award of damages in respect of loss of earnings to Mr Vesey, there being insufficient evidence to support such an award
- In regard to 'the dishonesty' of Mr Vesey, the trial judge erred in law and on the facts in making any award of damages, in that Mr Vesey had failed to discharge the burden of proof upon him to satisfy the court as to the injuries he had allegedly sustained.

The case came before the Supreme Court composed of Denham, McGuinness and Hardiman JJ, with Hardiman J delivering the judgment of the court on 13 November 2001. Hardiman J referred to the difficulties experienced by the trial judge in ascertaining the precise physical injuries and disability suffered by Mr Vesey and Mr Vesey's work history insofar as it bore on his pre-existing condition and on his likely loss of

earnings for the future. This issue was complicated by the fact that Mr Vesey had at least four previous accidents, three of them while in the employment of a company for which he worked for a total of only six or seven months. In those cases, Mr Vesey had made claims of various sorts of injuries which would have the effect of rendering him fit for only light work. However, in the six months or so prior to the present accident with Bus Éireann, Mr Vesey had been working in the building trade and earning an average of £365 (€463.45) a week.

Having referred to extracts from the judgment of the High Court, Hardiman J stated that the evidence in the High Court took a number of 'unusual turns'. Mr Vesey 'gave contradictory evidence on a considerable number of points both in relation to his medical condition and his work history'. Particulars of his medical state had been furnished by another firm of solicitors acting on his behalf in relation to an earlier accident. The particulars were dated July 1993 and these particulars contained the allegation that Mr Vesey's 'incapacity was such that he will be unable to compete with others with realistic hope of obtaining even lighter work'.

Hardiman J stated that Mr Vesey claimed that his pre-accident work history was a generally good one and that, in particular, as a result of work he carried out in the Isle of Man and in Jersey, he had earned enough money to buy a house. However, in the particulars delivered in 1993, but in respect of an accident in 1984, Mr Vesey had been asked to identify all his employers since the date of that accident. The reply to the notice for particulars stated that after the accident Mr Vesey endeavoured to continue his existing employment 'but was not physically fit to do so'. In particular, he stated that he subsequently tried to work as a steel fixer but found 'he was physically incapable of work'. When, in the same action, Mr Vesey was asked to state the amount of his earnings in respect of each employment, he replied: 'The periods (of employment) were of such short duration that these figures are of no significance'.

In his judgment, Hardiman J stated that Mr Vesey appeared to have been employed outside the country at periods when, according to what he had told his doctors treating him, he had been out of work and he claimed again to have been employed abroad at periods during which he was drawing social welfare in Ireland: 'He replaced one untrue account with another equally untrue'. The judge stated that it became perfectly clear that Mr Vesey had only made a very partial disclosure of his history to certain of his own medical advisers. In particular, Dr Browne, a pain specialist, stated in cross-examination that she was unaware of the history set out in the statement of claim in Mr Vesey's prior proceedings. She stated that she would have expected to have been told about these symptoms.

No appeal was taken from any of the trial judge's findings by Mr Vesey. However, it was suggested in argument in the Supreme Court that the findings were too harsh. In particular, it was submitted that far too much weight was put on the contradictions between Mr Vesey's evidence and the particulars delivered in previous litigation, on the basis that particulars are drafted 'by someone else'. It had also been submitted in the Supreme Court that while the evidence was unsatisfactory and unreliable, it was the obligation of the trial judge to 'disentangle any contradictions'. In this regard, Mr Vesey relied on the well-known passage from the judgment of McCarthy J in *Reddy v Bates* ([1984] ILRM 197 at 205) to the effect that the court should not intervene with the trial court's award of damages unless there is a very significant disparity between the sums awarded in the High Court and that which the Supreme Court would consider appropriate.

Bus Éireann submitted that, having regard to the trial judge's unappealed assessment of Mr Vesey's evidence, the trial judge was wrong in making any award at all to Mr Vesey either of general damages or of loss of earnings. It was emphasised that the onus of proof lay on Mr Vesey and it was submitted that, having regard to what the High Court judge had stated, Mr Vesey had plainly failed to discharge the onus of proof. According to Bus Éireann, there should be no award except for special damages. Additionally, Bus Éireann submitted that the specific sums awarded were excessive and unsupported by the evidence.

In the Supreme Court, counsel on behalf of Bus Éireann made what Hardiman J described as 'an interesting submission'. Counsel referred to the well-established principles whereby exemplary damages may be awarded to a plaintiff if the defendant's evidence or account of the case has been such that the court wishes to mark its disapproval of it. Counsel referred to a recent personal injuries case, *Crawford v Keane* (High Court, unreported, 7 April 2000), where this had been done. In effect, counsel argued that the same principle should apply in reverse against a plaintiff such as this, whose conduct of the case had merited the court's strong disapproval. Counsel had found no Irish or English authority for the proposition that this could be done.

Hardiman J stated that he did not accept that the High Court judge's observations on Mr Vesey were in any way unjustified or unduly harsh. Nor did he accept that the High Court judge placed too much emphasis on the particulars given by Mr Vesey in his previous litigation. Hardiman J stated that he would specifically deprecate the submission made that particulars in another accident should be disregarded, or regarded with less seriousness, on the basis that everybody knows that they are not drafted by the plaintiff personally. The Supreme Court considered that in providing the particulars which a defendant is entitled to require, a plaintiff may rely on the advice of his lawyers, doc-

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tors, engineers and other professionals. But none of these professionals are responsible for the factual content of the replies. Hardiman J stated that these replies are the plaintiff's documents for which he is personally responsible.

In the present case, Hardiman J stated that Mr Vesey's capacity for work after an accident and his employment history were matters peculiarly within his knowledge and about which his lawyers and doctors could have no direct knowledge other than on the basis of his instructions to them. It was essential and, as far as the judge knew, was the general practice that a plaintiff's solicitor should carefully go through with the plaintiff replies to particulars in the form in which it was proposed to send them to the defendant and to obtain the plaintiff's assent. The fact that particulars of negligence or breach of statutory duty are necessarily expressed in legal terms and particulars of injuries or prognosis in medical terms in no way exempts the plaintiff from ensuring, with the assistance of his solicitor, that the underlying facts are correctly stated.

Hardiman J could not agree that it was the responsibility of a trial judge to 'disentangle' the plaintiff's case when it became entangled as a result of lies and misrepresentations systematically made by the plaintiff himself. He noted that the procedure in our courts is an adversarial one. The trial judge was quite correct to point out that the onus was on the plaintiff and that he had in significant respects failed to discharge it.

In the context of the trial judge's statement that he accepted that Mr Vesey suffered some damage but as to what damage he could only 'speculate', Hardiman J stated that this was not a correct basis on which to approach an assessment of damages and that a defendant was entitled to have the exercise approached in a more specific and evidence-based fashion. The Supreme Court noted that the High Court was, of course, attempting to perform the very difficult task of deciding what should be awarded to a plaintiff, who undoubtedly had an entitlement to some award, in circumstances where the plaintiff himself had made the exercise all but impossible by persistent lies in and out of court.

The Supreme Court, *per* Hardiman J, considered that the award in relation to future loss of earnings was largely 'speculative' and should be set aside. The Supreme Court took the view that the plaintiff had almost entirely failed to produce credible evidence in this regard and was accordingly entitled to no award. In view of the utterly sporadic nature of proved employment and Mr Vesey's lies and deceptions in relation to his employment history and medical evidence, the court did not believe that Mr Vesey had established on the balance of probabilities that he was entitled to any award in respect of loss of earnings into the future.

In the context of general damages, Hardiman J stated that a court is not obliged or entitled to speculate in the absence of credible evidence. Here, Mr Vesey was contradicted 'out of his own mouth' both in relation to his history of working and to his pre-accident medical condition. In these circumstances, Hardiman J stated that the trial judge was correct in his decision that the only reliable evidence was that of Bus Éireann's medical witnesses.

Hardiman J referred to the evidence of Mr Harold Browne, the well-known surgeon, to the effect that Mr Vesey had a pre-existing back condition. Mr Browne testified that he did not consider the accident at issue made Mr Vesey's previous conditions any worse.

In the context of the claim for past loss of earnings, Hardiman J stated that this was extremely problematic. Mr Vesey had supplied the names of five employers with whom he said he had worked over the years. The major issue was that Mr Vesey had stated that he was in good employment at the time of the accident. It appears that he had worked for a major company for some months but this was not continuous and he had been drawing social welfare at some time.

In relation to loss of earnings between the date of the accident and the date of the trial, Hardiman J considered the matter was unsatisfactory and Mr Vesey's evidence entirely 'unreliable'. However, it was conceded by Mr Browne that it was not unreasonable for Mr Vesey to have been off work for nine months after the accident.

Counsel had argued in the Supreme Court to the effect that the damages to which the plaintiff may be entitled should be reduced or extinguished as a mark of the court's disapproval of the sustained dishonesty which characterised Mr Vesey's prosecution of his claim. However, Hardiman J stated that he was not satisfied that there was a direct analogy with an award of exemplary damages to mark the court's disapproval of the conduct of a defendant and that even if, according to Hardiman J, there was an inherent power to reduce damages in circumstances such as the present, it would not be appropriate to do so without warning in the circumstances of the present case.

Hardiman J noted that in the United States there is well-established jurisprudence on the inherent power of a court to dismiss an action for 'flagrant' bad faith (see *National Hockey League v Metropolitan Hockey Club Inc* [427 US 69]). The power would be exercised in circumstances such as dishonest conduct by a litigant, obstruction of the discovery process, abuse of the judicial process or otherwise seeking to perpetrate a fraud on the court. The rationale was stated in the *Hockey League* case as follows: 'Here, as in other cases of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the District Court in appropriate cases, not merely to penalise those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent'.

Hardiman J noted that there was plainly a point where dishonesty and a prosecution of a claim could amount to an abuse of the judicial process.

In his judgment, Hardiman J referred to a judgment in the case of *Kelly v Bus Éireann*, delivered 16 March 2000, when he expressed the view that counsel could probably assist the trial court in many personal injury actions by making brief submissions as to the issues arising and the salient evidence bearing on them. Obviously, this would not be necessary in an entirely straightforward case, but Hardiman J stated that the present action could not possibly be regarded as being in this category. It was a case in which the evidence underwent several dramatic changes. Hardiman J considered that the court might have been assisted by a brief statement of each side's contentions at the end of the evidence. G

THE AWARD IN THE SUPREME COURT

- Special damages of £7,500 (€9,523.04) as determined by the High Court to stand
- Loss of earnings to date of trial and into the future of £35,000 (€44,440.83) was reduced to £7,500 (€9,523.04)
- General damages of £30,000 (€38,092.14) were reduced to £15,000 (€19,046.07).

Total: £30,000 (€38,092.14)

This case was summarised by solicitor Dr Eamonn Hall.

Eurlegal

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

Directive on resale rights

In July 2001, the Council of Ministers adopted a directive on resale rights for the benefit of authors of original works of art. The directive entitles the artist, or his heirs, to receive a percentage of the selling price of art when it is resold by an art market professional such as an auctioneer, an art dealer, an art gallery and so on. The principle on which the resale right is based is that as an artist's reputation grows, and his work consequently increases in value, he should be entitled to a proportion of the benefits of his enhanced reputation. The royalties payable under the new directive will be significant when one considers that the total annual worldwide level of sales of works of art is of the order of €8,000 million. These sales are divided between dealers, who account annually for approximately €6,000 million sales worldwide and auction sales which account for approximately €2,000 million.

The primary objective behind the directive is to ensure that the artist and his beneficiaries will benefit from a percentage of the seller's profit as the value of their work increases. It ensures that artists, or their estates (for 70 years after the artist's death) benefit from the artist's work when it is subsequently transferred. Because of the 70-year limit, the resale rights will apply almost exclusively to 20th century works of art. This places contemporary artists in a similar position to other categories of authors such as composers and writers who receive on-going copyright royalties even after their death. In other words, artists such as Francis Bacon and Louis Lebrocquy will be treated like composers such as U2 and Sinead O'Connor in terms of royalty resale rights.

The directive covers only original works of art. Original works of art are defined as graphic or plastic art such as pictures, collages, ceramics, glassware and photographs. Copies of works of art that have been made in limited numbers by the artist himself, or under his authority, shall be considered to be original works of art for the purpose of the directive. The directive will only apply to sales by professional art dealers as opposed to private sales or sales to non-profit making museums. Member states are permitted to exempt art galleries which acquire works directly from the author from the resale right for sales of works of art, which take place within three years of the acquisition from the author. This exemption is limited to such acts of resale where the resale price does not exceed €10,000.

Resale rights will only apply as long as the selling price of the work in question exceeds €3,000. There is, however, an option given to member states in the directive to apply resale rights to sales of art of less than €3,000. There is concern that an art-selling professional may choose to effect sales outside of the European Community in order to avoid the provisions of the directive. Neither the USA nor Switzerland recognises resale rights and art-market professionals are concerned that sales which would normally be effected in the EC will be transferred to these countries. In order to deal with this concern, the directive introduces a system of decreasing percentage royalty rates as the value of the original work of art increases. Artists will, therefore, receive 4% where the sale of the original work generates between €3,000 and €50,000, 3% for sales between €50,000 and €200,000, 1% for sales between €350,000 and €500,000 and 0.25% for sales over €500,000. The maximum an artist can receive as resale rights on a single sale is limited to €12,500.

Artists will now be in the same position as performers such as U2 and Sinead O'Connor *(above)* in terms of royalty resale rights

The rationale of the commission in introducing this sliding scale of royalties is to make it unattractive, from an economic point of view, to transfer sales outside of the EU. It is interesting to note, in this regard, that over 80% of all EU art sales concern works of art which have a value of less than €50,000. In addition to the sliding scale introduced by the directive, it is expected that import procedures and CGT requirements in certain third countries should act as a disincentive to transfers of sales to non-EU countries. Germany currently applies a 5% resale right and there is no evidence that sales are being transferred from Germany to its neighbour Switzerland.

Resale rights are written into the legislation of 11 of the 15 member states of the EU, nine of which apply resale rights in practice. The approach of each of these nine member states differs substantially in the type of work which is subject to the resale rights, the rates that are applicable and so on. Resale rights are currently not provided for in the domestic legislation of the Netherlands, Austria, the UK and Ireland.

This situation obviously creates distortions in the market. For example, an Irish artist such as Robert Ballagh is currently entitled to a resale right, or *droit de suite*, when one of his works is sold in Paris, whereas the estates of French artists such as Bernard Buffet or Raoul Dufy would not be entitled to such a payment when one of their works is sold in Dublin. One of the aims of the directive is to eliminate existing differences between laws where they have a distorting effect on the functioning of the internal market. The commission considers that the existence of differences between national provisions on the resale right creates distortions of competition and displacement of sales within the community and leads to unequal treatment between artists depending on where their works are sold.

The directive will have significant repercussions in member states such as the UK where there is currently no legislation on resale rights. The UK is the largest market for art in the EU. It accounts for approximately 48% of dealer sales within the EU and 61% of all auction sales.

The directive states that member states must provide that authors who are nationals of third countries will enjoy the artist's resale right, provided that authors from the member states enjoy reciprocal treatment in the third countries concerned. This means that sales in Ireland by US artists will not be entitled to resale royalties because US legislation does not offer resale rights to Irish artists whose works are sold in the US. The council intends, in the short term, to open negotiations with countries throughout the world so as to harmonise laws on resale on an international basis. This is particularly important in an international market such as the market for modern art.

All this is good news for artists. However, the time limits for transposition of the directive are so lengthy that artists will not benefit from its adoption until possibly 2012. Member states are obliged to transpose the directive into national law by 1 January 2006. Those countries that do not apply resale rights at that date will be able to restrict its application to living artists for a further four years until January 2010.

If a particular member state requires it, this can be extended for a further two years. The commission has expressed regret that the time limit for implementing the directive is so long and that some member states will be able to defer its introduction until 2012. Ireland does not currently have domestic legislation on resale rights and if it fails to introduce legislation by 2006, it will be in a position to apply for an exemption until 2010 and possibly until 2012. G

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

Davidoff/Levis: Community exhaustion of rights in the context of trademarks

On 20 November 2001, the European Court of Justice issued a preliminary ruling under article 234 of the *EC treaty* in response to a request made by the High Court of Justice of England and Wales, Chancery Division (Patent Court) in the context of certain questions regarding interpretation of article 7 of first council directive 89/104/EEC of 21 December 1988 to approximate the laws of the member states relating to trademarks (OJ 1989 L 40 p1) as amended by the *Agreement on the European Economic Area* (EEA) of 2 May 1992 (OJ 1994 L 1 p3).

The judgment of the ECJ arose out of two sets of national proceedings. In the first case, C–414/99, Zino Davidoff SA was the proprietor of a number of trademarks registered in the UK, which were used for a wide range of toiletries and cosmetics products. Davidoff entered into an exclusive distribution contract under which the distributor undertook to sell Davidoff products solely within a defined territory outside the EEA to local sub-distributors, sub-agents and retailers, and the distributor further undertook to impose on its customers a prohibition on resale outside the stipulated territory. A&G Imports Limited acquired stocks of Davidoff products which had been manufactured within the EEA and which had originally been placed on the market in Singapore by Davidoff or with his consent. A&G imported those products into the UK and Davidoff brought proceedings against A&G before the High Court of Justice of England and Wales, Chancery Division (Patent Court), alleging that the importation and sale of those products in the United Kingdom infringed its trademark rights.

In the other joint cases, C–415/99 and C–416/99, Tesco Stores Limited and Tesco Plc (together 'Tesco') and Costco Wholesale UK Limited obtained *Levis 501* jeans from traders who imported them from countries outside the EEA. The products had originally been sold by Levis or on its behalf in territories outside the EEA. Levi Strauss & Co and Levi Strauss (UK) Limited (together 'Levis') claimed that the importation by Tesco and Costco infringed Levis' trademark rights and initiated proceedings before the High Court of Justice of England and Wales, Chancery Division (Patent Court), claiming infringement.

Uniform interpretation: no cheap Levis 501s

Under EU law, the ECJ by its case law has established a general principle that the holder of intellectual property (IP) rights is considered to have exhausted his rights under the laws of the member states to oppose the importation and sale of products in circumstances where the goods have been marketed in the EU by the holder of the IP rights or with his consent.

With regard to trademarks, this principle is now contained in article 7 of the directive entitled *Exhaustion of the rights conferred by a trademark*, which provides as follows:

'1)The trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the community under that trademark by the proprietor or with his consent

2) Paragraph 1 shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.'

The issue for the ECJ effectively was to define exactly when the holder of trademark rights is considered to have exhausted his right to oppose the importation and sale of products bearing the trademark. In other words, the ECJ had to rule on the issue of when the owner of the trademark rights is regarded as having consented to the sale of his goods in the EEA.

The ECJ ruled as follows:

1) It confirmed that the principle of exhaustion of rights as embodied in the directive did not apply in respect of goods placed on the market in non-EEA countries as established in case C-355/96 *Silhouette*

International Schmied ([1998] ECR 1-4799). In other words, there is no scope for an international, as opposed to community, principle of exhaustion of rights. The ECJ pointed out that therefore the effect of the directive is to limit exhaustion of rights in cases where goods have been put on the market in the EEA and to allow the proprietor to market his products outside that area without exhausting his rights within the EEA. The ECJ pointed out that in this way the community legislature has allowed the proprietor of the trademark to control the initial marketing in the EEA of goods bearing that mark (case C-173/98 *Sebago and Maison Dubois* [1999] ECR I-4103)

2) The ECJ confirmed that the concept of consent was not a matter of interpretation at national level. It held that in the interests of a uniform interpretation of the concept of consent throughout the community, its interpretation fell to be determined at community level
3) In view of the 'serious effect' of the exhaustion of rights principle in the context of the main proceedings before the national courts, the ECJ ruled that consent must be so expressed that an intention to renounce those rights is unequivocally demonstrated
4) Article 7(1) of the directive is to be interpreted as meaning that the consent of a trademark proprietor to the marketing within the EEA of products bearing that mark which have been previously placed on the market outside the EEA by that proprietor or with his consent may be express or may be implied. The ECJ ruled that consent may be implied or inferred from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the EEA which, in view of the national court, unequivocally demonstrate that the proprietor has renounced his right to oppose the placing of the goods on the market within the EEA
5) Consent cannot be implied from the mere silence of the owner of the trademark
6) The burden of proof of establishing consent is on the party who alleges the existence of consent
7) The ECJ ruled that consent could not be inferred in the following situations:
   i) From the fact that the proprietor of the trademark has not communicated to all subsequent purchasers of the goods placed on the market outside the EEA its opposition to marketing within the EEA
   ii) From the fact that the goods carry no warning of a prohibition against their being placed on the market within the EEA
   iii) From the fact that the trademark proprietor has transferred the ownership of all of the products bearing the trademark without imposing any contractual reservation and that, according to the laws governing the contract, the property right transferred includes, in the absence of such reservation, an unlimited right of resale or, at the very least, a right to market the goods subsequently within the EEA
8) The ECJ confirmed that it is not relevant to the exhaustion of rights principle that the importer of the goods bearing the trademark is not aware that the proprietor objects to their being placed on the market in the EEA or sold there by traders other than authorised retailers or that the authorised retailers and wholesalers have not imposed on their own purchasers contractual reservations setting out such opposition, even though they have been informed of it by the trademark proprietor. G

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

The *European company statute*

The *European company statute*, which will come into force on 8 October 2004, is a new community law instrument which will give companies the option of forming a European company – known formally by its Latin name of *Societas Europaea* (SE). It consists of two separate pieces of legislation, namely a regulation[1] (directly applicable in member states) establishing the company law rules and a directive[2] (which will now have to be implemented in national law in all member states) on employee participation.

The *European company statute* will allow companies which are now established in more than one member state to merge and operate throughout the EU on the basis of a single set of company law rules instead of setting up a network of subsidiaries governed by different national laws. There will be advantages in terms of reductions in administrative and legal costs, a single legal structure and unified management and reporting systems. On a European-wide basis, the potential savings in terms of administrative costs are estimated to be up to €30 billion a year.

Each SE will be registered in a given member state on the same register as companies established under national law. However, the registration of each SE will also be published in the EC's *Official journal*. The SE must be registered in the member state where it has its administrative head office. The minimum capital requirement has been set at €120,000; this will enable medium-sized companies from different member states to create an SE.

An SE can be set up in any of five ways:

- By the merger of two or more existing public limited companies from at least two different EU member states
- By the formation of a holding company promoted by public or private limited companies from at least two different member states
- By the formation of a joint subsidiary of companies from at least two different member states
- By the transformation of a public limited company which has, for at least two years, had a subsidiary in another member state
- By the creation by an SE of a wholly-owned single shareholder subsidiary.

An SE with commercial interests in more than one member state will be able to move across borders easily in response to the changing needs of its business. This is because the statute will allow an SE which is registered, for example, in Ireland to move its registered office to any other member state without, as is the case now, having to wind up the company in Ireland and re-register it in the other member state. An SE should also be able to attract private venture capital more easily than a series of national companies, all operating under national rules.

For tax purposes, an SE will be treated in the same way as any other multinational company under the applicable national fiscal legislation. While the tax rules relating to SEs are still under discussion, there are likely

to be tax advantages in operating a pan-European business through an SE with branches in different member states rather than through a holding company with local subsidiaries in different member states.

Under the directive on employee involvement, the creation of an SE will require the negotiation of arrangements relating to employee involvement in the business of the SE. If it proves impossible to negotiate a mutually satisfactory arrangement, then a set of standard principles, laid down in an annex to the directive, will apply. These principles oblige SE managers to provide regular reports to employee representatives in relation to a range of different matters including the companies' current and future business plans, production and sales levels, the implications of these for the workforce, management changes, mergers, divestments and potential closures and layoffs.

In certain circumstances, where managers and employee representatives are unable to negotiate a mutually satisfactory agreement and where the companies involved in the creation of an SE were previously covered by employee participation rules under the relevant national law(s), an SE will be obliged to apply the standard rules on the participation of its employees in the SE. This will be the case for an SE created as a holding company or joint venture when a majority of the employees had the right under the relevant national law, prior to the creation of the SE, to participate in company decisions.

In the case of a an SE created by a merger, the standard rules on participation of its workers will have to be applied when at least 25% of employees had the right to participate before the merger. Agreement on this aspect of the directive had proved impossible until the Nice summit in December 2000. The compromise struck by heads of state and government was to authorise a member state not to implement the directive on employee participation in the case of SEs created by merger; but in that case, the SE can be registered in that member state only if an agreement on employee participation is concluded or if no employees were covered by participation rules before the SE was created. Where the SE is formed through the transformation of a national company into an SE, the arrangements for worker participation, if any, applied by the company prior to its transformation into an SE will continue to apply. G

Gerald FitzGerald is a partner in the Dublin law firm McCann FitzGerald.

Footnotes

1 Council regulation no 2157/2001/EC of 8 October 2001 on the statute for a European company (SE).
2 Council directive 2001/86/EC of 8 October 2001 supplementing the statute for a European company with regard to the involvement of employees.

Recent developments in European law

FREE MOVEMENT

Persons

Case C-184/99 *Rudy Grzelczyk v Centre public d'aide social d'Ottignies-Louvain-la-Neuve*, 20 September 2001. The applicant was a French national undertaking a course of studies in physical education in a Belgian university. During the first three years of his course, he defrayed his own costs by taking various part-time jobs and through loans. The fourth year of the course is the most demanding and for this year he applied for payment of the minimum substance allowance ('minimex'). This was initially granted and then withdrawn, as he was a student. The Belgian court asked the ECJ whether it was contrary to EC law for entitlement to a non-contributory social benefit to be made conditional, in the case of nationals of other member states, upon their being regarded as workers where this condition was not required of nationals of the home state. The ECJ held that the minimex was a social benefit that Belgian students would have obtained. Thus, Mr Grzelczyk had been discriminated against on the ground of his nationality. One of the fundamental rights guaranteed by the treaty is the right to move and reside freely in other member states. The treaty on European Union introduced the status of citizen of the EU. Such citizens pursuing university studies in other states cannot be discriminated against on grounds of nationality. Nevertheless, states can require students that reside on their territory to declare that they have sufficient resources for themselves and their family to avoid becoming a burden on the social assistance scheme of the host state. A student's circumstances may change and they should not be barred from subsequently having recourse to the social security system of a host state.

Therefore, Belgium could not make entitlement to non-contributory social benefits conditional on a criterion which need not be satisfied by its own nationals.

Case C-459/99 *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL [MRAX] v Belgium*, Opinion of Advocate General Christine Six Hackl, 13 September 2001. Since 1980, Belgium has had a law governing access to Belgium in respect of particular nationalities. The ASBL movement challenged this law in the Belgian courts, arguing that part of it offended EC law. The Belgian Council of State referred the matter to the ECJ. Its questions related to the status of non-EU nationals married to EU nationals and wishing to move the state of the latter for the purpose of bringing their family together. The advocate general noted that the legal position of non-EU family members of an EU national living in his or her home state and not exercising his or her EC right to free movement of persons is governed exclusively by national law. The Belgian court had asked whether EC law permits states to refuse entry at its border to non-EU spouses of EU citizens where no identity document or visa is produced. The advocate general pointed out that there is no express provision in EC law on refusal to allow entry in these circumstances. Such refusal infringes the spouse's basic EC law right to respect for his or her family life. Such infringement can be permissible provided that certain conditions are satisfied. It is for national courts to determine whether the infringement is necessary and proportionate. The Belgian court asked whether EC law allows states to refuse to grant a residence permit to or expel non-EU spouses of EC citizens who enter a state illegally. The advocate general regarded such a refusal as 'a measure of public policy' under community directive 64/221. Such measures must be based 'exclusively on the personal conduct of the individual concerned'. A blanket rule is not permitted, as it does not require each case to be examined individually. The same principle applies to expulsion. The Belgian court asked whether a state could refuse a residence permit to a non-EU spouse of an EU citizen whose visa has expired.

The advocate general said that if a person enters a state legally they could not be refused a residence permit on the basis that their visa has expired.

Case C-285/00 *Commission of the European Communities v French Republic*, 10 May 2001. Council directive 89/48/EEC provides for a general system for the mutual recognition of diplomas (awarded after professional training of at least three years' duration) in the EU. The commission brought an enforcement action, arguing that France had failed to enact legislation allowing access to the profession of psychologist. Thus, it had failed to comply with article 12 of the directive, which required implementation measures within two years of its enactment. The commission argued that no legislation had been introduced and that the principles of the directive were not being applied to applications for the recognition of psychology qualifications obtained in other member states. The ECJ held that France had failed to meet its obligations under the directive. It pointed out that a draft law that the French government had used in its defence amounted to an admission that the directive had not been correctly implemented.

INTELLECTUAL PROPERTY

Trademarks

Case T-359/99 *Deutsche Krankenversicherung AG (DKV) v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, 7 June 2001. In 1996, the applicant filed an application for a community work mark at the Office for Harmonisation in the Internal Market for the term *EuroHealth*. In 1998, the examiner refused the application on the ground that the word in question was devoid of distinctive character. In 1999 the applicant appealed. The appeal was dismissed. The ECJ upheld the finding of the examiner. The term *health* was purely descriptive of health insurance services and the prefix 'Euro' merely indicated that the services were offered at the European level. The applicant had sought to register the term in respect of all services falling within the category of insurance. The board of appeal had also refused a similar application for the financial services sector but had not given reasoned grounds. This is a requirement of the regulation 40/94 (article 7(1)(b)) which applies in this area and therefore the ECJ annulled the decision of the board on that application. G

High society
At the Cork launch of the 2001 edition of the contract for sale on 30 January at the Imperial Hotel were *(left to right)* Law Society Conveyancing Committee member Stephen O'Riordan, committee chair Patrick Dorgan, CLE executive Lindsay Bond and committee member Patrick Fagan

Presidential air
Pictured on the day of his election as president of the CCBE last November are John Fish of Arthur Cox and Law Society Senior Vice-President Geraldine Clarke of Gleeson McGrath Baldwin

Getting it on account
At the Law Society's recent seminar on the *Solicitors' accounts regulations* in Cork were Tina Beattie, executive officer with the the society's regulatory department; Simon Murphy, chair of the society's Compensation Fund Committee; accountant Charles Russell; and investigating accountant Tim Bolger

Meeting of minds
Georghias M Pikis, president of the Supreme Court of Cyprus, with Law Society President Elma Lynch. President Pikis and all the other members of the Cypriot Supreme Court recently visited Blackhall Place to meet members of the society's EU and International Law Committee to discuss Ireland's experience of the legal issues that arise on the accession of a new member state to the EU

Civil tongues
At the launch of *Civil procedure in the Superior Courts* are *(left to right)* Catherine Dolan of publishers Round Hall Sweet & Maxwell, authors Hilary Delaney and Declan McGrath, and Mr Justice Peter Kelly

Improve your career prospects with a specialist diploma

With the recent introduction of the euro, the European Community now has a visible daily presence in our lives. The impact of European legislation on national legislation can be felt in areas as diverse as company law, labour law and agricultural law. It is important that all solicitors have a working knowledge of EU law and, in recognition of this, the Law Society actively supports such learning through its *Diploma in applied European law*. The course is designed to provide a balance between the theory and practice of EU law. Particular emphasis is placed on areas of day-to-day relevance to solicitors, such as the law relating to the economic freedoms, competition law, consumer law and litigation.

The next starting date for the society's *Diploma in applied European law* is Saturday 27 April 2002. Bookings are currently being accepted. For further information on this, or other diploma courses, contact Michelle Nolan of the Law Society (m.nolan@lawsociety.ie).

The Law Society currently offers six diplomas: property tax, commercial law, e-commerce, applied European law, legal French, and legal German (certificate).

The society plans to continue expanding the programme and hopes to introduce a diploma in banking and corporate finance before the end of the year.

There's a first time for everything
Law Society Director General Ken Murphy, President of the High Court Joseph Finnegan and President of the Law Society of England and Wales David McIntosh at a recent parchment ceremony. It was the first parchment ceremony that former solicitor Mr Justice Finnegan attended as the new president of the High Court. It was also the first-ever time that a president of the Law Society of England and Wales, the elected leader of 104,000 solicitors, became a member of the Law Society of Ireland

Young bloods
Pictured at the Autumn 2001 conference of the Society of Young Solicitors of Ireland are Law Society President Elma Lynch and Director General Ken Murphy, who addressed the conference, in the company of the SYS committee, speakers, sponsors and guests

Jump right in
Niall Lord, Paddy Bardon of Gerard Black & Co, William Brennan of Binchys and John Healy of A&L Goodbody *(left to right)* together raised €6,000 in a sponsored parachute jump for the homeless. Further donations to Focus Ireland's appeal may be made to: 'Jump for Focus', Ulster Bank, Lower Baggot St, Dublin 2. The account number is 0353 5075

Mayo dressing
At the December 2001 annual dress dance of the Mayo Solicitors' Bar Association were *(front row, from left to right)* Jaqueline Durcan, treasurer of the association; James Cahill, the association's president; Judge Mary Fahey; Law Society President Elma Lynch; and Judge Mary Devins

Conferring of diplomas in commercial law
Chief Justice Ronan Keane, Law Society President Elma Lynch, Director General Ken Murphy and chairman of the Law Society's Education Committee Michael Peart, with the recipients of the society's *Diploma in commercial law* pictured at a recent graduation ceremony in Blackhall Place

SADSI
Solicitors Apprentices Debating Society of Ireland

Age and experience beats youth and vigour

Due to delays caused by foot and mouth disease, the SADSI 2001 Gaelic football match between trainees and solicitors finally took place in the Guinness Iveagh Grounds in Crumlin, Dublin.

Over 40 players assembled there, with both sides grateful for the participation of this year's PPC1. It was a strongly contested encounter, with a bitter wind blowing across the pitch that kept the score to a minimum.

The trainees were led by Daireann Gibson and scored the early points, but by half-time they were equal. The towering presence of Enda Newton dominated all high balls in midfield, and he undoubtedly played a pivotal role in the overall outcome. The result: solicitors 0-06, trainees 0-04.

Age and experience: the winning solicitors' team

Youth and vigour: the trainees

TRAINEES' DIRECTORY

This year's SADSI committee hopes to compile a trainees' directory for the 2001 PPC1. A similar directory was compiled for the previous year and has proved a valuable tool in forging links with other trainees. The directory will contain your name, the office in which you are indentured, office telephone number and your e-mail address. We intend to distribute the questionnaire during the next skills days on 4 and 11 March 2002. If you do not receive a questionnaire and wish to have your details in the directory, please e-mail your details to us at 2002@sadsi.ie.

If you think it's good to talk, then this is for you

Trainees are always reminded that advocacy skills have more relevance than ever before. Greater rights of audience for solicitors and increased monetary jurisdiction in the courts have forced many solicitors to look afresh at their abilities as an advocate. How do you become a good advocate? Well, practice makes perfect. So where does this leave the novice, the trainee solicitor who has never stood in front of a judge? Help is at hand. During December, January and February, the Law School runs its annual trainee solicitor mooting competition, which is open to all on the professional practice course at the time.

The competition provides an ideal environment to practice and hone advocacy skills – you can make mistakes and no harm will be done and you get support, praise and constructive feedback from the presiding judges.

In a moot court the facts are not at issue; instead you are arguing points of law before the appellate courts, usually the Supreme Court – it's not every day that you get to do that. The judges are usually faculty members or indeed retired judges.

By engaging in courtroom advocacy, you will also learn the rules of the courtroom and gain experience in researching and drafting written briefs. For the ambitious mooter, it also provides a training ground for larger competitions.

COMING EVENTS

■ We plan to kick off the year with our first regional event in Galway on Friday 8 March, in The Skeff at 8pm. Dawn Carney, your western representative, guarantees a night filled with subsidised beverages, good music and great crack. Even though this is a regional western event, the event is open to all trainees. To this end, your sports liaison officer, Noel Devins, has also organised a soccer match at 1pm at Corrib Village football pitch on the following day. It is hoped that a team will travel from Dublin to Galway to take on the might of the West. Other activities have also been organised, including bowling and golf. All are then invited to meet in The Quays, Galway, at 6pm. Many thanks to Ulster Bank for their continued support in sponsoring this event.

■ On 13 March in Blackhall Place, SADSI will host a guest speaker debate on the motion that 'Ireland has a justice system to be proud of'. There will be several high-profile guest speakers on the night, which augurs well for a lively and interesting debate. If anyone is interested in representing SADSI in the *Irish Times* or Mace debating competitions, or indeed in the annual challenge debate against the King's Inns later in the year, please contact Ronan Feehily by e-mail at 2002@sadsi.ie.

■ On Saturday 16 March, the Irish apprentices' rugby team will take on the King's Inns students' team in UCD. The club would like to invite all interested players to contact SADSI's eastern representative and welfare officer, Christian Victory, at 5903@campus.ie, giving details of positions played. For insurance reasons, the club can only consider players who are already fully paid-up members of a registered rugby club. Jerseys and kit will be provided.

Further details of these events, including information on transport and accommodation, may be obtained via e-mail at 2002@sadsi.ie or on our website at www,sadsi.ie.

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 March 2002)

Regd owner: Brian Flynn; Folio: 8688F; Lands: Grangeford Old and Barony of Carlow; **Co Carlow**

Regd owner: Peter Thomas Gaynor; Folio: 565; Lands: Cornakill; Area: 10.70625 acres; **Co Cavan**

Regd owner: Joy McAlavey; Folio: 15297F; Lands: a plot of ground situate on the west side of Fisher Street otherwise Lower O'Connell Street in the town and parish of Kinsale shown as plan 82 edged red on the registry map (OS 112/13). 6641/16; **Co Cork**

Regd owner: Timothy Coleman; Folio: 16410; Lands: Known as the townland of Knockacorbally situate in the Barony of Muskerry East; **Co Cork**

Regd owner: Michael Holland; Folio: 6663F; Lands: Known as a plot of ground situate in the townland of Donegall Middle, the Barony of Carbery west (east division); **Co Cork**

Regd owner: Edmund W and Margaret B McClean; Folio: 43349; Lands: Meenderryowan; Area: 0.50 acres; **Co Donegal**

Regd owner: John and Jo O'Donnell; Folio: 15398; Lands: Termon (parts); Area: 1.102 hectares; **Co Donegal**

Regd owner: Daniel McElchar; Folio: 33747; Lands: Ballylast 9.7937 acres, Ballylast 23.675 acres; **Co Donegal**

Regd owner: Kathleen, Anne and Vincent McDonnell; Folio: DN8653; Lands: Property situate in the townland of Rathcoole and Barony of Newcastle; **Co Dublin**

Regd owner: Kathleen, Anne and Vincent McDonnell; Folio: DN3329; Lands: Property situate in the townland of Rathcoole and Barony of Newcastle; **Co Dublin**

Regd owner: Fiona and Maurice Keenan; Folio: DN87272L; Lands: Known as apartment no 16, second floor and car park space no 13, Kings Court, Parnell Street, situate in the parish of St Mary's and district of North Central; **Co Dublin**

Regd owner: Eileen Purcell; Folio: DN72429L; Lands: property being flat no 6, the first floor of the building known as Hollywood, situate on the north side of Donnybrook and district of Pembroke and city of Dublin; **Co Dublin**

Regd owner: Thomas and Margaret Tyrrell; Folio: DN28920L; Lands: property situate in the townland of Carrickhill and Barony of Coolock; **Co Dublin**

Regd owner: John and Philomena Gubbins; Folio: 39829; Lands: Townland of Annaghvaan and Barony of Moycullen; Area: 7.9240 hectares; **Co Galway**

Regd owner: James Kearney; Folio: 12945; Lands: Townland of Cordal west and Barony of Trughanacmy; **Co Kerry**

Regd owner: Rev Mother Mary Baptista and others; Folio: 26800; Lands: Townland of Whitefield and Barony of Dunkerron North; **Co Kerry**

Regd owner: Castlemaine Harbour Co-operative Society Limited; Folio: 20245; Lands: Townland of Cromane Lower and Barony of Trughanacmy; Area: 1.055 acres; **Co Kerry**

Regd owner: Patrick and Elizabeth Looby; Folio: 7318F; Lands: Foulkscourt and Barony of Galmoy; **Co Kilkenny**

Regd owner: Patrick Dunne (deceased); Folio: 743F; Lands: Graiguenamanagh and Barony of Gowran; **Co Kilkenny**

Regd owner: Paul Walsh; Folio: 7174F; Lands: Clogga and Barony of Iverk; **Co Kilkenny**

Regd owner: Bridie Bohan and Jane Anne Dolan; Folio: 6759; Lands: Aghaboneill; Area: 23.7937 acres; **Co Leitrim**

Regd owner: Carmel Collins; Folio: 27121; Lands: Townland of Cloongownagh and Barony of Kenry; **Co Limerick**

Regd owner: James Hickey; Folio: 317L; Lands: Townland the leasehold estate in the parcel of land situate on the south east side of Corbally Road in the Parish of St Patrick; **Co Limerick**

Regd owner: Michael Holmes; Folio: 13680; Lands: Townland of Rath and Barony of Owneybeg; **Co Limerick**

Regd owner: Christina Foley; Folio: 12350; Lands: Aghnashannagh; Area: 0.73125 acres; **Co Longford**

Regd owner: John Joseph Reilly; Folio: 7567; Lands: Tawnagh (part); Area: 58.9062 acres; **Co Longford**

Regd owner: James Carroll; Folio: 3166; Lands: Athlumney; Area: 25.60 acres; **Co Meath**

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

Regd owner: Patrick Christopher Hickey; Folio: 25921; Lands: Rackenstown; Area: 0.831 acres; **Co Meath**

Regd owner: Edward McElroy; Folio: 11123 revised; Lands: Tonysillogagh; Area: 21.0937 acres; **Co Monaghan**

Regd owner: Madge McGuinness; Folio: 10159F; Lands: Corrybrannan; **Co Monaghan**

Regd owner: Christopher Fetherstone and Ann Fetherstone; Folio: 12325; Lands: Breaghmore and Barony of Ballybritt; **Co Offaly**

Regd owner: Richard Charles Hunter (deceased); Folio: 1644; Lands: Townland of Ballincar and Barony of Carbury; Area: 12 acres, 2 roods and 30 perches; **Co Sligo**

Regd owner: John Finnan and Jacqui Finnan; Folio: 22349F; Lands: Rathsasseragh and Barony of Clanwilliam; **Co Tipperary**

Regd owner: Fergus Roche; Folio: 5921; Lands: Known as the townland of Bewley situate in the Barony of Decies without Drum; **Co Waterford**

Regd owner: Maurice Dunne; Folio: 8759F; Lands: Eardownes Great and Barony of Forth; **Co Wexford**

Regd owner: Charles A Gambrill; Folio: 334R; Lands: Borleagh and Barony of Gorey; **Co Wexford**

Regd owner: John Breen (deceased); Folio: 1236 and 13072; Lands: Crory and Barony of Scarawalsh; **Co Wexford**

Regd owner: Malachy Quinn; Folio: 7388F; Lands: Ballynamona and Barony of Ballaghkeen; **Co Wexford**

Regd owner: Sean Byrne; Folio: 13861F; Lands: Townland of Thereewells and Barony of Ballinacor south; **Co Wicklow**

Regd owner: Joseph Maguire; Folio: 3197L; Lands: Bray and Barony of Rathdown; **Co Wicklow**

Regd owner: John Cullen; Folio: 2168; Lands: Redcross and Barony of Arklow; **Co Wicklow**

WILLS

Collins, Margaret (deceased), late of 22 St Mary's Road, Edenderry, Co Offaly. Would any person having any knowledge of a will being made by the above named deceased who died on 16 February 2001, please contact Byrne & O'Sullivan, Solicitors, Windsor Lodge, Edenderry, Co Offaly

Cummins, Annie (deceased), late of Kildwan Bonmahon Co Waterford. Would any person having knowledge of the whereabouts of the original will executed by the above named deceased on 21 March 1984 and codicil executed by the above named deceased on 22 June 1988, said deceased having died on 29 September 2001, please contact T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford, tel: 051 874 366 or fax: 051 870 390

Deane, Robert, late of Knockskeagh, Iyre, Clonakilty, Co Cork. Would any person having any knowledge of the whereabouts of a will of the above named deceased dated 14 August 1998, who died on 18 June 1999, please contact Collins, Brooks & Associates, Solicitors, 7 Rossa Street, Clonakilty, Co Cork, quoting ref AOD.

Donnelly, Maureen (otherwise Mary), late of Patrick Street, Portarlington, Co Laois, formerly of Ballinrahan, Rathangan, Co Kildare. Would any person having knowledge of a will executed by the above named

deceased who died on 31 January 2002, please contact Wilkinson & Price, Solicitors, Main Street, Naas, Co Kildare, tel: 045 897 551

Gilroy, Sara (deceased), late of 56 Palmerston Road, Rathmines, Dublin 6. Would any person having knowledge of a will executed by the above named deceased who died on 16 December 2001, please contact Moriarty & Co, Solicitors, 11 Anglesea Street, Dublin 2, tel: 01 677 7306 or fax: 01 677 0277

Hunt, James, late of 45 Whitechurch View, Ballyboden, Co Dublin. Would any person having knowledge of a will of the above named deceased who died December 2001 please advise White and Company, Solicitors, Market Square, Abbeyleix, Co Laois, tel: 0502 31123 or fax: 0502 31304

Kenny, Catherine (otherwise Katherine) deceased, late of 38 Farmleigh Avenue, Stillorgan, Dublin 18, formerly of Monkstown Avenue, Blackrock, Co Dublin and of Bon Voyage Travel Limited, Dun Laoghaire. Would any person having knowledge of the whereabouts of the will of the above named deceased who died on 4 January 2002 please contact Sean Hooper, Hooper and Company, Solicitors, 97 Upper Georges Street, Dun Laoghaire, Co Dublin. Ref: 3876-001. Tel: 01 280 6971 or fax: 01 280 1558

McCormack, Anna (deceased), late of 26 Mount Saint Oliver, Drogheda, Co Louth. Would any person having knowledge of a will being made by the above named deceased who died on 26 July 2000, please contact John J Tully, Tully & Duffy, Solicitors, of 49 Laurence Street, Drogheda, Co Louth, tel: 041 9839 411 or fax: 041 9836 444

O'Rourke, Angela, anyone knowing the whereabouts of a will of the late Angela (otherwise as Ellen) O'Rourke, formerly of Knockaun, Annestown, Co Waterford, obituary 13 January 2002, please contact Aherne Swift Solicitors, 51 O'Connell Street, Waterford, tel: 051 879 484 or fax: 051 852 230

EMPLOYMENT

AMT-Sybex Group, a consultancy and software company require an in-house solicitor. Based at our Dublin office in Sandyford, candidates should have one to three years PQE. Work will involve advising on and negotiating consultancy and software licence agreements and general legal matters. Forward CVs by post to Paul Reynolds, AMT-Sybex Group, Oak House, Leopardstown Office Park, Foxrock, Dublin 18. Or alternatively e-mail: paul.reynolds@amt-sybex.com

Apprentice – currently on PPC1, seeking apprenticeship for May 2002, in West/North Dublin, Co Meath. Other areas in greater Dublin considered. Please reply to **Box no 116**

Derry firm with busy cross-border practice seeks qualified solicitor. Attractive salary for suitable candidate. Please apply with CV to **Box no 117**

Post-PPC1 student seeks litigation experience for a three to six month secondment period commencing May 2002. Please reply to **Box no 118**

Are you snowed under? Experienced solicitor seeks part time position in Galway City. Please reply to **Box no 119**

Solicitor with three years PQE seeks part-time employment in general practice, North Dublin area. Please reply to **Box no 120**

Chartered accountant available for contract work. Dublin based FCA with 20 years and wide industrial experience and computer skills, available for part-time work. (20/25 hours per week). Please reply to **Box no 124**

Partner designate required for busy, well-established midland practice; also assistant solicitor. Excellent terms and prospects for right candidates. Reply to Catherine Corcoran, HR manager, Ryan Glennon & Company, Chartered Accountants, Trinity House, Charleston Road, Ranelagh, Dublin 6, tel: 01 496 5388 or e-mail: hrmanager@ryanglennon.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, Co Down, tel: 080 1693 68144, fax: 080 1693 60966

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

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

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

Personal injury claims, employment, family, criminal and property law specialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford), Birmingham and Cardiff. 'No win, no fee' available for accident and

employment claims, legal aid for family and criminal cases. Contact **Levenes Solicitors** at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, tel: 0044 20 8881 7777. Alternatively e-mail us on info@levenes.co.uk**.** or visit our website at www.levenes.co.uk**.**

49-year-old solicitor with a sole practice in Belfast and newly admitted to the Law Society's roll of solicitors in the Republic of Ireland would be keen to make contact with a firm in Dublin to explore the possibility of a mutually beneficial arrangement. If interested please contact WJ Irwin LLB, Solicitor, Imperial Buildings, 72 High Street, Belfast BT1 2BBE, tel: 028 9024 4042 or fax: 028 9024 4151 and home e-mail address: wjirwin@hotmail.com.

Solicitor seeks to purchase small general practice in Dublin area. Will endeavour to be as flexible as possible regarding terms in order to oblige, for example, a sole practitioner seeking to retire. All replies treated in the strictest confidence. No confidential information sought at this stage. Please send replies to **Box no 121**

Established solicitor's practice for sale in Co Donegal. Replies to **Box no 122**

Ordinary seven-day publican's licence for sale. Contact Walter P Toolan & Sons, Ballinamore, Co Leitrim, tel: 078 44004 or fax: 078 44788

Ordinary seven-day licence: reply to Brian D Casey & Associates, Solicitors, Thomond House, High Street, Ennis, Co Clare, tel: 065 682 0001 or fax: 065 682 3933 or e-mail: brian@briandcasey.com

Wanted: ordinary seven-day publican's licence. Reply to Desmond J Houlihan & Company, Solicitors, Salthouse Lane, Ennis, Co Clare, tel: 065 684 2244, fax: 065 684 2233 or e-mail: desmondjhoulihan@securemail.ie

Share for sale: €15,000. Sole practitioner has share for sale in thriving business serving the legal profession. Minimum wage while earning €350 per week. Suit Dublin-based person interested in civil law costing. Please reply to **Box no 123**

Established solicitor's practice for sale in Co Louth. Excellent opportunity. Principals only. Please reply to **Box no 125**

Full ordinary seven-day intoxicating liquor licence required. Please contact Jane O'Connor, Solicitor, Sweeney McGann, 67 O'Connell Street, Limerick, tel: 061 317 533/418 277 or fax: 061 319 496

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rent) (No 2) Act, 1978*: Seamus McNulty and Eimer McNulty – applicants; successors in title of Fletcher Moore – respondents
Take notice that the above named applicants are applying to acquire the fee simple interest in the property hereinafter described pursuant to the above acts. Further take notice that any person having an interest in the following property: part of the lands comprised in indenture of lease dated 25 September 1889 and made between Fletcher Moore of no 12 Hume Street, Dublin, Barrister at Law of the one part and James Monaghan of The Port, Ballyshannon, Co Donegal of the other part being premises located at West Port, Town of Ballyshannon, Barony of Tyrhugh and County of Donegal.

Take notice that Seamus McNulty and Eimer McNulty intend to apply to the county registrar of the county of Donegal for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Seamus and Eimer McNulty intends to proceed 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 of Donegal for direction as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest in the premises are unknown and unascertained.

Date: 25 January 2002
Signed: F Hutchinson & Co, Triconnell Street, Ballyshannon, Co Donegal, solicitors for the applicant

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 Vincent Thornton and Edward Thornton, 648 and 650 (formerly 74 and 72) South Circular Road, Dublin 8
Take notice that any person having an interest in the freehold estate of the following property: the premises formerly known as 74 and 72 South Circular Road, subsequently changed to 648 and 650 South Circular Road, Kilmainham in the parish of St James and the county of the city of Dublin.

Take notice that (the applicants) Vincent Thornton and Edward Thornton intend to submit an application to the county registrar for the county/city of Dublin, for the acquisition of the freehold interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received the applicant 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 maybe 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 and unascertained.

Date: 4 March 2002
Signed: Miley & Miley, solicitors for the applicants, 35 Molesworth Street, Dublin 2. REF: 7/DMCC

In the matter of the *Landlord and Tenant Acts, 1967 and 1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Stanley Faulkner of South Lotts Road, Dublin 4
To any person having any interest in the freehold estate or any leasehold estate in the following property: all that and those the premises being a portion of the premises described in a lease dated 5 August 1944 for the period of 99 years from 29 September

1943 subject to the annual rent of £25 sterling between James J Horan of the one part and Sheila Goff and Evelyn Margaret de Podesta of the other part being 'all that and those that plot of land containing, by estimation, one rood and seven perches, three quarters statute measure, by the same more or less situate on the north side of Dublin and Kingstown Railway in the parish of St Mary's Donnybrook and county of the city of Dublin, on which there now stand the house number 14 Bath Avenue and part of the house and premises numbers 2, 4, and 6 Bath Avenue Place', which said premises are now known as 7-9 South Lotts Road in the county of the city of Dublin.

Take notice that Stanley Faulkner intends to submit an application to the county registrar of the city of Dublin for the acquisition of the freehold premises in the aforesaid property and other party or parties asserting that they hold a superior interest into the aforesaid property are called upon to furnish evidence of title of the aforesaid property to the below named within 21 days on the date of this notice.

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

Date: 7 February 2002

Signed: Clifford Sullivan & Company, solicitors for the applicant, 31 Westland Square, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1976/1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: application by Inver Inns Limited

Take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all, if any, intermediate interest in the premises described in the schedule hereto and any person having an interest in the freehold estate of any intermediate interest or estate between the freehold and the leasehold interest held by the applicant in the property are hereby called upon to furnish evidence of their title to the solicitors for the applicant within 21 days from this notice.

In default of any such notice being received, the applicant 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 directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion of the property unknown or unascertained.

Schedule: all that and those the licensed house and premises no 159 Phibsborough Road in the parish of Saint George in the city of Dublin containing in front to Phibsborough Road aforesaid 26 feet six inches and in depth from front to rear on the north side 67 feet with the appurtenances as the same are more particularly delineated on the map endorsed on these presents and thereon coloured green commonly known as 'Mohans' (formerly 'The Hut')

Particulars of lease: lease dated 14 February 1896, and made between Thomas Dunphy of the one part and Anne Farnworth of the other part held thereunder for a term of 150 years from 29 September 1895, and subject to an annual rent of £60 thereby reserved and to the convenants on the part of the lessee to be observed and the conditions therein contained.

Take notice that Inver Inns Limited being a person entitled under sections 8, 9, and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, proposes to purchase the fee simple and any and all intermediate interests in the lands above described.

Date: 13 February 2002

Signed: McAlinden & Gallagher, Solicitors, Unit 2, Ashbourne Town Centre, Main Street, Ashbourne, Co Meath

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1978* section 8: an application by Bridget McDonald as legal personal representative of Joseph Higgins, deceased

Take notice that any person having any interest in the freehold estate of the following property: all that and those dwelling house and premises situate at 10 Chapel Street, Tullamore in the county of Offaly.

Take notice that Bridget McDonald as legal personal representative of Joseph Higgins, deceased, intends to submit an application to the county registrar for the county of Offaly for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Bridget McDonald 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 of Offaly for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion are unknown and unascertained.

Date: 1 March 2002

Signed: O'Donovan & Cowen, solicitors for the applicant, William Street, Tullamore, Co Offaly