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Regulars

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Cover Story

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NATIONWIDE
News from around the country

LEITRIM

Rural renewal

Good news from Leitrim. Partly due to the rural renewal tax relief scheme, which expires on 31 December, solicitors have seldom been busier. The scheme appears to have been very successful, according to Michael Keane Jnr of the Leitrim Bar Association. It has meant a very busy time for builders and their tradesmen and suppliers, as well as for professionals such as solicitors.

Under the scheme, introduced by the minister for finance in the 1998 Finance Act, owner-occupiers of houses can benefit from tax reliefs, including setting construction costs or refurbishment costs against rental income incurred on certain residential premises. For investors, relief is available against all rental income for 100% of the expenditure incurred on the conversion or refurbishment of certain buildings into rental residential accommodation.

Solicitors are under huge pressure now in conveyancing for these qualifying properties since the end-December deadline is fast approaching, according to Michael Keane Jnr.

District Court news

Meanwhile, Leitrim litigation solicitors are also smiling and adjusting to District Court judge Geoffrey Browne, formerly a Galway practitioner, who was described by one practitioner as an excellent judge and making a big impression.

MIDLANDS

Location, location, location

The Midland Bar Association, in conjunction with the Law Society, has been holding a number of continuing professional development courses, which have even attracted people from outside the immediate area, according to Caren Farrell, outgoing president of the association.

The Midlands is a good venue and well located in the centre of the country, with easy access, she noted. The bar association had also received great support from the Law Society, and its recent seminar in Athlone on costs was both very important and well attended.

Solicitors must keep up-to-date both for their clients and in their own interests. The courses being organised are a great way of maintaining our professional standards, she added.

Outgoing DSBA president John O'Connor hands over the chain of office to his successor, Orla Coyne, outside the DSBA's new Hatch Street headquarters

DROGHEDA

Court accommodation – again

At the end of January 2005, solicitors practising in Drogheda District Court will at last have some form of reasonable court conditions, according to the Drogheda Bar Association's Fergus Minogue.

Their conditions in recent years had been a cause of serious upset and were a disgrace to the judicial process. Solicitors had even staged a walk out of the court in Drogheda in September of last year in protest at the appalling conditions.

The new court facility, on the town's Dyer Street, will be for a three-to-five-year period. 'We are delighted', said Minogue. 'We were in a bingo hall for ten years and it is not hard to improve on that'.

The association is confident that the new premises will only be temporary, as has been indicated. The lease by the Courts Service is short term only.

So they expect that the sitting judge, officials, solicitors, gardaí and all users of the court, including the people whom they all serve, will then have a courthouse and courtroom with all of the modern facilities that people have come to expect in court and that will last for future generations.

KERRY

Judicial retirement

The retirement of a District Court judge is not always significant news. But it is if the retiring judge has served a community well for 25 years.

Judge Humphrey Kelleher was a very significant figure here. He was able to size up a situation before him both very quickly and very well. His judgments were fair and consistent, according to Pat Sheehan, secretary of the Kerry Law Society.

To mark his retirement, 70 local solicitors attended a retirement function at which tributes were paid to Judge Kelleher's contribution to the local community, to the judicial process in the Kingdom and to the state over a quarter of a century.

DUBLIN

Residential tenancies

A revised draft residential tenancies agreement will be launched in January by the Dublin Solicitors' Bar Association's conveyancing committee, chaired by Geraldine Kelly.

'Since the enactment of the Residential Tenancies Act, 2004 in September, we have been inundated with calls from colleagues on how to approach drafting of tenancy agreements', noted Kevin O'Higgins, secretary of the DSBA.

'Since the act came into force, we have been in a state of limbo and so the launch of the revised draft agreement for members will be widely welcomed', he felt. A committee, including himself, Marjorie Murphy, Christine Scott, Brian Gallagher and assisted by Aine Ryall of UCC, was now working on the draft agreement.

Discovery by e-mail

The DSBA has urged colleagues to note that Dublin Circuit Court has asked solicitors, when lodging motions for discovery, to e-mail a copy of the motion and affidavits to enable them to copy and paste the details onto the order.

'Discovery orders are often long and take a long time to type, which is one of the reasons that they take longer to produce. Often the details are already contained in the motion and we are merely duplicating what has already been typed by the solicitor. If we could copy and paste this into the orders, it would mean that all orders would be produced more quickly', according to Kevin Fidgeon, deputy chief clerk of the Dublin Circuit Court.

However, it is still not possible to lodge motion papers by e-mail. G

Nationwide is compiled by Pat Igoe, principal of the Dublin law firm Patrick Igoe & Co.

Society judicially reviews Competition Authority

The Law Society has launched judicial review proceedings against the Competition Authority, seeking to quash the authority's decision to issue a notice that purports to reserve to the authority the power to veto the choice of lawyer made by a party to a Competition Authority investigation. The society is seeking declarations from the High Court that the authority's notice, which was published on 4 August 2004, is ultra vires the authority's powers, null and void and of no legal force or effect.

In his affidavit grounding the motion, the society's president, Owen Binchy, said that the society 'was extremely alarmed at the decision and, in particular, at the authority's attempt to restrict the freedom of persons to choose the lawyer representing them before the authority'.

President Owen Binchy

The society took the view that the right to be represented by a lawyer of one's choice is a basic and fundamental tenet of any free and democratic society.

As the Gazette went to press, the society was awaiting a replying affidavit from the authority.

Vote of confidence in Murphy

Law Society director general Ken Murphy has been elected to an unprecedented fourth term as chairman of CEEBA, the organisation of chief executives of European bar associations.

At CEEBA's recent annual meeting in London, Murphy's peers from across Europe chose him to lead their network for another year. The organisation, collectively representing more than 300,000 lawyers, is a network enabling regular exchange of information and ideas on the regulation, education and representation of the legal profession across Europe. It seeks to develop better responses to the challenges facing the profession.

Murphy: fourth term

In addition, Murphy was recently elected as a member of the board of IILACE, the International Institute of Law Association Chief Executives, which organises chief executives on a worldwide basis. He says he finds it particularly valuable to learn and discuss how legal professions in other jurisdictions have dealt with such issues as review by competition regulators and government reforms of their litigation systems.

Society supports challenge to PIAB

The Law Society is seeking leave to make written and oral submissions to the High Court as amicus curiae or intervener in a case which challenges the Personal Injuries Assessment Board's policy of refusing to correspond exclusively with a solicitor for a claimant where it is the claimant's wish that PIAB should do so.

At issue is whether PIAB's general policy of disregarding applicants' written authorisations in this regard may violate the claimant's rights under the constitution and the European convention on human rights.

The society views the judicial review proceedings, brought by an applicant named Declan O'Brien, as highlighting issues of fundamental importance to the right of people to take independent legal advice and to entrust to their solicitor the conduct of a claim for personal injuries.

GAZETTE CHRISTMAS PUBLICATION

As usual, the *Gazette* will be taking a break over the Christmas period, so there will be no issue in January. Normal publication will resume with a joint January/February issue, due out in early February.

RETIREMENT TRUST SCHEME
Unit prices: 1 November 2004
Managed fund: €4.42768
All-equity fund: €1.03390
Cash fund: €2.57198
Long-bond fund: €1.20081

PRIZE BOND WINNERS 2004
The winners of the Law Society's prize bond draw were: Brian M Gallagher, Dublin 2; Andrew Smyth, Dublin; Caroline Preston, Dublin; John C Reidy and Patrick J Reidy, Co Kildare; William McGuire, Co Wicklow; Mary P Nowlan, Co Dublin; Patrick T Moran, Co Mayo; Leo and Kevin Loftus, Co Mayo; Thomas O'Halloran, Co Kerry; Dermot M Murphy, Dundalk; Patrick G Colfer (decd), Dublin.

JOYCE'S LEGAL DUBLIN
Brian McMahon, author of an article on James Joyce's legal Dublin published in the October issue of the *Gazette*, will be giving a talk on the article at 8pm on 20 January at 15 Usher's Island, Dublin 8 (Joyce's 'House of the Dead'). All are welcome to attend.

CONSULTATION ROOM FEES
The fees being charged by the Law Society for use of the consultation rooms in the Four Courts are being increased from 1 January 2005 as follows: one hour – €40 (up from €35); two hours – €55 (up from €50); full day – €170 (up from €155). The room rate has not been increased since January 2003.

New security arrangements in the Four Courts

The Courts Service has said that the series of security measures that are due to come into effect early in the new year 'will substantially improve security in and around the Four Courts complex'. The measures include the provision of 'security pavilions with scanning equipment' at the entrances and the restriction of vehicle access to the judges' car park in Chancery Place.

Solicitors, barristers, judges and other professional groups, such as courts staff and court reporters, will be exempted from going through the new security arrangements. Instead, they will be issued with identification cards, by arrangement. According to the Courts Service, the new security measures are 'a response to an ever-changing security climate'.

'There is no question of restricting public access to the courts', it says, 'but of organising this access so as to better ensure safety and security for all who use the building'.

The main features of the new arrangements include:

- From January 2005, there will be no access available to anybody through either the front door of the main Four Courts building or the front door of Áras Uí Dhálaigh
- Public entrances will be located at Morgan Place (between Áras Uí Dhálaigh and the main Four Courts building) and the front door of the Circuit Courthouse in Chancery Place
- Those with ID cards will be able to gain access through specially erected turnstiles at the entrances to Morgan Place, Chancery Street, the judges' car park at Chancery Place and the Circuit Courthouse at Chancery Place
- Cars authorised to park in the Morgan Place/Áras Uí Dhálaigh car parks will be issued with permits that must be displayed on the windscreens.

However, it appears that solicitors may not find it easy to get their hands on access/ID cards for the Four Courts. The Courts Service has informed the Law Society that 'some garda stations are not prepared to stamp application forms and photographs' for solicitors, trainees and solicitors' clerks.

'We have consulted with the garda commissioner's office regarding this matter', it says, 'and have been advised that solicitors should arrange with members of the Garda Síochána who are well known to them to have their application forms stamped rather than seek to have the forms stamped at a garda station where the applicant is not known'.

ONE TO WATCH: NEW LEGISLATION

Criminal Justice (Temporary Release of Prisoners) Act, 2003

Prior to this act, the legislative basis for temporary release was the *Criminal Justice Act, 1960*, section 2, which simply provided that the minister could make regulations in relation to temporary release from prisons and St Patrick's Institution. The 2003 act replaces section 2 with a new section, which sets out the ground rules for temporary release. It came into effect on 12 November 2004 (SI 679/04).

The purposes for which temporary release may be ordered by the minister are (a) to assess the prisoner's ability to reintegrate into society, (b) to prepare him for release, and (c) to assist the Garda Síochána. There also may be circumstances justifying temporary release (health, humanitarian grounds); or the temporary release may be necessary or expedient, in the minister's opinion, to ensure good government of the prison or maintain good order, humane and just management; or if the minister believes the person has been rehabilitated and is capable of reintegrating into society.

The minister must have regard to certain considerations before giving a direction:

- The nature and gravity of the offence
- The sentence imposed and any remarks by the court
- The period served
- The potential threat to members of the public
- Other previous convictions
- The risk of not returning to prison
- The conduct of the prisoner while in custody
- Any reports by the prison governor, gardaí, probation officer, or anyone else the minister considers would be of assistance
- The risk of offending while on temporary release

New officer team in place

The Law Society has a new Council and a new officer team, with Owen Binchy taking over as president for the next year. Binchy was deemed elected to the post after serving as senior vice-president last year, while Michael Irvine was elected senior vice-president for 2004/05, with Brian Sheridan as junior vice-president.

The following members were elected to the Law Society Council in the recent ballot, with the number of votes appearing after their names:

1. Michael G Irvine 1,647
2. Donald Binchy 1,526
3. James B McCourt 1,402
4. Gerard F Griffin 1,401
5. Fiona Twomey 1,336
6. Anne Colley 1,319
7. Gerard J Doherty 1,314
8. John P Shaw 1,307
9. Simon J Murphy 1,300
10. Orla Coyne 1,292
11. Michael Quinlan 1,275
12. James MacGuill 1,263
13. Michelle Ní Longáin 1,246
14. Philip M Joyce 1,186
15. Daniel E O'Connor 1,108
16. Colin Daly 921

The following candidates were not elected and the number of votes received by them appears after their names:

17. Marie Quirke 908
18. Peter M Allen 893
19. John P O'Malley 872
20. Edward C Hughes 864
21. TC Gerard O'Mahony 330

New president Owen Binchy with (*from left*) junior vice-president Brian Sheridan and senior vice-president Michael Irvine

As there was only one candidate nominated for each of the two relevant provinces (Leinster and Ulster), there was no election and the candidate nominated in each instance was returned unopposed, as follows: Leinster – Andrew J Cody; Ulster – Margaret M Mulrine.

Council members are elected for a two-year term. The sitting Council members who were elected last year are: Brian Sheridan, Geraldine Clarke, Owen Binchy, John O'Connor, John D Shaw, Kevin O'Higgins, Michele O'Boyle, Stuart Gilhooly, James Cahill, Moya Quinlan, Patrick Dorgan, John Dillon-Leetch, John Costello, Thomas Murran, and Jarlath McInerney.

IRISH WOMEN LAWYERS' ASSOCIATION

The Irish Women Lawyers' Association is holding a half-day seminar on Saturday 22 January on *Law and the elderly: an emerging practice*. Topics will include incapacity, enduring powers of attorney, the rights of the elderly under the *European convention on human rights*, elder abuse, and the ethics of medical treatment of the elderly. The venue and other details will be notified on *www.iwla.ie*.

Abolish 'feudal land law', says Wylie

Leading land law expert Professor John Wylie has called for the abolition of land legislation dating back to the Middle Ages. Addressing a recent conference on reforming land law and conveyancing, organised by the Law Reform Commission, Wylie said that 'it is staggering that there remains in force so much legislation stemming from the feudal age, and it is time that an independent state, which has been in existence for over 80 years, jettisoned this historical baggage'.

And he added: 'The purchase of a home is a transaction of supreme importance to most people. The day is surely approaching when members of the public will not understand why, in the age of the computer, a conveyancing transaction seems bedevilled with uncertainties, involves a huge paper chase and seems to take an extraordinary time to complete'.

The conference focused on the proposals outlined in the LRC's recent consultation paper on the subject.

- The risk of failure to comply with any conditions attaching to the release
- The likelihood that the release might accelerate the prisoner's reintegration or improve his prospects of employment.

Some prisoners are excluded, including those serving mandatory sentences under certain legislation (such as under the 1977 and 1999 *Misuse of Drugs Acts* or that dealing with treason and murders of prison officers and gardaí in section 5 of the *Criminal Justice Act, 1990*).

SI 680/04 contains the *Prisoners (temporary release) rules 2004*, which also came into effect on 12 November 2004. The rules automatically include default conditions for release of a prisoner:

- That the person shall keep the peace and be of good behaviour during release and
- That the person be of sober habits during that period.

The regulations include a form to be signed by the governor and the person granted temporary release, which list the default conditions, and on which others may be included. The form is to be witnessed, so that it amounts to a contract between the prison authorities and the candidate for temporary release.

Will it make any difference? No significant difference is anticipated, but the act does make the whole process more transparent. In that way, the granting or refusal of temporary release complies more closely with the fair procedures requirement in article 6 of the *European convention on human rights*. G

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

Cork's family law court problems: district judge O'Leary speaks out

Following the story on Cork's district courts in last month's issue, Cork district judge Con O'Leary has issued a statement to the Gazette on the effects of late sittings in his court on his childcare list. In it, he confirms the substantial increase in child cases coming before him and the pressures this has caused. But he does not back the call by some Cork practitioners for an additional district judge to be appointed to Cork, suggesting instead the possible appointment of a regional family judge.

O'Leary says that there were 37 sittings after 5pm in his court in 2002, 48 in 2003, and 32 in the first six months of this year. There were nine sittings after 6pm in 2002, 19 in 2003, and 11 in the first six months of 2004.

And he adds: 'These figures do not fully reflect the pressure. Sittings have commenced at 9.30am or 10am. Criminal and civil business have been cancelled or delayed to give priority to childcare business … These late sittings are unacceptable and unfair to the parties, the advocates, the judge, and most of all to the children. They must affect the quality of the work by the advocates and the judge, and of the evidence given by witnesses'.


CORK FAMILY LAW COURTS IN CRISIS

Nature of the work

The judge points to the nature of childcare proceedings as one of the factors in the problem. 'The nature of the work, including the potential consequences of the order, whichever way it goes, the vulnerabilities of the children, the apparent discrepancy of resources and the creation of a perception of the court as a forum which is fair and responsive requires facilitation of the most rigorous testing of the evidence', he argues. 'I am aware that some people would have the view that I create unnecessary work by regular reviews of troublesome cases. I will not make a care order and then walk away and blame the health board for not delivering. Frequently, plans made by the health board run into bureaucratic or resource difficulties, or the child needs encouragement to take advantage of the resources that are made available. The court has put the child, usually with a traumatic history, in a potentially challenging situation, and to take no further interest in the child would be irresponsible'.

Extreme examples

According to O'Leary, a disproportionate number of late sittings after 6pm arise from a very limited number of cases.

'The extreme example is the case which ran from October 2003 to April 2004. It took a total of 60 hours in court. I estimate that it accounted for all 11 sittings after 6pm in October to December 2003, and eight of the 11 such sittings in January to June 2004.

'Sixty hours is about 14 days in court time. This was on top of all the day-to-day work. It was, and felt, as if I had done my day-to-day work to the end of July, and then sat for three weeks in August to hear the case, and then came back to work after a week. Previous years had similar events, where a minuscule number of cases caused unacceptable late sittings.

'The difficulty arises from the combination of the unpredictability of such an excessively long case, and the unavailability of moveable judges to deputise at short (two to four weeks) notice. I understand that courts were cancelled in districts 16, 18 and 20 in September, where judges had medical commitments and could not be replaced.

'I do not see a solution to the difficulties in hearing childcare cases in an additional permanent appointment to Cork or additional service by a moveable judge on a regular basis, as presently in the Family Court, as being necessary. It may also be that unless the number of judges is increased, unexpectedly dramatically, the president may find that other districts have bigger problems and the problems must be solved using such personnel as are presently assigned to Cork.

'One possible alternative would be a permanently assigned regional family judge. This judge would do all the family work in districts 17, 18, 19 and 20 and could organise his time according to need. I am not familiar with the demands of districts 17, 18 or 20, so my reference to the grouping is purely speculation'.

Interim solution

The judge concludes by suggesting an interim solution to this on-going problem.

'I am giving thought to giving all childcare matters priority to all other business', he says. 'The example would be that I would commence hearing a childcare case on a Wednesday afternoon, and simply adjourn all scheduled business on every day following commencement of hearing for as long as it takes, which may be up to a week, until the case is finished. I would plan to sit until 5pm to do this.

'This may mean that other business has to wait or eventually be struck out, but I will not inhibit cross-examination (which is the slow part) of witnesses who give evidence in support of an application to remove a child from its parents'. G

Gay marriage is not a convention right

Alma Clissmann reports on developments in relation to the practical application of the *European convention on human rights*

Homosexual relationships do not fall within the scope of 'family life' under article 8 of the ECHR, and the European Court of Human Rights (ECtHR) has held that 'the right to marry guaranteed by article 12 refers to the traditional marriage between persons of the opposite biological sex' (S v UK, 47 DR 274 [1986], ECtHR; Rees v UK [1986] EHRR 56). This interpretation does not prevent states from extending marriage to members of the same sex or from instituting a civil partnership scheme for same-sex couples that may mimic the rights and obligations of marriage in most respects. Civil partnership is now available to many gay couples throughout Europe and in other parts of the world and is expected to arrive in the UK and Northern Ireland in the course of 2005 with the enactment of the Civil Partnership Bill 2004.

Decriminalisation and discrimination

However, the ECtHR has accorded respect for sexual orientation and identity short of official recognition of same sex unions. Following Dudgeon v UK ([1981] 4 EHRR 149, ECtHR), the law criminalising consensual homosexual activity was declared to be contrary to the convention in Norris v Ireland ([1988] 13 EHRR 186, ECtHR). The Strasbourg court held that the prohibition of private, consensual homosexual conduct was an interference with a most intimate aspect of private life, which was not necessary in a democratic society. This reasoning was applied to the ban on homosexuals serving in the UK armed forces, and both the investigations to identify homosexuals and the procedures

to dismiss them were held to be serious violations of article 8 (Smith & Grady v UK, [1999] 29 EHRR 493). The age of consent for homosexual activity (18) was reduced to equate with the age of consent for heterosexual activity (16) in the UK as a result of Sutherland v UK.

Parenting and adoption

In Salgueiro Da Silva Mouta v Portugal ([1999] 31 EHRR 47), the applicant was the father of a daughter born during his marriage. He left the marriage and cohabited with a man and his parental responsibility was revoked and given to his ex-wife. The court ordered that he should disguise the fact that he was living in a homosexual relationship during contact with the girl. The ECtHR found a violation of both article 8 (family life) and article 14 (discrimination), and held that discrimination on the basis of sexual orientation was not permissible under article 14. However, in Frette v France ([2003] 2 FLR 9), the refusal by the authorities to allow the applicant to adopt a child was held by the ECtHR, by a majority of four to three, to be within the member state's margin of appreciation, in the interests of adoptable children. The applicant alleged that the refusal to allow him to adopt was based on his sexual orientation and violated articles 6, 8 and 14. Though it narrowly rejected his application, the court made it clear that particularly weighty reasons were needed to justify a difference in treatment on grounds of sexual orientation.

Tenancy rights

The issue of housing arose in Karner v Austria (24 July 2003). The applicant was the homosexual partner of the tenant of the apartment where they cohabited for over four years, and, on his death, the tenant designated Mr Karner as his heir. He applied to succeed to the tenancy under the domestic law that permitted this for 'life companions', but the Austrian court held that this was intended to apply only to heterosexual couples. The ECtHR held that he qualified as a life companion except for his sexual orientation and that the defendant state did not offer sufficiently convincing or weighty reasons to justify differentiating between different sex and same-sex couples. It found a violation of articles 8 and 14.

This case was followed by the House of Lords in Ghaidan v Godin-Mendoza ([2004] UKHL 30; [2004] 3 WLR 113), using the interpretative powers of the Human Rights Act 1998 to extend the protection afforded to heterosexual cohabiting couples under the Rent Act 1977 to same-sex couples. They held that succession under the Rent Act 1977 came within article 8, respect for a person's home. They considered whether difference in treatment could be justified on the basis that it pursued a legitimate aim and the means employed to achieve that aim was proportionate to the aim, and concluded it could not. Rather than make a declaration of incompatibility under the HRA, they held that it was possible to interpret the legislation to include same-sex couples.

Despite the decision in Karner v Austria, the Irish Residential Tenancies Act, 2004 does not include a same-sex cohabitee in the list of persons eligible to elect to take over a tenancy on the death of the tenant (section 39). However, an Irish court may follow the Ghaidan decision in interpreting the legislation to be compatible with the ECHR case law.

Protection for other rights

The jurisprudence of the ECtHR stresses that the protection of rights must not depend on formal status, such as marriage, but must be effective nonetheless to recognise the realities of the people's lives, including families outside marriage and private lives involving homosexual relationships. How far the domestic law must go to accommodate these realities is a question to be explored. G

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

Bell, book

Canon law is the basic law of the Catholic Church and has come to prominence in recent times in relation to child-abuse cases. But does it take precedence over civil law? Henry Murdoch gets a belt of the crozier

MAIN POINTS

- Relationship of canon law to civil law
- *O'Callaghan v O'Sullivan* (1925)
- Canon law as 'foreign law'

The archbishop emeritus of Dublin, Cardinal Desmond Connell, is reported as having said that canon law 'enjoys the same status in Ireland as foreign law' (Irish Times, 31 May 2004). However, justice minister Michael McDowell is reported as having said on 20 October 2002 that canon law is viewed by the civil law of the state 'as equivalent to the laws of, say, the Presbyterian Church or the internal rules of a sporting organisation'.

Speaking at a mass on 30 May to mark 160 years of the St Vincent de Paul Society in Ireland, Cardinal Connell said: 'I note that the idea has got around that in Ireland the law of the church has the standing of the rules of a private association. But as early as 1925, the Supreme Court decided that in our jurisdiction the canon law enjoys the status of foreign law. It is recognised, therefore, as law enacted by a sovereign independent authority. That sovereign authority resides in the Holy See'.

The views of the cardinal and the minister appear to be diametrically opposed, one indicating a high and important status for canon law and the other indicating a lower and limited status. Who is right, or are they both right or both wrong?

Church and state

Canon law has had an important impact on the development of civil law, particularly in relation to marriage, where the law of nullity developed historically from the principles of canon law. When the Church of Ireland was disestablished, jurisdiction in matrimonial matters was transferred to the civil courts. Indeed, the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 required the civil courts to adopt the rules and principles that the ecclesiastical courts had followed.

However, the civil courts have over the years departed from those principles in the light of advances in psychiatry and psychology. Indeed, by 1887, the courts held that 'the law of Ireland and England is not the same as the canon law on the subject of impotence' (A v A sued as B, 19 LR Ir 403). The civil courts have accepted that the 1870 act did not fossilise the law – 'courts must recognise that the great advances made in psychological medicine since 1870 make it necessary to frame new rules which reflect these' (Kenny J in S v S, Supreme Court, unreported, 1 July 1976, cited in F(P) v O'M(G) [2001] 3 IR 1).

Canon law and civil law can be quite different, sometimes one socially ahead of its time and sometimes behind. For example, canon law conferred legitimate status on an otherwise illegitimate child whose parents married subsequently, provided they were free to marry each other at the time of the child's birth. That principle was not accepted by the civil law in Ireland until 1931 in the Legitimacy Act.

On the other hand, in civil law, the distinction between a void and a voidable marriage has worked well in practice, whereas under canon law all invalid marriages are void. A void marriage is one that never had legal effect and consequently is void ab initio – for example, where a party does not have the legal capacity to marry. The validity of the marriage may be challenged by any person with a sufficient interest, even after the death of the parties. A voidable marriage is one that is valid until it is annulled by a decree of nullity – for example, where the marriage has not been consummated. The validity of such a marriage may be challenged only by one of the parties to the marriage during the lifetime of both.

And, of course, the difference between canon law and civil law over recent years is probably best exemplified by the decrees of nullity of marriage by an ecclesiastical court of the Catholic Church, which have no legal effect in the state. The Law Reform Commission declined in 1984 to recommend that

and CANDLE

these decrees be given legal recognition, although it did note that the grounds for annulment in the civil courts 'differ far less radically from those recognised by the ecclesiastical courts of the Catholic Church than is perhaps generally appreciated' (LRC 9, 1984).

The red and the black

In the 1925 case to which the cardinal referred, the Supreme Court held that canon law is foreign law, which must be proved as a fact and by the testimony of expert witnesses according to the well-settled rules as to the proof of foreign law (O'Callaghan v O'Sullivan [1925] 1 IR 90). So the cardinal is right. Well, partly.

The case arose from the removal of a parish priest by the bishop of Kerry (see panel, next page). Importantly, both parties in this case accepted that

PHOTO: roslyn@indigo.ie

the relationship between the priest and the bishop was subject to canon law. This is similar to two parties to a contract accepting that their contract was subject to Latvian law. In a subsequent Irish court action in relation to that contract, Latvian law would normally be recognised by the court as the law governing the contract and as foreign law that would have to be proved by expert evidence as a fact.

The cardinal is right in that, if a relationship at issue is clearly subject to canon law, the courts will give effect to it. Particularly if a line can be drawn around the relationship between, say, a bishop and a curate in canon law that does not adversely affect any other party, the courts will probably give effect to the canon law, as it did in the 1925 case. The High Court in Northern Ireland also did so in 1991 in the legal battle between Bishop Cathal Daly and his curate (now bishop) Pat Buckley (Buckley v Daly [1991] ITLR).

The minister is probably also right in his assertion, as the laws of the state will frequently override private arrangements between parties that have the objective or effect of avoiding the requirements of domestic or European legislation or indeed of the Irish constitution. Just by asserting that your relationship is based on a particular law does not render you immune from these

BEATING THE BISHOP: *O'CALLAGHAN v O'SULLIVAN*

The 1925 case referred to by Cardinal Connell is a bizarre story of a very public conflict between a parish priest and his bishop, the likes of which we have not seen in recent times. Amazingly, the case involved the High and Supreme Courts in Ireland, an appeal to Rome, and a petition to the English king.

Eyeries is a small village in the Beara Peninsula in West Cork. Fr O'Callaghan was appointed parish priest there in 1904. By 1919, he was in deep trouble with his parishioners, his curates and his bishop. He accused his parishioners of being 'exceedingly mean', he claimed to be entitled to a 'better parish than Eyeries', and he failed to provide for his two curates and would not let them reside in the parochial house.

He was constantly in battle with his curates over who would say mass and who would officiate at funerals and baptisms. He accused one curate of abusing him 'in scandalous language in the presence of witnesses'. At one stage, he wrote to the bishop: *'both, especially Fr Dennehy, used their best energies to deprive me of all authority as parish priest, to deprive me of my living by depriving me of my right to perform in person duties I am bound to perform in person and to secure contingent emoluments, to spread contempt and foment hatred against me in every part of the parish, to foster the hope that rebellion against me would drive me out of the parish and that the vacancy thus made might be filled by Fr Dennehy'*.

While his letters to Bishop O'Sullivan usually ended respectfully with 'I beg to remain, my lord, your lordship's humble servant', there was nothing servile in the language he used: *'I warn you that should you go on and find a verdict against me, I will hold you as conspiring with my enemies to beggar me by driving me out of the parish'*.

A hearing took place at the bishop's palace in Killarney on 11 July 1919, following which a decree was made against Fr O'Callaghan by the synodial judges requiring him to pay £45 and £59 to his curates in respect of board and lodging denied to them. On the same day, the bishop wrote to Fr O'Callaghan and invited him to resign for two reasons: *'1) the hatred or deep-rooted dislike which your people, or a considerable number of them, have conceived towards you, and which cannot but render your ministry in the parish useless, if not harmful; 2) your maladministration of the temporalities of your parish'*.

Fr O'Callaghan would not resign and would not comply with the decree: *'I will bring against your decree not the doped evidence of one witness; I will bring the whole parish. Pocket your decree or better burn it; you and your consultors have disgraced yourselves by issuing it'*.

The bishop issued a decree of removal on 15 November 1919, which was subsequently confirmed on 6 January 1920, removing Fr O'Callaghan from the office of parish priest. The decree said that the regrettable state of things in the parish *'makes it incumbent on us to take remedial action in discharge of our obligation to provide for the good of souls'*.

He was granted a pension of £80 a year and reminded of his indebtedness to his two curates.

Fr O'Callaghan sought to have the decree of removal declared by the High Court to be illegal, unauthorised, *ultra vires* and void. He failed, and appealed to the Supreme Court. That court noted that both Fr O'Callaghan and his bishop accepted that 'the laws, ordinances and canon laws' of the church regulated their sacred offices and their relations with each other. This was crucial to the subsequent decision that canon law governed their relationship and that, as 'foreign law', it was required to be proven as a fact by the testimony of expert witnesses.

The Supreme Court held that: *'We are not dealing with a foreign contract. The contract is the appointment of the plaintiff as parish priest – a contract made in Ireland between two Irish parties. It is a term of that contract that the parties are to be bound by a foreign law regulating their respective offices'*. The court held that the bishop had correctly followed canon law in removing the parish priest from office.

Fr O'Callaghan took an appeal to Rome in July 1921, but this also failed. His last attempt was a petition in 1925 for special leave to appeal *in forma pauperis* (as a pauper) to the English king. This was rejected by the Privy Council.

If Fr O'Callaghan were taking his case today, he could argue that, while his contractual relationship was indeed governed by canon law, he was entitled to procedures that comply with the now high standards of natural justice and the *European convention on human rights*.

requirements. You may agree to be bound by the internal rules of the local sporting club, but those internal rules cannot deny you your civil rights, such as your right to natural justice.

This is particularly the case where other parties are involved. This has been acknowledged by the bishop of Killaloe, Dr Willie Walsh, who is reported as saying that confidentiality in the relationship between priest and bishop, though protected by canon law, does not take precedence over civil law (Irish Times, 6 September 2002).

Where canon law clearly governs a relationship, the courts will generally apply the canon law, as it did in Connolly v Byrne ([1997] IEHC 195). In this widely-publicised case, the court refused injunctive relief to parishioners who sought to restrain the bishop from altering the sanctuary of Carlow Cathedral. The defendants successfully contended that the property was held subject to canon law and that they had the right under canon law to carry out the alterations.

Curate's egg

It is correct to say that canon law is recognised as 'foreign law' by the Irish courts where it governs a relationship that is at issue. It would not be correct to imply that this gives canon law precedence over civil law. If the relationship at issue is clearly governed by canon law, it will generally be applied, as in Connelly v Byrne. If no third party is affected, it may well be applied, as in O'Callaghan v O'Sullivan. If a third party is affected, it might not be applied. Depending on the circumstances, canon law may have a significant status and govern a relationship, as in the 1925 case. In other circumstances, it may have no status and civil law may rule supreme, as is the case in ecclesiastical decrees of nullity of marriage. The same could be said in certain circumstances about the laws of, say, the Presbyterian Church or the internal rules of a sporting organisation.

So the cardinal and the minister for justice are both correct – in part. A genuine curate's egg. G

SOWING WILD OATHS

One would expect that the oath in law, with its appeal to supernatural sanctions, was derived from canon law. Not so. Originally it was believed that any person who swore falsely could expect the swift and certain vengeance of an omnipotent God, bound to intervene on the side of truth. And a sworn witness who remained unharmed after testifying was presumed to have been adjudged by God to have spoken the truth (LRC 34, 1990, *Report on oaths and affirmations*). However, canon law was initially hostile to the reception of oaths, preferring to base its decisions on documentary and testimonial evidence (Silving, *Essays on criminal procedure* [1964]).

Henry Murdoch is a barrister and author of the recently published Murdoch's dictionary of Irish law (2004), 4th edition, and the CD-ROM and internet product Murdoch's Irish legal companion (2004).

PHOTOS: roslyn@indigo.ie

THE QUI

Don't expect any table-thumping from the Law Society's new president, Owen Binchy. There will be no fuss, no 'Binchy manifesto'. The man is just here to do his job, he tells Conal O'Boyle

Owen Binchy is a man who knows how to keep his own counsel. In fact, that's what landed him in the spot he's in today. Many years ago (18 to be precise), the president of the then North and East Cork Bar Association, Tim Lucey, dispatched Binchy to Blackhall Place as a bar association nominee to the Law Society's Conveyancing Committee, with the words: 'Owen, now you'd be a good fellow to keep your mouth shut. Go up and see what they're doing in Dublin'. So he did. The following year he was a Cork nominee to the Law Society Council. And two years later, in 1989, he stood for Council in his own right. He's been elected every year since.

The Law Society's new president is managing partner of the law firm James Binchy & Son, based in Charleville, Co Cork. He is the fourth generation of Binchy to practise in the firm set up by his great-grandfather, and admits that there was never any question of him studying anything but the law.

'I didn't have much of a choice', he says almost wistfully. 'If I didn't become a lawyer, I would have become a teacher or an engineer'.

Binchy finished third in his class at UCD in 1970, behind distinguished solicitors Mary Redmond and former Law Society president Laurence K Shields. During the time he was studying for his BCL, he was apprenticed to the family firm, qualifying in 1971 aged 21. He has stayed with the firm ever since.

Binchy is probably unique among solicitors these days in that he actually admits to enjoying conveyancing. 'I am quite happy doing conveyancing', he says. 'I do a lot of family conveyancing. In family

ET MAN

conveyancing, you are only dealing with the family and you can do it at your own pace'.

He has been a regular CLE lecturer on conveyancing and other topics, and is one of the authors of the Law School textbook on conveyancing, published by Blackstones. He has also chaired the society's Conveyancing Committee (as well as registrar's, education and finance), and reckons that at a push he could probably recite verbatim the various clauses in the standard contract for sale.

'I enjoy law', says Binchy, 'which is maybe different

from enjoying working at it, but the intricacies of it don't phase me. I love doing CLE lectures, standing up in front of a group of solicitors and seeing if I can talk for a couple of hours. Then you get your evaluation at the end and you see whether you have passed or you have failed.

'Otherwise, I turn up for my work on Monday morning and I go home on a Friday evening. My better half says that I live for the law, but I don't see it'.

Certainly, the modern aspects of practising law hold little appeal for the new president, who is refreshingly blunt about the bane of his working life – the telephone. 'Before the telephone, people used to write to you or turn up at your office', he says. 'Now you have e-mail and fax, and people are sitting at home or in their cars in traffic jams and they know they can pick up the phone and reach you. Now, you might be in the thick of a particular file when someone rings you, and you have to switch from the file in front of you to their file, and when you're finished with them, you have to switch back. It is the mental gymnastics this requires that I think makes it much harder these days'.

In Binchy's view, if the solicitors' profession can deal with modern technology, it will have no problem dealing with the challenges posed by the Personal Injuries Assessment Board and the Competition Authority. 'I think we are resilient', he explains. 'We will be able to deal with them all. I think that we have to be able to deal with change, and I think we will. PIAB is just something that will be there. It will be an extra hurdle'.

And the possibility of licensed conveyancers? 'No problem. First of all, they don't have a compensation fund. Secondly, they have to be qualified. Conveyancing is highly complicated, and if you want to train people, you need to train them up to our standard'.

Nor is he worried about what the Competition Authority might recommend. 'I don't think we have anything to fear. Genuinely, I think that we are highly competitive. I think that people can get cheap law, they can get bad law, they can get good law – you get what you pay for. The competition is there already and we have nothing to fear'.

In the face of all of these upcoming challenges, Binchy is confident about the future of the solicitors' profession. 'I would say we are the oil in the machinery', he argues. 'If we work and we gel, the whole system works. You may have different machinery over the years, but at each stage we have been the oil that enables it to work'.

As president, Binchy says he will be doing his best to inform the profession of the efforts that the Law Society is making on their behalf in the face of what can sometimes seem to be an unrelenting pressure from outside forces. However, he is realistic enough to recognise that there are limits to what can be achieved.

'Sometimes it seems that the profession has a perception that we can somehow change the law, that we can stop the tide coming – but if the government decides to change the law, that's it. We can put our point of view across, and we can ask our members to put the point across, but if the government has a majority in the Dáil and decides to do something, we must be prepared to accept it.

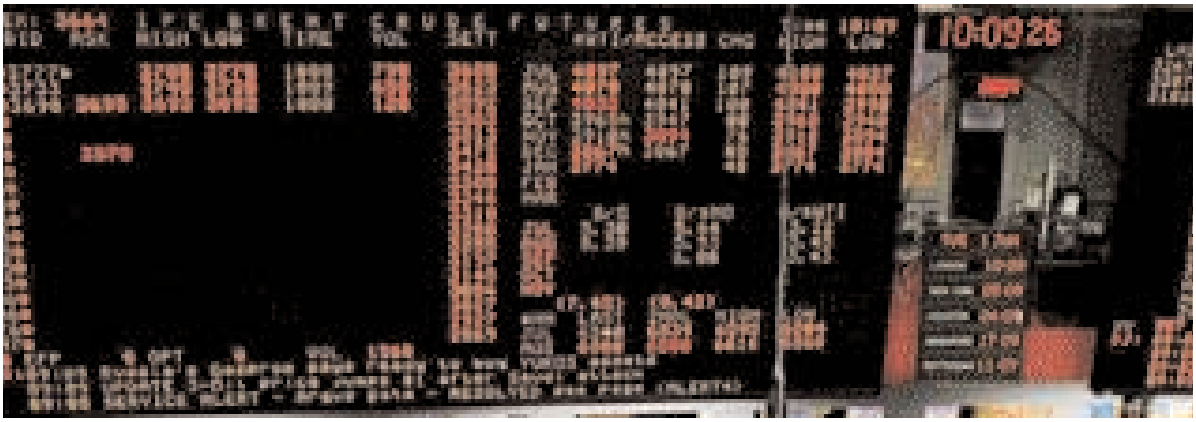
'There is no point in making noise if you don't have to, and I certainly wouldn't. To quote solicitor and former Law Society Council member Hugh O'Neill's great catchphrase, You catch more bees with honey than with vinegar'.

This is almost certainly going to be a tough year to be president of the Law Society of Ireland, but Owen Binchy will tackle it in his characteristically quiet and understated way.

'I'm going to give it my best shot', he says. 'It's a challenge. As president, you don't change the world. I'm here to do the job'. G

FACT FILE
OWEN BINCHY

Occupation: Solicitor (admitted to roll of solicitors in 1971). Managing partner of the law firm James Binchy & Son, based in Charleville, Co Cork. Three partners in the firm, including wife Eimear, and six support staff.
Education: Nuns and Christian Brothers, Charleville; Clongowes; third level: University College Dublin (BCL and LLM).
Family: Married to Eimear, a solicitor. Three sons – James, Kieran and Michael – and a daughter, Deirdre.
Law Society career: SLA nominee to Council in 1987. First elected to Council in 1989. Junior vice-president 1999, senior vice-president 2003, president of the Law Society of Ireland 2004/05. Has chaired the following Law Society committees: conveyancing, registrar's, education and finance.
Hobbies and interests: Golf (when his back holds up), hill walking, local history, bridge and archaeology.



No such thing as BAD PUBLICITY?

Bad publicity can harm the share price of listed companies, but a novel attempt to recover compensation for such a loss recently failed in the English High Court. Pamela Cassidy inspects the damage

A £230 million claim for special damages against the publishers of the Financial Times, based on a collapse in share price at Collins Stewart plc, was struck out as unsustainable in October. The decision was greeted with relief not just by the Financial Times, but by the media in general, fearful of the chilling effect of large libel awards.

The background to the FT article is dramatic: in mid-summer 2003, James Middleweek, an analyst with CS Ltd, prepared a draft report to the Financial Services Authority alleging regulatory breaches by Collins Stewart Group. CS plc is a financial services group listed on the London Stock Exchange. Its main trading group is CS Ltd, 'one of the leading independent UK stockbrokers'. What happened next is disputed: CS says that JM's advisers suggested that he would suppress the draft report in return for settlement of an employment claim – they considered this a blackmail attempt, dismissed JM immediately and reported the matter for investigation by the police. They also reported the allegations to the FSA, which instituted a formal investigation, and they asked a law firm to conduct an independent investigation.

Middleweek denied blackmail. His advisers, he said, had indicated that he would not lodge the draft report provided an internal investigation into his concerns was made, and as part of the settlement of his employment claim. He instituted employment proceedings and annexed a copy of the report to the FSA to his claim form.

The FT was just one of many papers to pick up the story. On 27 August, in an article entitled 'Reputations on the line at Collins Stewart', the paper reported the allegations of regulatory failure by JM, who was described as 'not ... a rank outsider but an analyst who has been with the firm for seven years, covering Collins Stewart's core area of smaller companies and who never missed receiving his annual performance bonus'. The paper also reported the CS claim of attempted blackmail and that it had been cleared of wrongdoing by an independent investigation.

The share price of CS collapsed in the four days following publication, dropping 15% 'against a broadly positive market', a drop that equated to a reduction in CS plc's market capitalisation 'of approximately £128 million'. CS hit back hard and fast: their solicitors wrote to the FT on 31 August demanding an apology and compensation for the drop in share price. The following day, CS issued a libel writ and posted the solicitors' letter on their website with an accompanying statement categorically denying wrongdoing and publicising the threat of proceedings

THE PLAYERS

Financial Times:	FT
Collins Stewart Tullet plc:	CS plc
Collins Stewart Ltd:	CS Ltd
Collins Stewart Group:	CS
James Middleweek:	JM

MAIN POINTS

- **Damages in defamation**
- **Company law actions**
- **Market capitalisation**

DAMAGES IN DEFAMATION

Common law: special damage in defamation is defined as any material loss that is not too remote and is capable of being estimated in financial terms. Where the plaintiff wishes to claim special damages, he must be able to give particulars of his loss or he will not be permitted to lead evidence of such loss – *Ratcliffe v Evans* ([1892] 2QB 524).

Court of Human Rights: legal rules concerning damages for libel must be formulated with sufficient precision and awards must bear a reasonable relationship of proportionality to the injury to reputation suffered – *Tolstoy v UK* ([1995] 20 EHRR 442).

and the £128 million claim.

By August 2004, the CS estimate of market capitalisation loss was £230 million. This was coupled with an additional special damage claim for £38 million.

All of which makes the £1.5-million libel award against Tolstoy Miloslavsky, which fell foul of the European Court of Human Rights in 1995, look paltry. No wonder the fourth estate was collectively biting its nails.

Remote viewing

A claim for special damages is rare in libel actions, and in previous cases reliance on a fall in share price was allowed only as an indication of a general loss of goodwill underlying a claim for general damages. Special damages are confined to actual financial loss that is not too remote and which can be quantified. General damages are awarded for distress (not applicable in this case, as corporations cannot recover for injury to feelings), harm to reputation and as a measure of vindication. The current ceiling for general damages in England is £200,000 (Reed & Anor v Newcastle Borough Council [2002] EW HC 1600 (QB), paras 1547-1551).

'The judge decided that not only was market capitalisation too uncertain a tool to become a legal basis for assessing damages, but that it had no application to the facts'

The FT applied to the High Court to strike out part of the CS claim in special damages. That claim was in two parts: first, a claim for reduction in market capitalisation estimated at £230 million and, second, a claim for direct loss of a more usual kind, including identifiable lost revenues and payments to PR agents to mitigate the effects of the damaging publicity, the total estimated at £38 million and continuing. The strike-out application was confined to the market capitalisation claim.

The strike-out application was heard in the English High Court in October 2004. As with much litigation, the landscape had changed considerably since the first angry words were fired across the bows of the FT, which is the Pearson Group flagship. The police decided not to pursue the blackmail allegation against James Middleweek, the FSA closed its inquiry, saying no action would be taken, and Collins Stewart Group reached a compromise with him, each side withdrawing its claims.

English law on special damages in defamation actions can be simply stated: special damages that are not remote must be capable of being quantified. Human rights jurisprudence has added two requirements: the method of assessing damages must be certain and the award must be proportionate (Tolstoy v UK [1995] 20 EHRR 442).

With these considerations in mind, the judge assessed the pleaded case on market capitalisation, which was this:

'Measured against the stock-market performance of two close competitors, CS plc's share price should have risen by 24.65% (being the mean of the percentage rise of the competitor's share prices over the period) rather than fallen by 2.8%. Accordingly, in order to keep pace with these close comparators, CS plc's share price should have risen by 27.45%, making its share price 567p at the close of business on 26 March 2004. (For the avoidance of doubt, CS plc's share price had tracked those of the competitors over the previous year to a correlation figure of .9334 and .9595 respectively.) This represents a loss in CS plc's potential market capitalisation since 26 August 2003 of approximately 122p per share, or £230,526,320, calculated on an issued share capital of 188,956,000 shares. This, they claimed, is the direct measure of the change in the market's assessment of the net present value (NVP) of future earnings of the company. The figure is arrived at by analysts and investors estimating the future earnings of CS plc and then discounting those figures at CS plc's estimated weighted average cost of capital (WACC) to produce an NPV. The theory and methodology involved is well recognised'.

Calculations

The judge, however, was not persuaded that the NPV methodology had actually been applied, and even if it had, that there could be a 'certain' mathematically correct method of assessing the basis for share price movement:

'Nowhere in the present statements of the claimants' case is such a calculation made in relation to CS plc or either of the comparators. And it is clear that whatever interpretation

may be put upon share prices published by the London Stock Exchange's Historic Price Service, those prices are not said by the claimants to be arrived at, as a matter of fact, by such a mathematical calculation. Thus there is no answer to the defendant's question 4.7. That question was: "Of ... the market's assessment of the net present value (NPV) of future earnings of the company. Please provide particulars of how the NPV ... is calculated, estimated and/or arrived at". There could be no answer. The market assesses figures only metaphorically. So far as the claimants' pleading is concerned, the reasons why a share is traded at a particular price in any given deal are unknown, or, at best, matters of conjecture … in general, I take it that a market price is the product of numerous decisions by people who cannot be asked what their reasons were for trading, or, which may be just as important, for deciding not to trade.

'I accept that market capitalisation calculated in that way is a concept which is very well recognised and has many uses. The question is whether it can be used in an assessment of damages, and in that context it has achieved very little recognition, as the cases show ... When the claimants plead that the alleged shortfall between CS plc's actual market capitalisation on 26 March 2004 compared with its potential market capitalisation on that date, ie £230.5m, "is the best available reflection of the loss in future revenues which the second claimant has suffered and will suffer", that is a proposition which the court is invited simply to take on trust. No indication is given that there will be any evidence or authority to establish it. Moreover, that proposition it is not a statement of fact. This is accepted impliedly by the claimants when they say that it is a matter for expert evidence. Rather, it seems to me that the claimants' proposition as to the shortfall in market capitalisation is, if anything, a proposition of law.

'The court can do no more than speculate as to the factors which have influenced the fluctuations in the market capitalisation in CS plc since August 2003. Whatever those factors may be, it is plain that they are not confined to the publication of the words complained of'.

He concluded that the suggested measure of damages was far too uncertain to be acceptable as a legal basis for assessing damages:
'The suggested measure of damages would involve investigation of the business of not only the claimants, but also of the two comparators, for a period commencing some time before the publication complained of until the date of assessment of damages, which is unlikely to be for at least another year. And in the pre-publication period, the share price was fluctuating widely'.

Share and share alike

This was not the only difficulty faced by the two CS companies. Apart from the problem of establishing which company (if not both) had been libelled (the paper denied that the article referred to CS plc), they also faced the complex reflective loss principle, which (simply stated) prevents a shareholder from suing in his capacity as shareholder in respect of a loss to the company and conversely prevents a company from suing for loss caused to the shareholder. If the loss sustained by the shareholder is merely a reflection of the loss sustained by the company, the shareholder cannot recover. The complexity was compounded in this case by the fact that shares in CS plc are not an asset of that company, and neither are they an asset of CS Ltd. The principles of reflective loss are broadly similar in Ireland (being derived from the rule in Foss v Harbottle), and the main case relied on by the English High Court (Prudential Assurance Co Ltd v Newman Industries Ltd (No 2) [1982]) was approved by the Supreme Court in O'Neill v Ryan ([1993] ILRM 557 at 570).

In striking out the claim for share price collapse, the judge decided that not only was market capitalisation too uncertain a tool to become a legal basis for assessing damages, but that it had no application to the facts because 'each claimant is asking the court to measure damages suffered by itself by reference to a change in the value of property, that is its shares, which is owned by neither of them'. The remaining live issues in the case will be tried in April 2005. These issues are, first, the viability of the newspaper's defence of privilege, second, (if privilege fails) the remaining special damages claim of £38 million and, third, general damages. G

Pamela Cassidy is a partner in the Dublin law firm BCM Hanby Wallace.

WAR OF WORDS

FT editor Andrew Gowers welcomed the ruling, describing the claims as 'manifest nonsense and untenable in law'. He added: 'It would be a very dark day for journalism and for a free press if publishers were to be held liable for a drop in share price following publication of an article reporting on company events'.
A spokesman for Collins Stewart Tullet said the decision would 'have no bearing on our determination to pursue our claim'. He said that there remained a claim of £38 million, which represented the quantifiable amount of lost business and profits from the article.

TEN YEAR

MAIN POINTS

- Post-conflict reconstruction
- Reform of the judiciary
- Possible accession to the EU

A decade ago, civil war convulsed Bosnia and Herzegovina, but now things are looking up for that beleaguered country as it prepares for a future in Europe. Lynn Sheehan reports on the work being carried out to reform public administration there, including an overhaul of the judiciary

Less than ten years ago, the Dayton peace agreement signaled the end of the war in Bosnia and Herzegovina (BiH) and divided the country into two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Since the war, the federation has principally been populated by Bosnian Muslims (Bosniaks) and Croats, while the Republika Srpska has principally been populated by Serbs. To complicate matters further, there is one small part of the country that does not fall within either entity, namely Brcko District. Under the final award of the Brcko Arbitral Tribunal for the Dispute over the Inter-Entity Boundary Line of 1999, this part of the country is autonomous and it is to be held 'in condominium' but not under the authority of either entity.

The Bosnia and Herzegovina parliament consists of two houses, the House of Peoples and the House of Representatives. The House of Peoples has 15 delegates – five Serbs, five Croats and five Bosniaks. The House of Representatives has 42 members, two-thirds of whom are elected from the federation and one-third from the Republika Srpska. Their role is to adopt the state/BiH budget, to elect the government on the proposal of the presidency and to adopt laws within their competence.

The state/BiH presidency consists of three people elected by direct election for a four-year term. The Serb member of the presidency is elected from the Republika Srpska and the Croat and Bosniak members from the federation. They rotate every eight months based on their ethnicity. Similar to the state/BiH level, the two entities each have a bicameral parliament and a president.

Such a complex political structure does not facilitate speedy and efficient decision-making, which sometimes leads to negative effects on the economy. BiH is going through a transition process from a centrally-planned economy to a market economy, a

process that started prior to the 1992-1995 war. The unemployment rate for the whole of BiH is over 40%. However, it is widely believed that there is quite an active grey economy and that the number of people who are actually not working is probably less than this.

Tumbling dice

The reform of the judiciary in any country in transition is not an easy task. Under the socialist/communist regime, there was little or no need for judges to be independent decision-makers. This led to a situation where the public at large had little faith in the judiciary and suspected that members of the judiciary were corrupt. This mistrust continued even after the regime ended. In addition, this mistrust was compounded in the post-war period, as the public often believed that judges were appointed on ethnic or political grounds, or, to put it another way, appointed on the basis of how much they could be trusted to be loyal to their own ethnic group. The reform process, therefore, was not simply about actual structural reforms but also about changing the public's perceptions of the judiciary.

professional training for judges and prosecutors. The laws in relation to judicial training centers were imposed by the high representative in May 2002 in accordance with 'the Bonn powers' (see panel overleaf).

New laws were also prepared by the IJC in relation to the legal profession in each entity and, again, were imposed by the high representative in May 2002. These laws define the practice of law and set out the general obligations of lawyers towards their clients. They also set out the overall principles to be covered in the codes of ethics to be adopted by the bar associations (there are two in BiH, one in each entity) and they provide that a lawyer registered in either entity may practise before the courts in each entity.

In 2002, the IJC proposed a reinvigorated strategy in relation to strengthening the judiciary and this strategy was accepted by the Peace Implementation Council (PIC) steering board in February 2002. The new strategy involved the setting up of High Judicial and Prosecutorial Councils (HJPCs), one in each entity and one at state/BiH level, which would be responsible for the appointment of judges and prosecutors and also for disciplinary procedures

S AFTER

Since the signing of the peace agreement, a significant number of reforms have been introduced to strengthen the judiciary and change its public perception. In 2001, the Independent Judicial Commission (IJC) was granted its first mandate by the high representative and was established as the lead agency for judicial reform in BiH. The IJC was involved, in particular, in the drafting of new codes of civil and enforcement procedures and in preparing the laws creating judicial training institutes in each entity in order to provide

Lynn Sheehan, with Mostar Bridge in the background

ALPHABET SOUP

It seems impossible to understand the situation in Bosnia and Herzegovina without a grasp of the acronyms. These are the main ones:

- BiH: Bosnia and Herzegovina
- OHR: Office of the High Representative (the chief civilian peace implementation agency in the country). The high representative is currently Paddy Ashdown
- PIC: Peace Implementation Council, a group of 55 countries and organisations sponsoring the peace process
- IJC: Independent Judicial Commission, the lead agency for judicial reform in the country
- ICTY: International Criminal Tribunal for the Former Yugoslavia
- HJPC: High Judicial and Prosecutorial Council, responsible for the appointment of judges and prosecutors and also for disciplinary procedures against the judiciary
- SAA: stabilisation and association agreement with the European Union
- SFOR: NATO's military stabilisation force in the region
- EUSR: EU special representative (currently Paddy Ashdown).

GIMME SHELTER

The *Dayton peace agreement* provided for the establishment of the Office of the High Representative (OHR), which is the chief civilian peace implementation agency in BiH. The mandate of the high representative, currently Paddy Ashdown, is to act as the final authority to interpret the peace agreement, although his mandate has been further elaborated upon by the Peace Implementation Council (PIC). This is a group of 55 countries and international organisations that sponsor and direct the peace implementation process. The OHR is funded by the PIC. Its budget for 2004 was €21.1 million. In addition to being the high representative, Paddy Ashdown is also the EU's special representative to Bosnia and Herzegovina.

The high representative has the authority to impose laws at state/BiH and entity level under certain circumstances and in certain conditions. He also has the authority to remove officials at all levels from office, again under certain circumstances and in certain conditions. These powers were granted to the high representative during a meeting of the PIC in December 1997 and are referred to as 'the Bonn powers'.

Paddy Ashdown recently made use of these powers when, earlier this year, he removed 60 people from office. Among those removed were members of the SDS, the political party co-founded by wanted war criminal Radovan Karadzic. This action was in response to a communiqué issued by NATO in June, which stated that NATO was concerned that BiH, and particularly 'obstructionist elements' in the Republika Srpska, had failed to live up to their obligation to co-operate fully with the International Criminal Tribunal for the Former Yugoslavia, including the arrest and transfer to the tribunal's jurisdiction of war crime indictees, a fundamental requirement for the country to join the Partnership for Peace. At the NATO summit, BiH was denied membership of the PfP.

against the judiciary. The strategy also involved a re-selection process for all judges (excluding Minor Offence Court judges) and prosecutors, which was carried out by the HJPCs, assisted by the IJC.

This meant that all judicial positions were re-advertised and all sitting judges and prosecutors were forced to re-apply for their existing positions. Prior to the re-selection process, the IJC carried out a reform of the court structure that led to a significant reduction in the number of courts and judges throughout BiH. In June 2004, once the re-selection process had been finalised, the three HJPCs were merged into a single HJPC at state/BiH level. Currently, the HJPC is comprised primarily of national members with a number of international members and advisors.

Round and around

The restructuring of the courts undertaken by the Independent Judicial Commission was quite a complicated process because of the different court structures at each of the different levels. There are two courts at state/BiH level – the Constitutional Court and the Court of BiH. At an entity level, the lowest level of courts are Municipal Courts in the federation and Basic Courts in the Republika Srpska. The Cantonal Courts in the federation and the District Courts in the Republika Srpska form the middle tier, and at the top level in each entity is a Supreme Court. Both entities also have a Constitutional Court. In Brcko, there are two courts, the Brcko Basic Court, which has all first-instance jurisdiction, and the Brcko Appellate Court, which hears all appeals. The Court of BiH was given appellate jurisdiction over cases arising from Brcko.

It is, at times, quite difficult to work out the jurisdiction of the various courts, not least because the jurisdiction of each of the entity courts does not mirror the other. For example, the federation Supreme Court was given limited first-instance criminal jurisdiction in 1999, but this was never the case in the Republika Srpska. In addition, contrary to what is commonly perceived, the Court of BiH is not at the pinnacle of the BiH judicial hierarchy. It has administrative jurisdiction over decisions of state/BiH-level institutions and jurisdiction over crimes defined by BiH-level legislation. It also has appellate jurisdiction over its own decisions. It does not have appellate jurisdiction over decisions of the entity courts.

Exile on Main Street

The political climate in BiH appears to be changing and there is more of an emphasis on Europe and membership of the EU as opposed to the implementation of the Dayton peace agreement. This is clearly illustrated by a number of events in the past year.

In late 2003, the European Commission published its feasibility study for BiH (www.delbih.cec.eu.int/en/index.htm). The study outlined 16 areas in which BiH has to make significant and rapid progress in 2004, including co-operation with the International Criminal Tribunal for the Former Yugoslavia, the establishment of a more effective public administration and judiciary, the proper functioning of a directorate for European integration, the development of a single BiH space as opposed to two separate economic spaces, and the implementation of laws in relation to competition, public procurement and public broadcasting.

In the course of the feasibility study, it was noted that the existence of 'the Bonn powers' do not make it impossible for Bosnia and Herzegovina to enter into stabilisation and association agreement (SAA) negotiations. However, according to the study, the

country will have to be in a position to show that the powers are generally declining in relevance and that their use occurs less within core SAA areas (such as trade, the single market, and justice and home affairs) in order for it to be able to enter into SAA negotiations. In other words, it must be in a position to demonstrate that 'the Bonn powers' are becoming redundant and that the high representative is becoming at most a facilitator and mediator.

Waiting on a friend

Another interesting development is NATO's decision to pull the stabilisation force (SFOR) out at the end of this year. This is because NATO believes that the security situation in the country has evolved positively. The EU is to provide a follow-on force called EUFOR from this month on. The EU-led force will have a robust mandate and resources similar to those of the departing SFOR. It will take over the Dayton mandate of providing a safe and secure environment in BiH. EUFOR will also assist in the country's integration into Europe and help the BiH authorities fight organised crime.

Finally, in terms of recent events that illustrate a new departure for Bosnia and Herzegovina, the high representative appears to be placing more and more emphasis on his role as special EU representative (EUSR) as opposed to his role as high representative. In July of this year, Ashdown launched the new EU special representative website, which can be accessed at www.eusrbih.org. At the launch of the new website, he stated that: 'BiH's destiny lies in Europe, as a member, one day, of the European Union. As we move away from the era of Dayton and into the era of Brussels, the EU's engagement in BiH is growing more and more significant. My role as EUSR is evolving at the same time'.

The recent developments are positive moves for Bosnia as it prepares for a future in Europe and leaves behind its status as a post-conflict country. As it proceeds along the course to Europe, it is anticipated that it will attract foreign investment as potential investors leave behind certain misconceptions about it and begin to view the country as an exciting and interesting place to invest. As the EU membership negotiations proceed, it should also be easier for its citizens to travel to Europe, where new opportunities are likely to emerge and, hopefully, where valuable alliances and associations can be created and maintained.

It is only ten years since there was armed conflict in Bosnia and Herzegovina and the future looked incredibly bleak. Ten years on, the future is looking incredibly better. G

Lynn Sheehan is a solicitor with the Cork law firm Ronan Daly Jermyn, who is currently working at the secretariat to the High Judicial and Prosecutorial Council in Sarajevo. Any views expressed are the author's own and should not be interpreted as representing the views of the HJPC or any other body or organisation.

COPYRIGHTS

New technologies have made the copying and instantaneous distribution of copyright works much easier, and the law continues to respond to these digital-age developments, writes Paul Lambert

MAIN POINTS

- Protection of copyright
- Electronic publishing
- Legislative reactions

We are all aware of how the history of mechanical printing led to the first copyright laws. Copyright laws continue to operate as a response to developments in technology. The 1710 Statute of Anne, the first modern copyright law, both provided a legal protection for rights owners and was aimed at 'the encouragement of learning', a point reflected in many current copyright laws. This point is particularly interesting in terms of new digital libraries and new academic electronic publishing models.

The traditional copyright chain

New technologies, such as new copying machines and devices, digital and electronic content, and the internet, have made copying and the instantaneous distribution of copyright works much easier. Modern copies can be as good as the original. The internet has been described as the biggest copying machine in the world, and it is getting bigger. The law continues to respond to the rapid technological developments of the digital age. There have been varying reactions to these new technologies and how they have broken the traditional copyright chain, thus exposing rights owners (see panel, page 24).

One reaction is new copyright laws encompassing explicit protection for new copyright distribution models such as on-line and wireless methods. Examples of the legal reaction to the breaking of the traditional copyright chain include the WIPO treaties, the EU Copyright directive and the Digital Millennium Copyright Act (DMCA) in the United States. There are also new and expanding definitions contained in many of the modern copyright laws.

New technologies are also coming to the aid of rights owners, most particularly in the form of recognising technologies assisting the identification of copyright works, terms and conditions of distribution and use, as well as separate technologies that can package copyright content and restrict its use to lawful users. New copyright laws provide legal protection for new digital rights management (DRM) technologies. These are specifically rights management information (RMI) and technology protection measures (TPM). In addition to new laws and new technologies, there are also new collection or collective management societies

(CMS), such as reprographic collection societies, that aim to protect rights-owners.

Electronic publishing

Clearly the digital and on-line environments present another great challenge for the publishing industry (like many other industries, such as music). Arguably, the electronic publishing industry has been slow to accept these technological changes and the commercial roll-out of electronic publishing has been slower than had been originally predicted. One reason relates to the traditional copyright chain. Electronic publishers share the same concerns as the music and film industries as regards protecting their published

AND WRONGS

content and intellectual property rights. The traditional print or publication chain is now being redefined by different electronic distribution and mediation chains. These are a reaction to how publishers were previously exposed by the breakdown of the traditional copyright chain.

Some of the many issues that arise with these new models include:

- Access to cultural heritage and current information
- Newspaper and TV on-line models
- On-line publishing of books, journals, articles
- Electronic databases
- Libraries, museums and art galleries and electronic publishing
- Digital libraries and electronic copies and electronic publishing
- Journalists (and others) circumventing editors as intermediaries (for example, blogs). The same point is made about many new indie music bands who can distribute their music more easily and in competition to the multinational record labels
- Tracking and DRM.

Electronic publishers also need to obtain a licence and/or assignment to begin publishing works electronically. Such permissions will need to be more expansive than heretofore, given the new and extended use of the copyright works.

Many modern published works can also be described as multimedia works that contain a bundle of rights. Text, images, moving images, spoken words, music, and so on, include many forms of copyright as well as many forms of intellectual property rights. This increases the complexity of licensing, assignments and rights clearing. It also means that other issues need to be considered, such as trademarks, electronic contracts, requirements regarding information society services and prior information requirements when providing electronic and on-line services. Electronic publishers should also be aware of the possibility of business method and software patents.

New models

There are growing numbers of e-books and e-journals available in the marketplace. There are numerous electronic newspaper models. These newspaper models have now successfully expanded to the mobile phone environment, particularly in places such as Japan.

In the developing electronic field, we see experiments with different licence and fee models. Consumers are also changing their habits – an example is the ability to purchase smaller personalised amounts of data or information, sometimes directly from the author.

One of the issues affecting the electronic publishing industry, as well as industrial copyright users and CMS, is the fact that developing technologies permit new and unenvisaged uses for copyright works. For example, does a traditional publisher have permission to use existing published content in new digital formats? This is an area that is beginning to be litigated. Similar issues have also been litigated previously. In Australia, for example, a photographer was able to sue for a commissioned photo when it was used for a new uncommissioned magazine issue (the ACP case). Overlapping with these arguments are issues in relation to implied

licences, such as the ability of the customer or company to make (or have made) amendments to a commissioned tourist brochure (the Pasterfield and Bord Fáilte cases, for example). In terms of electronic publishing, we see how in Tasini (freelance journalists) an original licence did not permit a new electronic use. Therefore, a new agreement (and negotiations for additional payments) may be necessary. Equally, freelance photographers were able to prevent later unenvisaged uses in Ryan v Carl Corp. Electronic publishers must grapple with these contract and licensing issues.

Technical protection

Copyright and technical security protections are crucial to the continued development of electronic publishing. (So too are software programs that enable e-commerce transactions and payments.) One of the reactions to the breakdown of the traditional copyright chain includes technologies and laws enabling rights management information (RMI) and technical protection measures (TPM). RMI can be defined briefly as electronic fingerprints or data, while TPM can be referred to as technical use and use-prevention measures. A more technical definition of RMI comes in article 12 of the WIPO copyright treaty (WCT), which states that RMI is information that identifies the work, author, owner of any right in a work and can also identify terms and conditions of use.

The origins of RMI and TPM can be traced back to the 1996 WIPO treaties, the EU Copyright directive and the Digital Millenium Copyright Act in the US. The deployment of RMI and TPM while protecting copyright content also permits new copyright distribution and payment models, including electronic publishing. Some examples of TPM (some of which can be used by electronic publishing) include anti-copy devices, access control devices, electronic envelopes, proprietary viewer software, encryption codes, passwords, watermarking, fingerprinting (user authentication), metering, monitoring/tracking usage and payment systems.

However, there are some continuing issues in terms of a broader roll-out of commercially successful DRM solutions, such as international standard(s) agreement and standards setting organisations, technical circumvention of TPM, the problem of equipment manufacturer adoption, and related calls for mandating equipment laws (for example, the Hollings Act and the more recent draft Inducing Infringement of Copyrights Act, both in the US). Other issues relate to interoperability and the forms of metadata uses in the DRM products. A recent example is how the new copy-protected CD of the US band Velvet Revolver cannot be used on the iPod.

However, some commentators make the point that electronic publishers do not face the same file-sharing threats as the music and film industry because of the way in which their works are used – at least not yet. However, when they have to rely on DRM, the same doubts exist as face the music industry following Elcomsoft and the DeCSS case in the Netherlands and the file-sharing case (under appeal) in Canada, where the music industry lost. There is also the more recent case in the US where the music industry lost a case against an ISP-type entity. The court felt that it would be an extension of copyright laws to fix liability on ISPs for activities that were beyond their control, namely file sharing by end-users. Clearly, the legal and practical success of DRM is not yet assured.

REACTIONS

- New copyright laws
- New wider and expanded definitions of copyright
- Longer copyright terms
- New technologies, for example DRM
- New collection societies or CMS
- New business and licensing models, for example, iPod.

Wired and wireless

In considering new technologies, electronic publishing and the electronic distribution of copyright works, we must now think in terms of the wired internet and wireless internet. There are predictions that soon 50% of electronic-commerce type transactions will occur through the wireless internet. The i-mode mobile service has over 43 million subscribers and 80,000 content sites. New technologies permit new forms of electronic publishing and exploitation, which in turn permits new business models and new payment and billing models. In addition to the copyright and intellectual property rights issues, there are significant transactional legal requirements in the new electronic publishing world. Some of these are already present in the wired e-commerce world, such as prior information requirements placed upon service providers, including electronic publishers. In addition, issues surround models, security, wireless spam, privacy, shut-off and blocking, liability, evidence/retention, health, competition, wireless contracts, content regulation, terms and conditions, and consumer information. There are many examples in on-line obligations contained in e-commerce regulations, such as:

- When an information society service (ISS) can be provided
- General ISS prior-information requirements
- Commercial ISS prior-information requirements
- Information requirements regarding cancelling contracts, and
- Information on procedures for placing electronic orders.

There are also separate internet service provider (ISP) defences, namely, mere conduit, caching and hosting, which need to be considered and which will be relevant to some electronic publishers.

Digital libraries

The topic of digital libraries is new and applies to academic libraries and public lending libraries alike. Some of the issues and considerations surrounding

COLLECTIVE MANAGEMENT SOCIETIES

The main functions of a CMS are to protect rights owners, facilitate lawful access and collect and distribute fees to authors and creators. They also have increasingly expanding roles in setting appropriate-use restrictions and implementing use monitoring. In terms of electronic publishing, companies may have to obtain licences from CMS. CMS are diversifying their service/product range as new uses evolve.

digital libraries include:

- Definitions of what a digital library is
- How will it be used?
- How to track usage
- How to compensate authors. Are they paid already? Are there new uses that need to be licensed?
- How to organise information and databases
- The role of libraries and publishers
- How to ensure that the works it copies and lends are legal
- Public lending rights
- On-line access
- The issue of copyright and temporary copies
- Should the first-sale doctrine apply to digital works and digital libraries?
- Should universities have to pay twice for academic content through funding research and then to a publisher?
- How can libraries and universities reduce storage costs and save on journal subscriptions? Can libraries become the new electronic publishers?

Another interesting development in the digital library debate is the report of the UK House of Commons Science and Technology Committee (July 2004). It recommended that universities should establish their own repositories for the works they and their staff create, particularly research and scientific works. This is in recognition of the fact that universities are increasingly being pressured by the financial cost of maintaining up-to-date libraries of current scientific published works, both in terms of the upwardly rising costs of published scientific literature and the increase in official scientific publications. The report also suggests that government or officially funded research should only be funded on the condition or mandate that the research produced is deposited in a university or digital library of some sort. An even more contentious suggestion in the report is that authors in future should have to pay to have their works published or made available through the university or digital library. This is also advocated by others, such as those responsible for the new Journal of insect science (see www.insectscience.org).

Trends in technology

The ultimate success of electronic publishing may see academic electronic publications concentrated in smaller niche, specialist, and customisation markets, with the commercial publishers concentrating on more mass-market or popular publishing. Hence, traditional and developing commercial subscription models may co-exist with the new academic models.

Issues remain, however, in terms of rolling out user-friendly technology solutions and applications for electronic publishing. Success may also depend on the actual successful delivery of digital technology protections, which has been a problem to date.

E-learning and info-literacy need to be considered in their own right, as well as issues surrounding access to and preservation of literature and cultural heritage.

While electronic copies and electronic publishing have been suggested as an end to paper, this is far from the truth. Looking at the horizon critically, it remains to be seen how broad the market and uptake of electronic publishing will be. Apart from a few companies, it seems that most efforts are aimed at the niche or library/university markets and not the broader public and novel markets. BBC news on-line carried a story in June 2004 that indicated that e-books, while becoming popular in the United States, are largely ignored in the UK. One problem is that the technology and devices for reading e-books are not yet user friendly. However, in these non-public markets such as distance learning, academic and research works and archiving, there appears to be a bright future. In terms of more commercial and popular publishing, we need to wait and see. Much will also depend on new technologies and user friendliness, as well as how web rating systems list electronic publishing sites. However, there are an increasing number of successful commercial case studies in the e-newspapers and e-magazines area, even in the mobile world.

It is fair to say, however, that we have not yet witnessed a revolution, but just possibly a storm is brewing ahead. G

'New technologies are also coming to the aid of rights owners, most particularly in the form of recognising technologies assisting the identification of copyright works'

Paul Lambert is an IP and IT lawyer with Dublin law firm Merrion Legal and is a director of the Copyright Association of Ireland and a member of the Legal Working Group of the Irish Internet Association. This article is based on a presentation entitled Legal and copyright issues affecting the publishing industry, in particular electronic publishing to the 2004 Beijing International Conference on Publication, Education and Publication Industry Development.

Fingerprint FILE

MAIN POINTS

- Biometric identifiers
- Systems security
- Uses in a legal context

Just when you were beginning to feel comfortable with the notion of digital signatures, biometrics is now the flavour of the month, write Eamonn Keenan and Tony Bradley

The Law Society's Technology Committee has been keeping the question of electronic signatures under review for some time. There is little demand for them now, but the situation is being monitored to ensure that we are reasonably ready for the day when it becomes live. When developments of this kind take off, they are inclined to do so widely and quickly – and when that day comes, everyone will want (and need) to have one 'now'.

Recent trends

Digital signatures as a way of identifying a signatory to a document are not as secure as might be thought. The most obvious weakness is the reliance upon keys, codes and passwords, frequently written down (and let out to others for convenience's sake) and then available for misuse.

Security issues, and particularly political security concerns, have sent the world moving in the direction of biometric identifiers. Most commonly this means the electronic matching of fingerprints, but there are other more complex (and expensive) methods, such as iris pattern matching as an even more certain means of identification in high-security situations.

Whereas the promotion of digital signatures was an industry-driven process, the pressure for biometric security is from governments and therefore more likely to be brought into everyday operation. Governments are putting large amounts of money into securing systems on a large scale (for example, air passenger movements and border controls), far beyond the comparatively easy matter of the verification of electronically-executed documents that is our simple need.

Current position

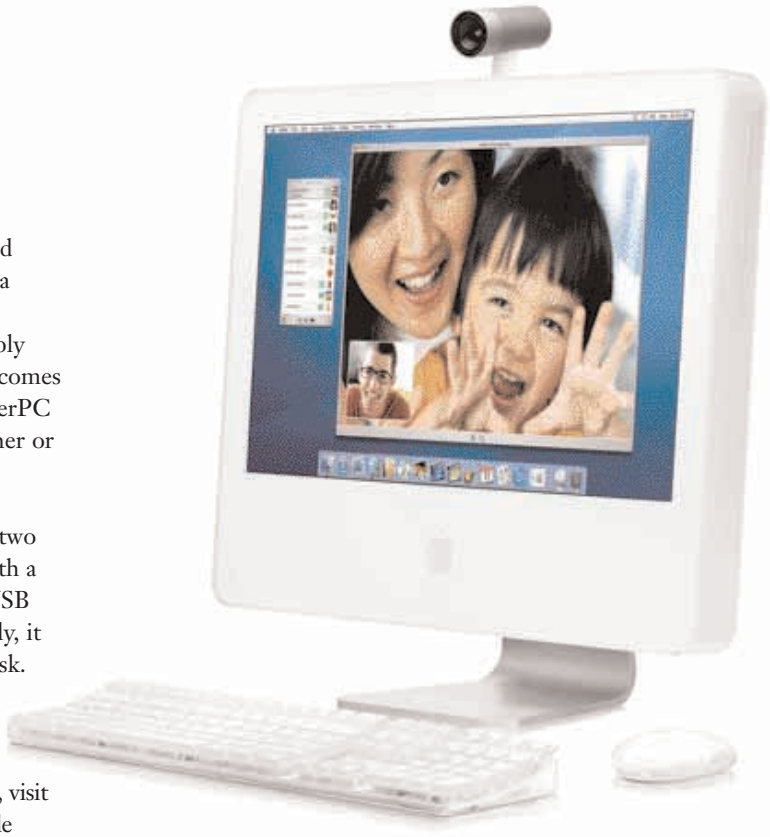
Biometrics is a technology whose time appears to have arrived. The Technology Committee has not as yet located a supplier who might be recommended to the profession when the time for action comes, but the watching brief continues to be held on your behalf. As with all technology, if we move early it will cost us more, but as the technology becomes commonplace the price will drop. So in our explorations, we have to try to achieve a balance between losing money by being at the cutting edge or losing face by being left behind. It is still a case of 'watch this space'. G

USES OF BIOMETRICS IN A LEGAL CONTEXT

- By linking biometric identifiers with digital signatures, we can have secure and verifiable electronic exchange of contracts and documents between solicitors
- Electronic filing of documents in court and other offices. If all solicitors had the same system, then we would be nearer the day when all public bodies would see the potential benefits of full electronic filing
- Perhaps the electronic completion and signing of the annual application for practising certificates
- And, at its most basic, a valuable aid in data protection: a simple fingerprint check-in would mean that only an authorised person could gain access to a PC or to an area within a PC or to a network.

Eamonn Keenan and Tony Bradley are members of the Law Society's Technology Committee. Keep in touch with technology developments through our area of the society's website – www.lawsociety.ie, 'committees', 'technology'.

Tech trends



The core of the issue

It's only a few years ago that a bold sense of design and the introduction of the iMac saved Apple from certain death. Now the company has launched its latest version, the Apple iMac G5. In a wonderful leap of the imagination, the entire computer – including a G5-based logic board, slot-loading optical drive, hard drive, speakers, and even the power supply – are located inside the two-inch thin visual display unit. To all intents and purposes, the computer has disappeared: now you are left with just the keyboard and the screen. Needless to say, the new iMac can handle incredible amounts of information and graphics without breaking a sweat. If you're a saucy IT monkey, then you'll probably want to know that the G5 comes with either a 1.8GHz PowerPC processor and a DVD burner or a 1.6GHz processor and a DVD/CD-RW drive, with memory expandable up to two gigabytes. It also comes with a built-in modem and five USB ports. But more importantly, it just looks great on your desk. The iMac G5 starts at around €1,350 plus VAT, depending on the specs you want. For more information, visit www.apple.com or call Apple Ireland on 021 428 4000.

Where do you want to go today?

These days, if you're in the business of making pocket PCs, you're going to want to make damn sure that your product stands out from the crowd. The award-winning Evesham Mio 168 Co-Pilot Live V5 may be a mouthful but apparently it's the first pocket PC to sport a built-in satellite navigation system. The Co-Pilot has everything you'd expect from a pocket PC – 64Mb of RAM, an Intel PXA 255 300MHz processor, the Windows-based PocketPC 2003 operating system, an SDIO compatible SD/MMC slot, 240 x 320 pixel 65k colour screen – but it's in the GPS arena where the Co-Pilot really scores. Unlike many other models, the Co-Pilot can be moved easily between vehicles. Just key in your destination and the device will give you door-to-door directions, including voice instructions, using the fastest and shortest routes. It also comes preloaded with UK and Irish street maps. You'd have to go a long way to find a more versatile or more affordable GPS device.

The Evesham Mio 168 Co-Pilot Live V5 costs around €800 and is available from 3D Logistics, Unit 66, Park West Enterprise Centre, Dublin 12 (www.3dlogistics.ie).

Nokia looks for a new angle

People like flip-open phones (known as 'clamshells' in the trade). Nokia is just about the last major company to go down this route but has finally bowed to pressure and launched its Nokia 6260 smartphone. This is a clamshell with a difference. The handset can be folded to act as a PDA or twisted to use as a camcorder, taking still or video images. It boasts the latest in mobile applications, including push to talk, e-mail, internet browser, document and presentation viewer, Bluetooth connectivity, an FM radio and an MP3 player. It also features swappable multimedia memory cards on which you can save your e-mail attachments, images, video clips and texts. Some critics are unhappy with its size, which (at 102 x 49 x 23mm, and weighing 130g) is, frankly, larger than you would expect from such a phone. But when you consider what's crammed into it, maybe it isn't so big after all.

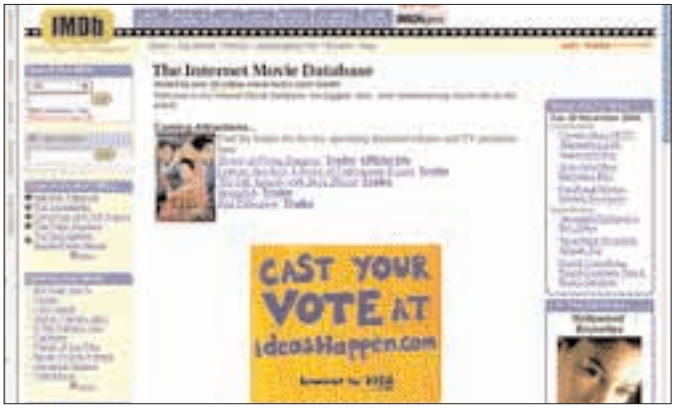
The Nokia 6260 costs around €400 and is available from phone retailers nationwide.

Sneakier than a ginger weasel

Spying on people is not big and it's not clever, but it's suddenly got a whole lot easier with this tiny wireless video camera that transmits live video footage back to your TV – where, of course, you can record it for posterity. Or as evidence against you in your criminal prosecution, whichever comes first. According to the manufacturers, this is the world's smallest colour wireless videocam, boasting a transmission range of 300 feet. Powered by a nine-volt battery, the micro camera can transmit for hours on end, or until you're caught. The signal is sent directly to your TV or VCR, if you prefer. 'Now you can conduct surveillance just like the pros!', screams the advert. Or just be sneakier than a sneaky ginger weasel.

The micro wireless video camera is available over the internet for €99. Visit www.newageoffers.com/shop/gadgets/spycam.

Sites to see



Movie database (www.imdb.com). A solution to that perennial problem of remembering all of Spencer Tracy's films in chronological order. 'The biggest, best, most award-winning movie site on the planet', even if they do say so themselves, offers a search facility that gives you any actor's filmography, as well as plot summaries. All this, plus reviews, news and release dates. But you'll probably just use it to impress your mates with your suddenly-acquired encyclopaedic knowledge of film.

Law reform (www.lawreform.ie). The Law Reform Commission's site has over 100 reports and consultation papers, all of which can be viewed on-line or downloaded, and it provides the papers from the 25 November conference on Modernising Irish land and conveyancing law. There is also information on how to make a submission to the LRC and on the programme for law reform that will form the basis for the commission's work until 2007. All in all, worth a look.

Road to nowhere (www.nra.ie). Keep tabs on the progress of the Tara-destroying M3 or make bets with yourself about the difference between a road's proposed and actual cost and completion dates. The site also offers a nifty facility whereby you can check out how the weather is affecting conditions on the roads, through a network of weather monitoring stations and road sensors, and offers information on public/private partnerships, tenders and more.

What's in a name? (http://indigo.ie/~kfinlay/Dublin%20Streets/dubindex.htm). Duke Lane used to be called Badger Lane. I'll bet you didn't know that. A historical curiosity, perhaps, but droll with it – the author says that Bachelor's Walk probably got its name from 'an owner of property here named Batchelor' and adds 'this derivation seems more probable than that which would describe the quay as a promenade for bachelors'. Or indeed badgers.

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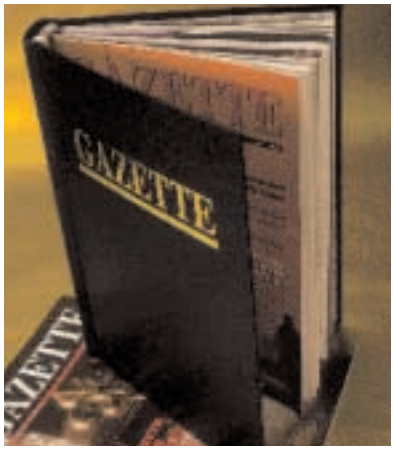

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Message from the President

Dear Colleague,

I have pleasure in inviting you to join me at the Society's Annual Conference in Kracow on 30 March – 3 April, 2005.

This year the theme of the Conference will be **East meets West** and you cannot fail to be impressed by the panel of distinguished speakers who will address a wide range of topics.

We are most grateful to our sponsors - Bank of Ireland, Jardine Lloyd Thompson Ireland Limited and Solicitors' Mutual Defence Fund for their continued support of the Law Society's Conference and I would ask you to give them your favourable consideration in return.

I thank all of you who have made advance bookings and I hope those who have not yet booked will now do so. We look forward to a memorable conference which we hope will be enjoyed by all.

Owen Binchy
President

Business session: East meets West

Speakers

Full details of all speakers will be provided at a later date.

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- 30 March, 2005 departure from Dublin – morning flight – times to be confirmed
- 3 April, 2005 departure from Kracow – afternoon flight – times to be confirmed

(*Times are subject to Air Traffic Control restrictions. However, we are endeavouring to secure morning departure and afternoon return flight times so that we may facilitate those wishing to travel from Cork, Shannon, etc. Exact times will be detailed in your booking confirmations. The charter flight will be allocated strictly in order of bookings received.)*

Those delegates not allocated to the Charter flights will be accommodated on scheduled flights which will incur a supplemental charge and transfer charges.

Note: Connecting flights from Cork, Shannon etc. can be arranged by Sadlier Travel. Please complete relevant section on the reservation form.

PACKAGE B
BASED ON SCHEDULED FLIGHTS

Delegates travelling on scheduled flights will travel via various European cities and will have the option of extending their stay subject to airline and hotel availability.

Price will be based on the charter package but will **not** include airport transfers and may incur airline and hotel surcharges.

Delegates intending to travel on scheduled flights should return a completed reservation form as soon as possible with details of their preferred travel arrangements.

REGISTRATION FEE

Payable by delegates only and **not** accompanying persons – €100

BOOKING ARRANGEMENTS

The closing date for receipt of bookings is 20 February 2005. Please complete the reservation form and return with deposit of €450.00 per person travelling.

CONTACT DETAILS

If you would like any further information please contact any member of the Organising Team:

Evelyn O'Sullivan (Law Society)	Tel: 01 672 4823
	Email: e.osullivan@lawsociety.ie
James McCourt (Chairman)	Tel: 01 660 6543
Gerard Griffin	Tel: 01 490 1185
Simon Murphy	Tel: 021 427 3305
Mary Keane	Tel: 01 672 4800

For information on **extending your stay** please contact the conference travel agent:
Alan Benson/Angela O'Brien
Sadlier Travel
Fleet Chambers
8-9 Westmoreland St.
Dublin 2.
Tel: (01) 670 4880
Fax: (01) 670 4883
Email: alan@sadliertravel.com

BOOKING/CANCELLATION TERMS AND CONDITIONS

1. Notification of all cancellations must be sent in writing to Evelyn O'Sullivan, Law Society of Ireland, Blackhall Place, Dublin 7. DX79.
2. Balance payments must be received by 20 February 2005. Thereafter, 100% cancellation fees apply.
3. Substitute participation will be accepted.
4. Travel insurance will be automatically invoiced at approximately €26.00 per person unless delegates indicate on the reservation form that they have their own insurance and provide the name of the company with whom they are insured.
5. No contract shall arise until a full deposit has been received and a Booking Form (which will be sent with written confirmation of acceptance of the reservation) has been signed and returned.
6. Travel agent reserves the right to allocate all bookings on flights.
7. Please note a supplement will be charged for all single room occupancy.

Social programme

The conference will open on Wednesday evening with a Welcome Reception for all participants at the Cloth Hall in the Old Town Square. Delegates will be taken on a guided walk through historical Kanonicza and Grodzka streets to reach the Old Town Square

ON THURSDAY AN OPTIONAL FULL-DAY VISIT TO AUSCHWITZ CONCENTRATION CAMP

ON FRIDAY AFTERNOON A HALF-DAY OPTIONAL TOUR TO THE WIELICZKA SALT MINE

A visit to the Wieliczka Salt Mine – a world class tourist attraction. Over 700 years, many generations of Polish miners created the underground world, exceptional in its beauty, with the rich interior decoration of the chapels – including the most beautiful of Blessed Kings, the original linings of the galleries and workings, and the underground salt lakes. We can see up to 20 excavated chambers on three levels - of those the main one is located 130 meters below ground level. The chambers are decorated with beautiful statues sculpted in salt with an all-year-round temperature of 18 degrees Celsius. The Wieliczka Salt Mine is on the UNESCO list of the World Cultural and Natural Heritage.

The Conference Banquet will be held on Friday night. Dress – smart informal.

ON SATURDAY WE WILL HAVE A HALF DAY CITY AND WAWEL CASTLE OPTIONAL TOUR

Wawel Castle is the most popular and the richest museum in Poland. In its 71 magnificent rooms, several thousand works of art of great value are on display. Through a tall vaulted gate we enter the Renaissance arcades of the castle courtyard. This is where colorful pageants, knights' tournaments and entertainments were held. Today, open-air performances and concerts are given in the courtyard.

The most valuable of all the works of art in the Wawel collection are the Arras tapestries. This great art legacy is due to King Sigismund Augustus, who commissioned the work with the best Flemish weavers, and supervised its progress over twenty years. Wawel Cathedral used to be the scene of coronations and is the eternal resting place of the kings of Poland.

Accommodation

All delegates will be accommodated in the Sheraton Hotel*****. This is the first five star hotel in the historical capital of Poland. This modern structure is perfectly located – at the footsteps of the Royal Wawel Hill, overlooking the Royal Cathedral and the Vistula River, just ten minutes walk from the heart of the historical part of Kracow - Old Town Square. All bedrooms are spacious, elegant and modern and the hotel boasts a sauna/fitness centre and swimming pool.

Book reviews

Personal Injuries Assessment Board Act, 2003: implications for the legal practice

Paul Quigley and William Binchy (eds). FirstLaw (2004), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1-904480-24-1. Price: €65 (hardback) plus €5 p&p.

This is a very informative book. More importantly for practitioners, it is also a very useful book.

First up is the contribution by the two editors, law researcher and Trinity College Regius professor of laws respectively. Their 'Navigating the PIAB procedure' is a general 12-page introduction to the new regime for practitioners.

We are reminded that the new procedure does not affect the freedom to arrange settlements. But if settlement cannot be reached, then of course the claimant must go the PIAB route. We are directed to Guide to the Personal Injuries Assessment Board, 2004 of the Department of Enterprise, Trade and Employment and to www.piab.ie for downloading the forms.

The procedures laid down by the act are outlined from where a claim must be referred to PIAB with a €50 fee, assessment by a PIAB assessor who contacts the respondent 'as soon as practicable after receipt of an application', through to completion of the assessment within nine months of the respondent's consent to the assessment.

The procedure must be completed within a further six months, even if the respondent does not so consent. If not, then PIAB must issue the claimant with an authorisation to proceed to court, unless the claimant agrees to continue the PIAB assessment. The follow-on time limits are outlined, including that the claimant has 28 days to accept or reject the assessment. If it is rejected, again PIAB must issue an authorisation enabling the claimant to proceed to court.

The possibility of the act being unconstitutional is examined by Paul Quigley in a separate chapter. He mainly focuses on the doctrine of separation of powers and the right of citizens to have access to the courts. He concludes that if a claimant is denied justice 'due to an overwhelming PIAB procedure', it is possible that a remedy might lie in constitutional justice. But he suggests that 'while its [PIAB's] decisions, actions and procedures will be subject to constitutional scrutiny … the act that established the new board seems constitutionally sound'.

The background to the establishment of PIAB is covered comprehensively, and indeed adversarially, in articles by the Law Society's Ken Murphy, the Bar Council's Conor Maguire and PIAB chair Dorothea Dowling, whose background is in litigation defence. PIAB's establishment has been a triumph for defence interests, particularly those of the powerful business and insurance lobbies, over those of victims, according to Murphy. On the other hand, Dowling argues that PIAB is a win-win situation for both victims and defendants.

The eighth and final chapter is an impressive tour de force of the implications of the act for tort law and practice. Professor Binchy, co-author of the seminal book and case book on Irish tort law, places the act in its legislative and case-law context. He also notes that 'it is unfortunate that the very worthwhile goals of the Personal Injuries Assessment Board Act, 2003 have, to a limited degree, been blurred by the desire to keep lawyers out of the assessment process even to the point that the board may not correspond with them directly'.

He outlines the four categories of civil actions to which the act applies, being employers' liability claims, road accident claims, occupiers' liability claims and a fourth general category that includes such headings as product liability, nuisance, dog bites and even defamation. Of course, claims relating to health services are excluded from the provisions of the act.

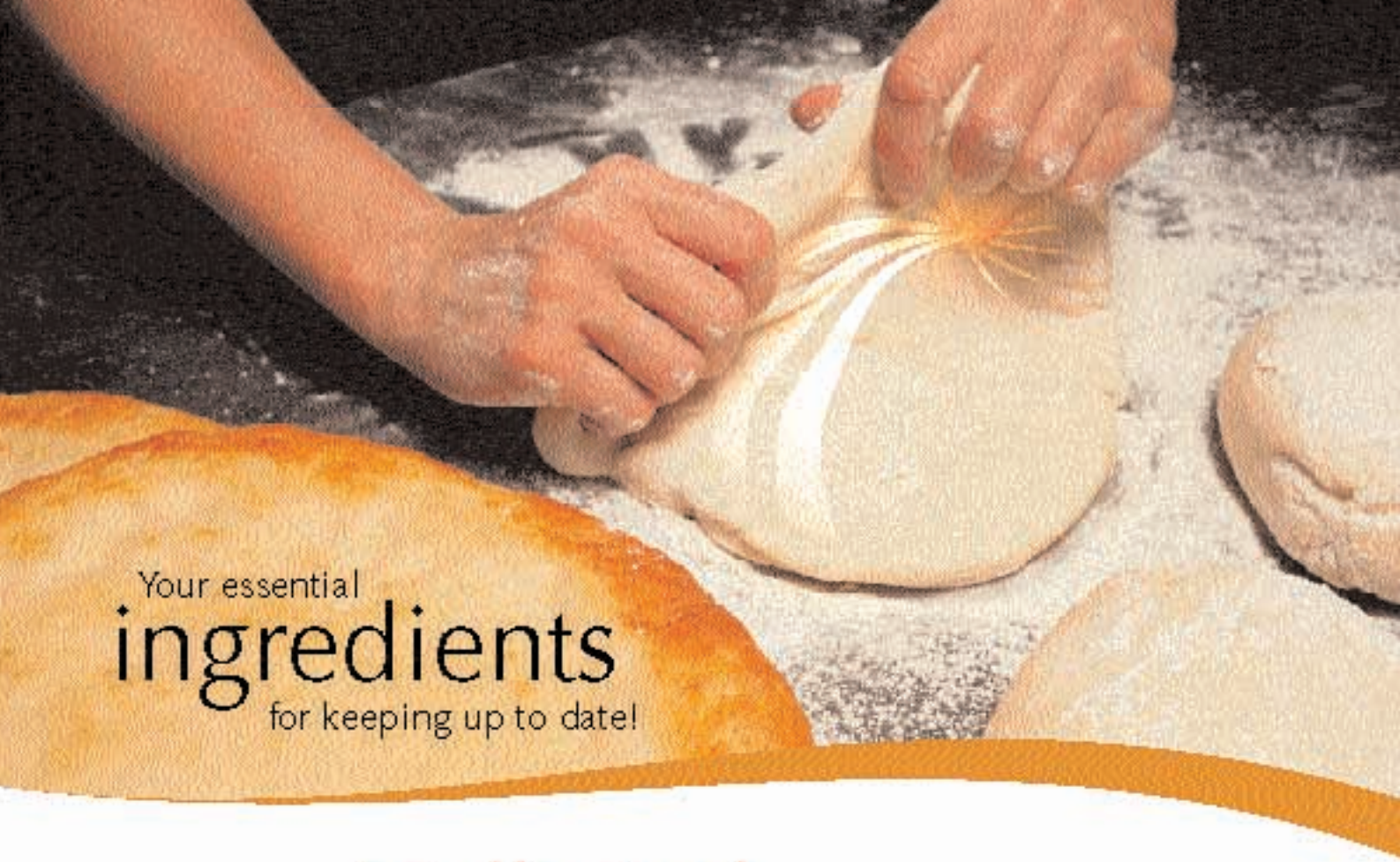
The appendices helpfully include a copy of the 2003 act, the rules of PIAB and an early book of quantum compiled on behalf of PIAB by independent consultants. Litigants and litigation lawyers would benefit from this book. G

Pat Igoe is principal of the Dublin law firm Patrick Igoe & Co.

Environmental law: professional practice guide

Anne-Marie Mooney Cotter (ed). Cavendish Publishing (2004), The Glass House, Wharton St, London WC1X 9PX, England. ISBN: 1-859419-01-1. Price: stg£40.

It is illustrative of the central position that environmental law has come to occupy in the work of an Irish legal practitioner that the Law Society's series of professional practice guides now includes Environmental law. The publication of a concise volume looking at the practical implications of Irish environmental law is to be welcomed, not only by legal practitioners and trainees but also by all students of Irish environmental law. These implications are felt in a host of areas of activity, ranging from transactions in land to workplace health and safety and



Intellectual Property Law in Ireland

Second edition

By Robert Clark, BA, LLM, PhD, BL, Professor of Law, University College, Dublin; and Shane Smyth, BCL, BSc (Comp), Solicitor, Partner, F R Kelly & Co

The NEW edition of this highly regarded textbook will bring you right up to date with all aspects of the legal framework relating to the area of intellectual property law, making sure you're well informed!

Incorporating all legislative and case law developments since the last edition was published in 1997, this new edition covers all the main aspects of intellectual property law including:

Copyright • Trade marks • Patents • Design law

This new edition of *Intellectual Property Law in Ireland* deals with topics such as passing-off and the law of confidence. It also includes full coverage of the Trademarks Act 1996.

In particular, this new edition covers the far-reaching changes introduced by the Copyright and Related Rights Act 2000, and the Industrial Designs Act 2001. Written by the leading experts in this area, it should prove invaluable to all IP practitioners and students.

Product Code: CSIP2
ISSN: 1854752340
Price: €140.00
Publishing Date: August 2004

LexisNexis®

from the licensing of industrial operators to the obtaining of planning permission for certain types of development projects.

In general, the layout of the book is appropriate, covering the key substantive areas where environmental rules, or the lack of them, are likely to have an impact on the work of the practitioner. The book includes very clear and informative chapters on integrated pollution control, environmental impact assessment, water pollution, waste management, nature conservation, and one on the related areas of air pollution, noise pollution and toxic torts. Indeed, it is a little unfortunate that each chapter is not fully referenced by means of footnotes or endnotes, as it could then serve as an excellent starting point for the reader who wished to delve a little more deeply into any particular area.

Though it is certainly appropriate that such a volume would give over some space to a discussion of the structures and roles of the key Irish regulatory and policy-making agencies for the environment – the Environmental Protection Agency (chapter 4) and the Department of the Environment, Heritage and Local Government (chapter 5) – the brief chapter on the United Nations environment programme (chapter 2) and the more substantial chapter on the European Environment Agency (chapter 3) appear somewhat superfluous and out of place. Also, the chapter on environmental business concerns does not fit very well into this text, involving little more than a restatement of the environmental policy preferences (and grievances) of industry.

These arguments are made articulately, though not always accurately. For example, the author claims that Ireland was the first EU member state to

introduce integrated pollution-control licensing under the 1992 Environmental Protection (Agency) Act, taking no account of the UK regime introduced under the 1990 Environmental Protection Act on which the Irish regime is largely modelled.

Of much greater significance, however, in a volume intended for use by graduates studying for a professional legal career, is the omission of dedicated chapters on toxic torts, contaminated land and on selected areas of planning law and procedure. Though Deborah Spence briefly outlines the topic of toxic torts in her excellent chapter on air pollution, noise pollution and toxic torts, one can argue that this important topic requires a more comprehensive treatment where there would be scope to look, for example, at important English case law, such as the recent House of Lords decision in Fairchild.

Similarly, though Margaret Austin alludes to the issue of historically contaminated land in her very thorough and comprehensive chapter on waste management, one might expect that this commercially-sensitive topic would be worth a chapter setting out, among other things, the nature of the problem and the rapidly-evolving practice in relation to contractual warranties and indemnities. Though planning law might at first glance appear to be beyond the scope of this work, a brief chapter setting out the operation of relevant aspects of the planning code would have been useful in setting the scene for the excellent chapters contributed by Rachel Minch on environmental impact assessment and on habitats, wildlife and natural heritage. However, I'm mindful of the fact that, in the case of an edited volume, the topics covered may depend on the contributions available.

However, probably the most puzzling chapter in the entire volume is that contributed by its editor – 'International environmental law: the global village'. This chapter appears to lack any coherent structure or focus. For example, it is difficult to understand why the 1987 Montreal protocol (itself merely one of a series of incrementally more stringent instruments on the phasing out of ozone-depleting substances, including the ground-breaking 1985 Vienna convention for the protection of the ozone layer and the 1990 and 1992 agreements amending the Montreal protocol) is singled out for discussion as one of the 'initial' agreements in the area of international environmental law. International environmental law was already quite highly developed by 1987. Similarly, it is unclear why the 1992 Climate change convention (which, incidentally, is not synonymous with the 1997 Kyoto protocol) is singled out for attention from among other key treaty instruments, some of which also flowed from the Rio process, such as the 1992 Convention on biological diversity.

One might reasonably argue that the true practical relevance of developments in public international law relating to the environment for practising solicitors lies in the relationship between the myriad sets of standards, guidelines and codes of conduct that set the standards of 'due diligence' required under general international law and often inform the standards of fault and reasonableness applied in our domestic courts. One has only to think of the persuasive character of World Health Organisation standards, for example, particularly in the absence of any corresponding standards in Irish or EC law or in the law of a comparable jurisdiction, such as the UK. Also, recent developments in international environmental law have done much to ensure freedom of access of nationals from adversely affected states to the courts of source states and/or to ensure the enforceability of judgments handed down in affected states within source states.

Clearly, these are issues of potentially immense significance for practitioners. However, by approaching this subject from a global policy-making perspective, the opportunity is missed here to highlight these important interconnections between the international and national legal systems.

As it is always much easier to point to the limitations of a book such as this than to highlight its strengths, I should emphasise that this volume makes a significant and very welcome addition to the limited literature on Irish environmental law. The vast majority of contributions are accurate, clear and to the point, betraying the wealth of practical experience of the contributors and their feeling for their discipline. I have no doubt that this guide will be well received by its intended readership, though also that it will be widely read beyond the ranks of trainee and practising solicitors. G

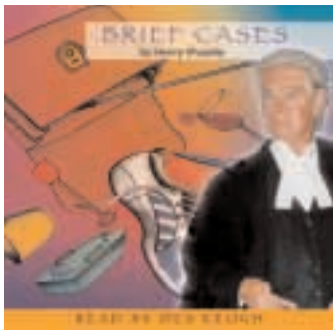
Owen McIntyre is a law lecturer at University College Cork.

Brief cases (three CDs read by Des Keogh)

Henry Murphy SC. Ashfield Press, 27 Carysfort Avenue, Blackrock, Co Dublin. ISBN: 1-901658-42-2. Price: €24.95.

Dermot McNamara BL, after six years at the bar, is concerned that the rocket to fame and fortune is not quite as turbo-propelled as he had hoped. His only success to date was for a client who got alcohol poisoning and sued the innkeeper who served him the drink. It was just as well that Dermot's wife Rachel had a thriving matrimonial practice.

Actor Des Keogh plays all the characters who impact on Dermot's legal career, involving hilarious accounts of courtroom dramas with surprising results. Dermot is usually instructed by Arnold O'Reilly, solicitor, who stirs his coffee with a pencil and believes the fax should be



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In the first court hearing, Dermot is opposed by Handy, whose nickname rhymed with his surname. O'Brien, the judge, unlike some of his colleagues, concentrates on the task in hand. The cross-examination involves the evidence of many diverse witnesses, including the female plaintiff, but Des Keogh can play them all, male or female, old or young, with the required accent, tone, exasperation, incredulity or sarcasm to meet the occasion.

In another case, Judge Bradley, with a reputation for lengthening cases far beyond their normal forensic life, presides over the action. The plaintiff is a retired English showjumper and one of the witnesses is a French Poirot character. None of the required accents phase the indomitable Des Keogh one bit.

Finally, there is a report of Dermot's Bar Golf Society debut in Milltown Golf Club, with uproarious results. Indeed, it is worth buying the CD for this golf outing alone.

Lawyers and non-lawyers will revel in the hilarious anecdotes recounted superbly in dramatic fashion by Des Keogh. This is the perfect Christmas present for anyone looking for light relief over the holiday period. Hopefully, this will not be the last we hear of Dermot McNamara BL, if Henry Murphy can be persuaded to continue with his fluent and comical writing. G

John Costello is a solicitor with the Dublin law firm Eugene F Collins.

Report of Law Society Council meeting held on 8 October 2004

Motion: Money-Laundering Reporting Committee

'That this Council approves the establishment of a Money-Laundering Reporting Committee and that the functions of the society set out in section 57 of the Criminal Justice Act, 1994 be delegated to that committee with an obligation to report to the Council on their exercise (on a no-names basis) and that the regulations of the Council be amended accordingly'.
Proposed: Simon Murphy
Seconded: James McCourt

Simon Murphy explained that, under section 57 of the Criminal Justice Act, 1994, the society had an obligation to make reports to the Garda Síochána and the Revenue Commissioners where it suspected that money-laundering offences had been, or were being, committed by its members. The society's obligations in this regard had been delegated to the Compensation Fund Committee. However, it was now proposed to establish a stand-alone committee with the sole function of making such reports. The membership of the committee would consist of the two most recent past chairmen of the Compensation Fund Committee and the registrar of solicitors. The Council approved the motion, as notified, and the consequent amendments to the Council regulations.

Motion: Code of conduct for Council members

'That this Council approves the code of conduct for Council members and the Council members' handbook'.
Proposed: Anthony H Ensor
Seconded: Stuart Gilhooly

The Council approved the code of conduct for Council members and the Council members' handbook, both of which had been circulated in advance.

Personal Injuries Assessment Board

Ward McEllin reported in relation to an application for judicial review sought by a firm of solicitors against PIAB's refusal to deal with a claimant's solicitor. The application for judicial review had been granted and the matter was likely to be heard before Christmas.

Legal costs review

The Council discussed the recent announcement by the minister for justice, equality and law reform of the establishment of a working group to identify ways of reducing legal costs and noted a letter from the president to the minister expressing the society's dissatisfaction with the exclusion of solicitors in private practice from membership of the working group.

Decision no N/04/001 of the Competition Authority

The Council considered legal advice received in relation to decision no N/04/001 of the Competition Authority, which decision purported to restrict the choice of legal representation available to persons being investigated by the authority. The Council agreed that the authority should be asked to withdraw the notice in recognition of the fact that it was wrong in principle and wrong in law, failing which the officers were authorised to issue judicial review proceedings against the authority.

Trainee solicitors' salaries

Donald Binchy briefed the Council in relation to a decision by the Education Committee to increase the level of salaries paid to trainee solicitors and the number of hours that trainees were requested to work per week.

No review of trainee salaries had been carried out since September 2000 and it had been agreed to give trainees an increase of 7% (in line with the national pay agreement) with effect from 1 January 2005. Trainee salaries would be reviewed annually from this date onwards. In addition, it had been agreed to increase the recommended levels of pay for trainees working in the office pre-PPCI by 7.5%. Again, this was in line with the national pay agreement. In addition, the number of hours that trainee solicitors were required to work had been increased from 35 to 36 hours per week.

Pre-budget submission

The Council considered, and approved, the society's pre-budget submission, which had been prepared by the Probate, Administration and Taxation Committee.

CCBE

John Fish reported that the Belgian Bar had decided to bring proceedings to have the Money-laundering directive declared null and void to the extent that it obliged lawyers to report suspicions to the authorities. Accordingly, the matter would ultimately be determined by the European Court of Justice.

Departure of long-standing Council members

The president paid tribute to John Fish, Ward McEllin, Anthony Ensor and Laurence Shields, who were departing the Council after many years' distinguished service on behalf of the profession. G

Committee report

CRIMINAL LAW

Criminal justice (legal aid) scheme: introduction of new format of claim form (LA1)

Some time ago, the society's Criminal Law Committee initiated discussions with the Department of Justice, Equality and Law Reform and the Courts Service regarding the possibility of revising the current LA1 claim form to a shorter, more user-friendly version. The committee is pleased to announce that, as from 1 January 2005, a simplified format of the LA1 claim form will be introduced. The new form will require solicitors to complete one page only. It is hoped that the reduction in time spent filling out the form will be of great assistance to busy practitioners.

From 1 January 2005, stocks of the new-format claim form will be available from the Courts Policy Division, Department of Justice, Equality and Law Reform, Old Faculty Building, Shelbourne Road, Dublin 4 and will appear on the Department of Justice website, www.justice.ie. A sample will also appear on the homepage of the members' area of the Law Society website www.lawsociety.ie.

The 'old' form will not be available from 1 January 2005, but solicitors who have stocks of the old form may still submit those forms after 1 January 2005.

The committee wishes to thank all those in the Courts Policy Division of the Department of Justice and those in the Courts Service who assisted in the revision of the form.

Criminal Law Committee

Practice note

PRACTISING CERTIFICATES, 2005: NOTICE TO ALL PRACTISING SOLICITORS

Why you need a practising certificate

It is misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the state) to practise as a solicitor without a practising certificate. Any solicitor found to be practising without a practising certificate is liable to be referred to the Solicitors Disciplinary Tribunal.

When you must apply

A practising certificate must be applied for on or before 1 February in each year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the year.

It is a legal requirement for a practising solicitor to deliver or cause to be delivered to the registrar of solicitors at the society's premises at Blackhall Place, Dublin 7, on or before 1 February 2005, an application in the prescribed form duly completed and signed by the solicitor personally. The onus is on each solicitor to ensure that his or her application form is delivered by Tuesday 1 February 2005.

What happens if you do not apply on time?

Any applications for practising certificates which are received after 1 February 2005 will result in the practising certificates being dated the date of actual receipt by the registrar of solicitors, rather than 1 January 2005. There is no legal power to allow any period of grace under any circumstances whatsoever.

Please note that, during 2004, 125 solicitors went to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January because their practising certificate application was received late.

There will be a special meeting of the Compensation Fund Committee (which is the committee of the society with responsibility for supervising compliance with practising certificate requirements) on 10 February 2005 to consider any late or unresolved applications for practising certificates. At this meeting, any practising solicitors who have not applied by then for a practising certificate will be considered for referral forthwith to the Solicitors Disciplinary Tribunal and will be informed that, if they do not apply in due form within a further seven-day period, the society will take proceedings for an order under section 18 of the *Solicitors (Amendment) Act, 2002* to prohibit them from practising illegally.

What you need to do about professional indemnity insurance

If confirmation of mandatory professional indemnity insurance cover is not received, the registrar of solicitors is precluded by law from issuing a practising certificate. All solicitors who are required to have professional indemnity insurance cover are asked to ensure that either they or their broker furnishes the society with confirmation of cover as soon as cover is renewed.

If you are an employed solicitor

Solicitors who are employed should note that it is the statutory obligation of every solicitor who requires a practising certificate to ensure that he or she has a practising certificate. Employed solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the society's recommendation that all employers should pay for the practising certificate of solicitors employed by them.

If you are ceasing practice

Solicitors who are intending to cease practice in the coming year are requested to notify the society accordingly.

Some of your details are already on the application form

This year, for the first time, the practising certificate application form will be issued with certain information relating to each solicitor's practice already completed.

What can you access on the website?

Also for the first time, the practising certificate application form will be available on the society's website, *www.lawsociety.ie*. By answering the questions on-line, there will be no need to complete the form by hand, thus making the completion of the form less time consuming. When the on-line form is complete, it must be printed, signed and returned to the registrar of solicitors. Alternatively, the form can be printed out and completed by hand.

The on-line form can be accessed by following the link under the 'Current news' section on the website and logging on using the solicitor's surname and solicitor number (stated on page 1 of the application form which will be sent to each solicitor by post). G

John Elliot, registrar of solicitors and director of regulation

LEGISLATION UPDATE: 20 OCTOBER – 15 NOVEMBER 2004

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – *www.lawsociety.ie* (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act.

ACTS PASSED

Dumping at Sea (Amendment) Act, 2004
Number: 35/2004
Contents note: Amends and extends the *Dumping at Sea Act, 1996* in relation to applications for dumping at sea permits
Date enacted: 3/11/2004
Commencement date: 3/11/2004

Ombudsman (Defence Forces) Act, 2004
Number: 36/2004
Contents note: Establishes the office of ombudsman for the defence forces; provides for the appointment, functions and staff of the ombudsman and amends the *Defence Act, 1954*
Date enacted: 10/11/2004
Commencement date: Commencement order(s) to be made (per section 19(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Adoptive Leave Act, 1995 *(extension of periods of leave) order 2004*
Number: SI 667/2004
Contents note: Extends the periods of adoptive leave under the *Adoptive Leave Act, 1995*
Commencement date: 19/11/2004 with saver

Courts and Court Officers Act, 2002 *(section 46) (commencement) order 2004*
Number: SI 712/2004
Contents note: Appoints 31/3/2005 as the commencement date for section 46 of the act, which provides that the Courts Service shall establish and maintain a register of reserved judgments of the Supreme Court, the High Court, the Circuit Court and the District Court in any civil proceedings

Criminal Justice (Temporary Release of Prisoners) Act, 2003 *(commencement) order 2004*
Number: SI 679/2004
Contents note: Appoints 12/11/2004 as the commencement date for the *Criminal Justice (Temporary Release of Prisoners) Act, 2003*

Prisoners (temporary release) rules 2004
Number: SI 680/2004
Contents note: Provide for the temporary release of persons from prisons, from St Patrick's Institution and from places provided under section 2 of the *Prisons Act, 1970*
Commencement date: 12/11/2004

Private Security Services Act, 2004 *(commencement) order 2004*
Number: SI 685/2004
Contents note: Appoints 28/10/2004 as the commencement date for: (a) part 1 (sections 1-5); (b) sections 6, 7, 8, 9, 10, 11, 12, 17, 18, 19 and 20; and (c) schedule 1 of the act

Protection of employees (employers' insolvency) (variation of limit) regulations 2004
Number: SI 696/2004
Contents note: Increase the maximum amount of weekly pay that may be used for the purposes of calculating employee entitlements under the *Protection of Employees (Employers' Insolvency) Act, 1984*

Redundancy payments (lump sum) regulations 2004
Number: SI 695/2004
Contents note: Raise the ceiling on annual reckonable earnings to be taken into account in the calculation of a statutory redundancy lump-sum payment
Commencement date: 1/1/2005

Social welfare (consolidated payments provisions) (amendment) (no 4) (maternity benefit) regulations 2004
Number: SI 660/2004
Contents note: Provide, for the purposes of the maternity benefit scheme, for the amended provisions governing maternity leave contained in the *Maternity Protection (Amendment) Act, 2004*. Reduce the minimum period of leave that must be availed of prior to the expected date of birth from four weeks to two weeks, and provide that where maternity benefit has been in payment for a minimum period of 14 weeks, payment may be postponed in the event of the hospitalisation of the child, and provide for related matters
Commencement date: 18/10/2004

Social Welfare (Miscellaneous Provisions) Act, 2004 *(section 8) (commencement) order 2004*
Number: SI 658/2004
Contents note: Appoints 18/10/2004 as the commencement date for section 8 (amendments to the maternity benefit scheme) of the act G

District Court (children) (no 2) Rules 2004
Number: SI 666/2004
Contents note: Amend order 37 of the *District Court Rules 1997* (SI 93/1997) to prescribe procedures for orders directing the probation and welfare service to arrange for the convening of a family conference and for orders directing a child to comply with an action plan pursuant to sections 78(1), 79, 82(1)(b), 82(2)(a), 83 and 84 of the *Children Act, 2001*
Commencement date: 3/11/2004

District Court (food safety) Rules 2004
Number: SI 700/2004
Contents note: Amend the *District Court Rules 1997* (SI 93/1997) by the insertion in order 34 of a new rule 16 'warrant – under the *Food Safety Authority of Ireland Act, 1998*' and by the insertion of a new order 96A 'food safety'. These amendments prescribe procedures for applications under the *Food Safety Authority of Ireland Act, 1998* in relation to information required by the authority to exercise its functions and in relation to non-compliance with 'improvement orders'
Commencement date: 14/11/ 2004

Prepared by the Law Society Library

Personal injury judgment

Dangerous animals – control of dogs – dog injured a woman on her way home – onus on owner or occupier to prove that they are not the owners of a dog – whether this onus had been discharged

CASE

Frances Quinlisk v Ross Kearney, John Kearney and Bernadette Kearney, High Court, judgment of Mr Justice Roderick Murphy delivered on 10 June 2004.

THE FACTS

Some time after 11.30pm on a summer's evening on 7 June 1999, Frances Quinlisk was returning from a meeting of Muintir na Tíre in Roscrea. She was left by her friend at the entrance to an estate where she and the Kearneys lived.

Mrs Quinlisk, having left her friend some 200 yards from her house, felt a tug on her left leg and saw a small, medium-brown-coloured dog growling. The dog pulled so hard that she turned around, lost her balance and fell. The dog had come up from behind her as she walked on the path of the green with her back to the Kearneys' house and going towards her own house. She lay on the ground for a quarter of an hour with severe pain in her right-hand side. She subsequently reached her house but spent two days in bed in a lot of pain.

Two days later, her husband brought her by car to see her medical doctor. Two days later, Mrs Quinlisk was sent to Tullamore Hospital; she was x-rayed and given painkillers. There was no bed available and she returned home, where she spent six weeks in bed in pain, having to be carried to the bathroom. In evidence in court, Mrs Quinlisk stated that she was on crutches until January 2001, some seven months later.

Mrs Quinlisk had suffered previously. Two discs had been removed in 1982 or 1983 and she had experienced intermittent problems since then. She experienced the pain that she had had before the incident with the dog. She went back to work in May 2001, some seven months later.

In evidence, Mrs Quinlisk stated that she had developed rheumatoid arthritis by Christmas 2001. At that stage, she was advised by her medical doctor to retire or else she would undo everything he was doing for her. She alleged that in mid-August she had seen the dog in question going into Mr Kearney's home. She went over on her crutches and asked Mr Kearney if he owned the brown dog that was at Mr Kearney's door. There was evidence that he replied that it was one of his son's dogs. The son was Ross Kearney (the first-named defendant).

Mrs Quinlisk sued Ross Kearney and his father and mother.

THE JUDGMENT

Mr Justice Roderick Murphy delivered judgment on 10 June 2004 and set out the facts of the case, as above.

The judge referred to the Control of Dogs Act, 1986 and quoted the various sections in relation to liability of persons in relation to dogs. Section (9)(1) of the 1986 act provides:

'[T]he owner or any person in charge of a dog shall not permit the dog to be in any place other than (a) the premises of the owner, or (b) the premises of such other person in charge of the dog, or (c) the premises of any other person, without the consent of that person unless such owner or such other person in charge of the dog accompanies it and keeps it under effectual control'.

The owner of a dog is defined in the 1986 act as including the occupier of any premises where a dog is kept or permitted to live or remain at any particular time (unless such occupier proves to the contrary).

Section 21(1) of the 1986 act provides that the owner of a dog shall be liable for damage caused in an attack on any person by the dog. Section 21(1) of the 1986 act provides that it shall not be necessary for the person seeking such damages to show a previous 'mischievous' propensity in the dog, or the owners' knowledge of such propensity, or to show that such injury or damage was attributable to neglect on the part of the owner.

The judge noted that Mrs Quinlisk had stated that there was no point in her reporting the matter to the relevant authorities until she knew who owned the dog. When she considered she knew who owned the dog, she telephoned the dog warden. A solicitor's letter was sent to the Kearneys in November 2000.

The judge observed that Mrs Quinlisk had stated in evidence that Mr Kearney's daughter had answered the door on one occasion and that Mr Kearney had admitted that his son Ross owned the brown dog.

Mr Justice Roderick Murphy referred to the medical condition of Mrs Quinlisk. The fall in relation to the dog had aggravated pain in her lower back. She was distressed. A doctor, who had given evidence, was of the opinion that stress after such an accident with a dog could lead to rheumatoid arthritis, although this could not be proved scientifically. The symptoms complained of by Mrs Quinlisk were as a result of her lower-back injury, but exacerbated by the fall. She had made good progress and the pain would tend to subside with time.

Mr Justice Roderick Murphy stated that the Control of Dogs Act, 1986 was a radical piece of legislation for a country where dogs proliferated. The very title of the act emphasised control rather than registration, which had been a requirement under previous legislation. The judge observed that the presumption of ownership was one of those radical elements in the legislation that deemed ownership on occupiers of any premises where not alone the dog was kept but permitted to live or remain at any particular time. The onus of proof was on the occupier to prove to the contrary. The issue of ownership in the particular case under question was critical.

The court had to be satisfied (according to the judge) on the balance of probabilities from the evidence of the Kearneys that none of them kept a dog or permitted a dog to live or remain for any particular time on their premises. According to the judge, there was no dispute regarding a small medium-brown dog tugging at Mrs Quinlisk, causing her to lose her balance and fall, causing her an injury which exacerbated a previous complaint.

In relation to the ownership of the dog, Mrs Quinlisk stated that in mid-August she had seen a dog going into the Kearneys' premises; she proceeded on crutches to the Kearneys' house and spoke to one of the Kearneys, who said that the dog was the son's, Ross Kearney. The dog was at the door. The judge noted that, unfortunately, Ross Kearney did not give evidence in relation to whether or not he was in the family home in June 1999. His testimony would have been of assistance to the court in relation to whether or not he had a dog or hunted or not.

The judge noted that the onus was on the Kearneys to discharge the presumption that they were the owners of the dog. It was up to them to prove that they did not keep dogs or allow them to remain in their premises.

Given the radical nature of the legislation, the judge stated that it would seem that the simplest way of rebutting the presumption was to tell Mrs Quinlisk at the time she met one of the Kearneys that not only did the Kearneys not own dogs, but that they did not permit dogs to live or remain on their premises. The evidence of a neighbour was, according to the judge, compelling with regard to the presence of dogs in and around the premises of the Kearneys. The judge did accept the evidence of Mr and Mrs Kearney that they did not have or own a dog. That evidence had been corroborated. However, as was clear from the definition section of the 1986 act, 'ownership' was defined very widely indeed to include the occupier of premises.

The judge noted that, even if dogs were strays, then the Kearneys should have been aware of the risk of liability once they were kept or allowed to remain on the premises.

The judge referred to section 13 of the 1986 act, which stated that any person who finds and takes possession of a stray dog is obliged to return the dog to its owner, deliver it to a dog warden or detain the dog and give notice in writing to the member in charge of the nearest garda station or to a dog warden. In such a case, the occupier would not be deemed to be the owner until one year had passed.

The court, on the balance of probabilities, found in the circumstances that the Kearneys did own the dog in question in that they, as occupier or occupiers (one or more of them), permitted the dog to live and remain at his, her or their premises. None of the Kearneys had proved, on the balance of probabilities, that they were not the owners of the dog that had attacked and caused Mrs Quinlisk the injury she had suffered. It followed that the Kearneys were liable for the damage caused. In terms of liability, the Kearneys were jointly and severally liable.

In relation to the medical evidence, the judge considered the two reports of the medical doctors, including the reports of the orthopaedic surgeon. The surgeon had found a fracture to the pelvis requiring hospitalisation. Mrs Quinlisk was on crutches for seven-and-a-half weeks. She had previous spinal surgery for a prolapsed disc in 1982. She had some intermittent pain since then. G

THE AWARD

Mr Justice Roderick Murphy awarded Mrs Quinlisk damages as follows:

- Special damages in relation to Mrs Quinlisk being out of part-time work which had been agreed – €1,600
- General damages – €16,000

Total: €17,600

This judgment was summarised by solicitor Dr Eamonn Hall.

SOLICITORS DISCIPLINARY TRIBUNAL

This report of the outcome of a Solicitors Disciplinary Tribunal inquiry is published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act, 2002*) of the *Solicitors (Amendment) Act, 1994*

In the matter of John B Harte, solicitor, practising under the style and title of James Harte & Son, 39 Parliament Street, Kilkenny, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the Solicitors Acts, 1954 to 2002 [2259/DT398]
Law Society of Ireland
(applicant)
John B Harte
(respondent solicitor)

On 28 September 2004, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he had:

a) Failed to comply with an undertaking given to a named solicitor's firm on 22 October 1996 to have a defunct public right of way to a well removed as a burden from a Land Registry folio in a timely manner or at all
b) Failed to respond to 13 letters from the complainants to him prior to their making a complaint to the society
c) Failed to respond to correspondence from the society in the investigation of the complaint in a timely manner or at all, and in particular failed to reply to letters from the society dated 12 April 2002, 24 April 2002, 7 May 2002, 22 May 2002, 26 June 2002, 3 July 2002, 15 July 2002, 25 July 2002, 7 November 2002, 13 February 2003
d) Failed to attend at Registrar's Committee meetings despite being requested to do so and in particular the meetings of 11 June 2002, 24 September 2002 and 5 November 2002.

The tribunal ordered that the respondent solicitor:

a) Do stand censured
b) Pay a sum of €5,000 to the compensation fund
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

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CHILDREN AND YOUNG PERSONS

Child abuse

Family law – children – child abuse – statutory instrument – commission of inquiry – functions and powers – whether additional functions sought to be conferred on commission by statutory instrument connected with functions and powers of commission – whether statutory instrument ultra vires – Commission to Inquire into Child Abuse Act, 2000, section 4 – Commission to Inquire into Child Abuse Act, 2000 (additional functions) order 2001 – Rules of the Superior Courts 1986, order 15, rule 13

The third respondent was established by the Commission to Inquire into Child Abuse Act, 2000. Its role was defined in section 4 of the 2000 act as being to inquire into the abuse of children in institutions. 'Abuse' for the purposes of the act was defined in section 1 as 'the … infliction of physical injury on, or failure to prevent such injury to the child, the use of the child by a person for sexual arousal or … gratification … failure to care for the child … [or any other act or omission towards the child] which results in serious impairment of the physical or mental health or development of the child or serious adverse affects on his behaviour or welfare'. The applicant was a participant in vaccine trials conducted on children in state institutions in the 1960s. Following a report prepared by the chief medical officer of the first respondent's department into those trials, the Commission to Inquire into Child Abuse Act, 2000 (additional functions) order 2001 was passed by the Oireachtas, which purported to confer additional functions on the third respondent to enable it to investigate those trials. She sought a declaration that the order of 2001 made by the government was ultra vires the provisions of the 2000 act, and, in particular, section 4(4) thereof.

Ó Caoimh J declared that the order of 2001 was made ultra vires section 4(4) of the 2000 act, holding that, in the absence of additional evidence being put before the court, the vires of the order had to be judged by reference to the terms of the order itself and the report of the chief medical officer mentioned therein, which disclosed nothing suggesting that the conduct of the vaccine trials, the subject of the report, was such as to amount to abuse as defined in the 2000 act. The essential issue raised by that report was one of medical ethics and was not one suggestive of abuse as defined in the 2000 act. There had to be some real connection between the functions sought to be conferred by the order of 2001 and the functions and powers of the Commission to Inquire into Child Abuse before such an order could be made by the government, and the mere fact that the persons the subject of the vaccine trials were vulnerable children in state institutions did not amount to any connection of substance enabling the making of the order. The approval of the order of 2001 by the Oireachtas was not such as to validate the making of the order itself, which could only have been made within the limits of section 4(4) of the 2000 act.

Irene Hillary v Minister for Education and Science, Attorney General and Commission to Inquire into Child Abuse, High Court, Mr Justice Ó Caoimh, 11/6/2004 [FL9705]

Adoption, delay

Family law – adoption – consent – children – refusal to consent to adoption – medical evidence – fostering – abandonment – delay in bringing proceedings – whether parental rights abandoned – whether appropriate to make adoption order – Adoption Act, 1988, section 3

The proceedings concerned an application by the foster parents of a child seeking to have the child adopted. Since the child (L) was three weeks old, she had been placed with her present foster parents. The application was opposed by the parents of L and her natural sister. The mother of L had been convicted of manslaughter in respect of the death of a sister of L. A brother of L had also been taken into care. The mother of L opposed the application on the grounds that there had not been any failure of parental duty and/or abandonment and also that it was not in the child's best interest. A fit persons order had been made in respect of L approximately two months after she was born. Evidence was also given by L that she would like to be adopted. A natural sister of L opposed the adoption on the basis that she would lose contact with L. It was also submitted that the delay in the case was such that the court should refuse to make the order sought.

O'Higgins made the order of adoption, holding that there had a total failure of parental duty and, in the circumstances, this amounted to abandonment in the legal sense. L's mother had acquiesced to the present arrangements in which L had become, in a practical sense, a member of the applicants' family. The evidence was overwhelming that it was in L's best interests to make the adoption order sought and the initiative for the adoption had come from L herself. The foster parents had fared excellently in raising L and were extremely suitable people to adopt her. It was unlikely that there would be a loss of contact between L and her sister once the adoption order was made. Although the delay that had occurred during the proceedings was regrettable, the position of the parties had not been prejudiced.

B(WH) and S(W) and S(E) v An Bord Uchtála, High Court, Mr Justice O'Higgins, 27/5/2004 [FL9628]

CONSTITUTIONAL

Sexual offences, order of prohibition

Judicial review – order of prohibition – constitutional law – criminal law – sexual offences – delay – issue of dominion – psychological evidence – role of director of public prosecutions – whether real or serious risk of unfair trial – whether order prohibiting trial should be granted – Bunreacht na hÉireann 1937, article 38.1

The applicant had been arrested and charged with sexual offences allegedly committed some years previously. The applicant brought an application seeking to prohibit his trial from proceeding. The applicant claimed that the lapse of time between the commission of the alleged offences and the date of trial was so great that it gave rise to an unavoidable and incurable

presumption of prejudice against him and breached his right to trial with due expedition. Furthermore, it was claimed that the delay had deprived the applicant of prospective witnesses. The applicant had been granted leave to bring judicial review proceedings by McKechnie J and now sought declarations and/or orders of prohibition preventing his trial from proceeding. The complainants submitted that the applicant was a respected family member and the close family ties were a factor in the delay in making the complaints to An Garda Síochána. Counsel on behalf of the applicant submitted that the position the applicant held as a respected family member did not justify the unconscionable and excessive delay in making the complaints by the alleged victims.

Ó Caoimh J refused the relief sought, holding that the complainants' delay in coming forward had been explained and must be attributed to the conduct of the applicant in the first place. It could not be said that the death of certain persons had resulted in a situation of clear prejudice for the applicant. A number of persons, including the applicant's wife, were alive and could be called as witnesses by the applicant. The applicant had failed to establish prejudice as to warrant a finding that a fair trial was no longer possible.

Chambers v DPP, High Court, Mr Justice Ó Caoimh, 9/7/2004 [FL9673]

CRIMINAL

Appeal, conviction

Charge to jury – erroneous charge on issue of provocation – whether erroneous charge automatically renders conviction unsafe – whether conviction unsafe – whether leave to appeal should be granted

The applicant was convicted of murder by a jury that had rejected his defences of self-defence and provocation. On application for leave to appeal that conviction, he submitted that the trial judge should have withdrawn the issue of murder from the jury, leaving them only to consider whether the applicant was guilty of manslaughter, and that the trial judge misdirected the jury in relation to the defence of provocation and the evidence on that issue.

The Court of Criminal Appeal refused the application for leave to appeal, holding that it was for the jury to determine whether the actions of the applicant were capable of being committed in pursuance of self-defence. While the defence had to satisfy a test of the existence of a body of credible evidence to justify leaving the issue of provocation to the jury, once the issue was left to them by the trial judge, it was subject to the orthodox rule regarding the burden of proof, which remained with the prosecution. As there was no sufficient case of provocation to justify a finding of manslaughter rather than murder, there was no miscarriage of justice as a result of the trial judge's erroneous charge to the jury on the issue of provocation.

The People (Director of Public Prosecutions) v Ismet Ceka, Court of Criminal Appeal, 28/7/2004 [FL9627]

Extradition

Corresponding offence – cheating public revenue – whether the offence of cheating the public revenue exists in Ireland

The applicant appealed from the judgment and order of the High Court granting an order for the rendition of the applicant to England on the basis that there was no corresponding offence in Ireland of cheating the public revenue. Peart J in the High Court held that the corresponding offence to the offence contained in the warrant from the jurisdiction of England and Wales was the common-law offence of cheating the public revenue.

The Supreme Court (Denham, McGuinness, Hardiman JJ) allowed the appeal, holding that:

1) The fact that section 3(2) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 abolished the offence of cheating except in relation to the public revenue did not mean that the offence of cheating the public revenue existed in Ireland. The statute was non-committal as to whether the offence existed and accordingly the reference to the exception did not create or revive the offence, which had not been used in prosecutions over the previous 100 years
2) The law was so uncertain and vague as to lead to the only possible conclusion being that no Irish common-law offence of cheating the public revenue exists.

The Attorney General v Anthony Karl Frank Baird Hilton, Supreme Court, 30/7/2004 [FL9699]

Jurisdiction, practice and procedure

Service of book of evidence – extension of time for doing so – jurisdiction – president of District Court granted adjournment and extension of time for service of book of evidence on 'peremptory' basis – whether order of president precludes another judge of equal jurisdiction from further extending time – whether first respondent has jurisdiction to extend time for service of book of evidence – words and phrases – 'peremptory' – Criminal Procedure Act, 1967, section 4(b)(3)

The applicant had been charged with various offences by the second respondent. At various appearances before the District Court, the proceedings had been adjourned with appropriate extensions of time for the service of a book of evidence until 28 August 2003. On that date, the president of the District Court extended the time for the service of a book of evidence for a further two weeks and expressed that extension of time and adjournment to be 'peremptory'. On 3 September 2003, the applicant was further charged with another offence and when all of the offences came on before the District Court, the first respondent granted a further extension of time for the service of the book of evidence. The applicant contended that by expressing his order to be 'peremptory', the president had created a final and absolute order that could not be altered by a judge of equal jurisdiction except in exceptional circumstances. The applicant was granted leave to apply for an order of certiorari by way of application for judicial review of the order of the first respondent granting an extension of time.

O'Neill J refused the relief claimed, holding that the impugned order of the first respondent had been made within jurisdiction, as it was not within the jurisdiction of the president of the District Court to make an order that would fetter the exercise of another judge of the District Court dealing with an application to extend time from the expiry of the extension of time granted by the former judge for the service of a book of evidence, as that would have the effect of rendering nugatory the judicial discretion necessarily implied in the exercise of discretion provided for in section 4(b)(3) of the Criminal Procedure Act, 1967 and would offend the fundamental principle that a judge could not bind another judge of equal jurisdiction to make a particular order in a matter in which the latter judge had full jurisdiction and seisin of the matter in question. The use of the adjective 'peremptory' or adverb 'peremptorily' as used in the context at issue did not have a defined legal effect and did not oust the jurisdiction of the first respondent to hear and determine the application for an extension of time and for that

purpose to exercise his judicial discretion to consider whether or not there were good grounds for extending time and whether it would be in the interests of justice to do so.
Smith v Judge O'Donnell, High Court, Mr Justice O'Neill, 27/4/2004 [FL9690]

Sexual offences, delay
Fair procedures – right to expeditious trial – application for order of prohibition – sexual offences – whether prosecutorial delay affected constitutional rights of applicant to fair and expeditious trial – whether delay prejudicial – whether risk of unfair trial should prosecution continue
The applicant was prosecuted for various sexual assaults on children in the 1960s. The complainants first made their complaints in 1995. The applicant was first interviewed by the gardaí in 1997 and charged in 1999. In 2000, the book of evidence was served. The applicant complained of both complainant and prosecutorial delay and sought an order of prohibition restraining his further prosecution for the various alleged assaults. The High Court refused to grant the order sought. The applicant appealed to the Supreme Court.

The Supreme Court allowed the appeal and granted the order of prohibition sought, holding that for complainant delay to be excused it had to be not only explained but the reasons for the delay had to be attributable at least in part to the actions of the abuser and for that purpose the court had to assume that the complaints made by the complainant were true. Prosecutorial delay could be excusable if it did not affect the applicant's constitutional rights. Reasons that could affect a fair trial and cause prejudice to the applicant due to delay were: the totality of the delays in question, inconsistencies in the complainant's statements, whether there was a danger of recollection being influenced by other complainants, the level of identification given by complainants, and the absence of records. While delay in itself may not be sufficiently blameworthy to prohibit a trial, when that delay was considered in conjunction with the above reasons, there was a real risk that the applicant's right to a fair trial would be in jeopardy.
M(J) v Director of Public Prosecutions, Supreme Court, 28/7/2004 [FL9724]

ENVIRONMENTAL

Planning, waste management
Planning and environment law – waste management – judicial review – leave – substantial grounds – whether EPA exceeded its powers in attaching conditions to waste licence without consulting planning authority – Waste Management Act, 1996, sections 43, 54
The applicant applied for leave to apply for judicial review of the decision of the Environmental Protection Agency (EPA). The applicant sought declarations that conditions of the waste licence granted by the EPA were ultra vires the powers of the EPA and irrational and an order of mandamus directing the EPA to grant a waste licence to the applicant with the conditions deleted. The applicant claimed that the EPA acted in breach of section 54(4) of the Waste Management Act, 1996 and exceeded its powers in attaching conditions without consulting the planning authority.

Ó Caoimh J refused the applicant leave, holding that the applicant had not demonstrated substantial grounds as required by section 43 of the Waste Management Act, 1996. In circumstances where no planning permission had been granted and no application for planning permission was pending, there was no reason why the EPA should consult with the planning autho rity. The applicant's case had a superficial air to it which was devoid of reality.
Yellow Bins (Waste Disposal) Ltd v Environmental Protection Agency, High Court, Mr Justice Ó Caoimh, 9/7/2004 [FL9679]

FAMILY

Judicial separation, trusts
Property adjustment order – proper provision – trusts – discretionary trust – whether court of trial can have regard to asset subject of discretionary trust when considering proper provision – statutory interpretation – words and phrases – 'settlement' – whether word to be given liberal and wide meaning – whether nuptial element present – whether 'post-nuptial settlement' – Family Law Act, 1995, sections 9 and 40
Section 9(1)(c) of the Family Law Act, 1995 provides that: 'On granting a decree of judicial separation, the court may make an order providing for the variation for the benefit of either of the spouses and [/or] of any dependant … of any ante-nuptial or post-nuptial settlement'. The applicant applied for an order of judicial separation and ancillary relief, including property adjustment orders, specifically in respect of land known as the Barne estate, which was the subject of a discretionary trust. During the course of that hearing, the trial judge directed that the issue as to whether the Barne estate could be considered when determining what proper provision should be made for each spouse under the provisions of the 1995 act be determined. Accordingly, the applicant issued a notice of motion seeking an order amending the summons to include a claim pursuant to section 9(1)(c) of the 1995 act varying the terms of the trust, arguing that it was a post-nuptial settlement made by the respondent. It was accepted by all parties that the notice party had full discretion to nominate persons to be beneficiaries for the purposes of the trust. It was accepted that the trust settlement was legitimately entered into and that, accordingly, the provisions of section 35 of the Family Law Act, 1995 did not apply.

McKechnie J ruled that the instrument of trust was a settlement within section 9(1)(c) of the 1995 act and directed that the trustees thereof remain as notice parties to the action, holding that:

- On or after the granting of a decree of juridical separation, the court had wide ranging and extensive statutory powers in order to achieve or attain the result which by statute it had to endeavour to so achieve
- Where the term 'settlement' is used in family legislation, it had a different meaning, derived from a broad and purposeful approach founded upon the aims and objectives of family legislation, than its use in a trust or tax law context
- An arrangement such as the trust under consideration could still be a settlement even if the interest of the claimant was not absolute but only contingent
- Once arrangements such as the trust under consideration conferred a benefit on the spouses or either of them in their capacity as husband or wife and was provided for, with and by reference to their marriage status, then it should be treated as a settlement within the statutory provisions pertaining to family law.

FJW T-M v CNRT-M and by court order Trustcorp Services Ltd, High Court, Mr Justice McKechnie, 22/6/2004 [FL9714] G

Eurlegal

News from the EU and International Affairs Committee

Edited by TP Kennedy, director of education, Law Society of Ireland

Recent developments in European law

EMPLOYMENT LAW

Working time

Joined cases C-397/01 to C-401/01, Bernhard Pfeiffer and Others v Deutsches Rotes Kreuz, Kreisverbank Waldshut eV, 5 October 2004. The applicants are emergency workers employed by the German Red Cross. It operates a land-based rescue service using ambulances and emergency medical vehicles. A collective agreement provided that the employees' average weekly working time extended from 38.5 hours to 49 hours. Part of this working time was 'duty time'. During these periods, the emergency workers had to make themselves available to their employer at the place of employment and remain continuously attentive to be able to act immediately should the need arise. The applicants commenced proceedings in the German courts arguing that their average working time should not exceed the 48-hour limit laid down in the Working time directive (directive 93/104/EC). The matter was referred to the ECJ. It held that the directive applied to the activities of emergency workers such as these. None of the exceptions in the directive were relevant. The cases did not involve services essential for the protection of public health, safety and order in case of exceptional gravity and scale that by their nature do not lend themselves to planning as regards working time. Any extension of the 48-hour maximum weekly working time requires each worker individually to give his consent, expressly and freely. It is not sufficient for the employment contract to refer to a collective agreement permitting such an extension. In calculating the period of working time, periods of duty time must be taken into account.

FREE MOVEMENT OF PERSONS

Case C-209-03, The Queen v London Borough of Ealing and Secretary of State for Education, ex parte Dany Bidar, opinion of Advocate General Geelhoed, 11 November 2004. In the UK, students received a student loan from the state to assist them with their living costs. The loan is offered at a rate linked to inflation and students begin to pay back the loan only once they start earning above a certain amount. A national of a member state is entitled to receive this loan if he is 'settled' in the UK and has been resident there for three years before commencing his course. In order to be 'settled', a person has to have lived in the UK for four years for a purpose other than that of receiving full-time education. Bidar is a French national who moved to the UK in August 1998 and completed his final three years of secondary education in London. In 2001, he enrolled on a course in University College London and applied to the London Borough of Ealing for funding. He was granted assistance with tuition fees but refused a maintenance loan on the basis that he was not 'settled' in the UK. He challenged this decision, arguing that the residence requirement amounted to discrimination on grounds of nationality. Advocate General Geelhoed noted that assistance with maintenance costs had been held in previous cases to fall outside the substantive scope of the EC treaty. However, the Treaty of Maastricht contained provisions bringing education within the scope of community action. This indicates that the subject of assistance with maintenance costs could now come within the scope of the treaty. The advocate general felt that in the light of the introduction of EU citizenship and the ECJ's case law in this area, assistance with maintenance costs falls within the scope of community law. The advocate general examined the UK eligibility criteria to determine whether they were objectively justifiable and independent of nationality. He observed that were eligibility conditions more cumbersome for EU citizens resident in the host member state than for nationals, this would constitute prima facie indirect discrimination on grounds of nationality, contrary to the treaty. Such discrimination may be valid if it were justified by and proportionate to a legitimate aim. He conceded that member states had a legitimate interest in preventing abuse of student support schemes and in preventing 'benefit tourism'. However, the manner in which this interest is ensured should not undermine the fundamental rights of EU citizens. Member states may impose conditions that ensure that the applicant has a real link with the national education system and society, but these conditions must be appropriate and not go beyond what is necessary for achieving that aim. In previous cases, it had been accepted that a residence requirement is an appropriate way of ascertaining whether this connection exists. If such a requirement excludes a person who can demonstrate a genuine link with the national education system from the enjoyment of maintenance assistance, the result would be disproportionate. Thus, where a person has followed his secondary education in a member state that is more adapted to preparing him for entry into a third-level institution in that member state than elsewhere, his link with the educational system of that state is evident. The advocate general accepted that this decision was a new and unforeseen development in community law of which the UK government would not have been aware at the time of drafting its legislation. He also noted the financial implications of a judgment in favour of the applicant. Therefore, he suggested that it would be justified to limit the temporal effect of a judgment to legal relationships established from the date of judgment, except where legal proceedings had been initiated before that date.

FREEDOM TO PROVIDE SERVICES

Case C-36/02, Omega Spielhallen-und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn, 14 October 2004. Omega is a German company that operates a centre for mock warfare using laser gun targeting devices. Omega used a form of the game developed and marketed by a company established in the United Kingdom and had a franchising agreement

with that company. In 1994, the Bonn police prohibited Omega from allowing at its 'laserdrome' games that involved firing at human targets (games which involved playing at killing people). The prohibition was introduced for public policy reasons. Acts of simulated homicide were seen as trivialising violence and thus being contrary to fundamental values prevalent in public opinion. Omega challenged the prohibition before the German courts and the matter was referred to the ECJ. The ECJ was asked to consider whether the prohibition was compatible with the fundamental freedoms guaranteed by the EC treaty, such as the freedom to provide services and the free movement of goods. It had to consider whether the restriction of fundamental freedoms had to be based on a conception of law common to all the member states. The ECJ held that the freedom to provide services had been restricted. Among the reasons justifying a derogation from this fundamental freedom is that of public policy. Public policy can only be invoked if there is a genuine and sufficiently serious threat to a fundamental interest of society. Member states cannot determine public policy unilaterally but they have a discretion as to the specific circumstances in which recourse to the concept of public policy is admissible. The community legal order seeks to ensure respect for human dignity as a general principle of law. Protection of such a fundamental right is a legitimate interest that is in principle capable of justifying a restriction on the freedom to provide services. It is not indispensable for a national measure to correspond to a conception shared by all member states as regards the method of protecting the fundamental right or legitimate interest in question. This prohibition corresponds to the protection of human dignity guaranteed by the German constitution and concerns only laser games, the object of which is to fire on human targets. Thus, the prohibition had not gone beyond what is necessary to attain the objective pursued by the German authorities and could not be regarded as a measure that unjustifiably undermines the freedom to provide services.

INTELLECTUAL PROPERTY

Cases T-396/02 and T-402/02, August Storck KG v Office for Harmonisation in the Internal Market (OHIM), 10 November 2004. In 1998, the applicant applied to OHIM for registration of two EC trademarks relating to the Werther's Original sweet. The first concerned a three-dimensional shape representing a light brown coloured sweet. The second concerned the representation in perspective of a twisted wrapper shape. The OHIM examiner rejected those applications on the ground that the marks applied for were devoid of distinctive character and had not acquired such character through use. Storck brought two actions before the CFI seeking to have these decisions annulled. The three dimensional shape is not significantly different from certain basic shapes for sweets. This mark does not therefore enable the consumer to distinguish immediately and with certainty the applicant's sweets from those of a different commercial origin. The twisted wrapper shape was not sufficiently removed from those of basic sweet wrappers and not likely to be remembered by consumers as indicators of commercial origin. In addition, Storck has produced no evidence of use of the trademarks as applied for in advertising or sales campaigns. OHIM surveys showed that awareness of the sweet in question was established not on the basis of its shape or wrapper but on the basis of its name. The CFI held that the marks had been rightly refused registration.

JURISDICTION

King v Lewis and Others, English Court of Appeal, 19 October 2004. The case concerned two defamatory statements that appeared on websites stored in California and were downloaded in England. The websites gave a detailed account of complaints made by the defendants in proceedings issued in New York. In these complaints, it was alleged that the claimant had engaged in a campaign of bribery, lies and death threats to convince them not to enter into an agreement. The parties accepted that the internet text was published at the place where it was downloaded. Thus, the claimant may have been libelled in England. The Court of Appeal had to decide which was the appropriate forum to hear the action – England or California. In its judgment, the Court of Appeal derived four points of guidance as to the appropriate factors for considering in deciding forum conveniens from earlier cases. First, there is an initial presumption that the natural or appropriate forum for trial would be the courts of the place where the tort was committed. In a defamation case where leave to serve on defendants out of the jurisdiction had been obtained on the basis of publication there, this would be England. The more tenuous the claimant's connection with England and the more substantial any publication abroad, the weaker that connection becomes. The court held that each publication constitutes a separate tort. This means that in a case of libel on the internet, the publisher is open to multiple actions in different jurisdictions. The place where the tort was committed could cease to be a potential limiting factor. The court said that it must bear in mind that the internet publisher's choice of such a ubiquitous medium suggested a robust approach to the question of forum. In an internet case, the court's discretion would tend to be more open-textured than otherwise. That was the means by which the court could give effect to the publisher's choice of a global medium. However, the court emphasised that each case would depend on its own circumstances. G

PARCHMENT CEREMONIES 2004

Newly-qualified solicitors at the presentation of their parchments on 12 February 2004

Brian Archer, Charles David Barry, Martina Bohan, Kevin Donal Brannigan, Norene Browne, Jim Campbell, Dawn Carney, Cathy Carrigan, Erin M Cregan, Mark Cronin, John Gerard Cullen, Eiteain Cunningham, Kieran Doran, Fiona Doyle, Karen Dunleavy, James Farrell, Joseph Patrick Farrell, Brendan Gill, Michael C Heaney, Fiona Kelly, Brendan Looney, Peig Lynch, Helen Maher, Erica C Mahon, Michelle Malone, Cornelius Joseph McCarthy, Joseph McGee, Aaron Oliver McKenna, Sharon McKenna Murphy, Juliana Mulin, Robert F Meehan, Michael Nearey, Enda Nolan, Gary O'Flynn, Cahir O'Higgins, Ellen O'Mahony, Muireann O'Neill, Helen O'Sullivan, Kieran Quigley, Michael Quinn, Barry J Reidy, Brian Robinson, Damien Rudden, Michael Stack, James St John Blake

Newly-qualified solicitors at the presentation of their parchments on 26 February 2004

Audrey Barrett, Marian Becker, Peter Benson, Caroline Browne, Lorna Cahill, Elaine Ann Coghill, Mary T Corcoran, Lorraine Davenport, Jacqueline Doherty, Elaine Dunne, James Farrell, Christine Gaynor, Caroline Gore-Grimes, Claudine Hanratty, Eileen Hayes, Catherine Healy, Sonya Heney, Colm F Hickey, Susan Higgins, Deirdre Maher, Freda Mahon, Niamh Martin, Fidelma McManus, Antoinette Mellon, Catherine Murphy, James Martin Noonan, Edward J O'Brien, Susan O'Brien, Patrick O'Donoghue, Padraic O'hUiginn, Seamus O'Leary, Gayle Patton, Michael Power, Robert Purcell, Marian Pyne, Jeremy Ring, Paul Smyth, Grainne Tuohy, Christine Vial, Jean Wilkinson

Newly-qualified solicitors at the presentation of their parchments on 11 March 2004

Fidelma Barry, Violet Behan, Bryanna Buckley, Ciara Byrne, Hilary Cahalan, Deirdre Carter Roche, Lisa Cawley, Ronan Cleary, Shane Crossan, Grainne Dolan, Emma Flynn, Daireann Gibson, Grace Gleeson, Sarah Gormley, Jason Harte, Denis Healy, Kenneth Hegarty, David Hickey, Emma Keavney, Olivia Lawlor, Eileen Lee, Neil MacDermot, Aine Mathews, Peter McKeever, Delia McMahon, Kevin McNamara, Pauline McNamara, Grainne McQuaid, Anna Molony, Caroline O'Boyle, Emer O'Callaghan, Eadaoin O'Riordan, Julie O'Sullivan, Aoife Pettitt, Elizabeth Roche, Lorraine Smyth, Shauna Sugrue, Andrew Sweeney, Patrick Sweeney, Robert Sweeney, Katie Twomey, Christian Victory

Newly-qualified solicitors at the presentation of their parchments on 15 July 2004

John Pinkerton (*president, Law Society of Northern Ireland*), Nessa Barry, Fiona Brassil, Peter Byrne, Edon Byrnes, Natasha Canniffe, Clare Colleran, Gerard Connolly, Therese Conway, Julie-Ann Corrigan, Helen Coughlan, Jennifer Coyne, Alison Curtin, Jennifer Dempsey, Joanne Dickson, Kevin Doherty, Hugh Donavan, Georgina Drum, Karen Dwyer, Patrick English, Aidan Fahy, Ronan Feehily, Fiona Fox, Carole Ann Gallaghar, John Geary, Catherine Gilmartin, John Paul Gilmartin, Majella Graham, Audrey Hannon, Shane Hogan, Emma Kearney, Sinead Keaveney, Patricia Kelly, Peter Kelly, Emma Laffan, Elaine Larke, Elizabeth Lorna Larkin, Richard Leonard, Eimear Loughnane, Sinead Lynch, Keith McConnell, Susan McLoughlin, John McRedmond, Paul Moloney, Philip Murphy, Conor Myles, Michelle Nolan, Gerard O'Connell, Thomas O'Dwyer, Rory O'Keeffe, Gillian O'Shaughnessy, Ita O'Sullivan, Julie O'Sullivan, Margaret O'Sullivan, Barry Reynolds, Emma Richmond, Lorraine Rowland, David Ryan, Emma Stephenson, Alan Stewart, Audrey Ward, Fergus Wheeler, Jennifer Wilson

Newly-qualified solicitors at the presentation of their parchments on 2 September 2004

Alan Boland, Peter Bredin, Eimear Burke, David Byrne, Lori-Ann Campbell, Eamonn Carey, Mary Claire Coakley, Siobhan Coen, Mary Coffey, Conor Connelly, Martina Connolly, Fintan Connolly, Michael Considine, Kieran Conway, Rody Corrigan, Susan Cosgrove, Melissa Cotterell, Niamh Counihan, Patricia Cranny, Kenneth Cunningham, Fiona D'Arcy, Catherine Daly, Dario Di Murro, Eibhlin Dowley, Gina Dowling, Deirdre Fagan, Colm Fahy, Grainne Finn, Declan Fitzpatrick, Michael Forde, Niall Gavigan, Laura Glennon, Brendan Griffith, David Kavanagh, Rachael Keane, Suzanne Kearney, Brendan Kelly, Eamonn Kelly, Fiona Kilrane, Siobhan Lane, Jennifer Liddy, Anne Lyne, Gavan Mackay, Jennifer Malone, Aisling Maloney, Patrick Martin, Diarmuid Mawe, Ceara McDonagh Lloyd, Muireann McEnery, Dermot McKeon, Niall McPartland, Vincent Molony, Rachael Murphy, Barry Murray, Aileen Murray, Gregory Noone, Teresa O'Brien, Patrick O'Connell, Cormac O'Regan, Audrey O'Reilly, John O'Riordan, Catriona O'Rourke, Joseph Power, Majella Raftery, Angelyn Rowan, Ethna Ryan, Annalisa Ryan, David Scott, Karl Sherlock, Ashling Walsh, John Woodcock

Newly-qualified solicitors at the presentation of their parchments on 23 September 2004

Sarah Armstrong, Desmond Barry, Julie Brennan, Stephen Burke, Raymond Clarke, Martin Colman, Deirdre Cummins, Caoimhe Daly, John Donald, Jennifer Drury-Byrne, Jonathan Dunne, Mark Fry, Erik Gannon, Catherine Ghent, Richard Grey, Grainne Hanley, Damien Harney, David Hasson, Mark Healy, Peter Keatings, Elaine Larke, Daniel Lawlor, Mary Lee, Edel McCool, Jennifer Mellerick, Barbara Moore, Gareth O'Brien, Darina O'Connor, Sarah O'Connor, Niamh Pollack, Judith Riordan, Ellen Rooney, Aideen Ryan, Aoife Salmon, Garret Searson, James Thompson, Sean Wallace, Tara Walsh, Eileen Whelan, Rachel Young

Newly-qualified solicitors at the presentation of their parchments on 5 November 2004

James Bourke, Daniel Byrne, Laurence Cleary, Lisa Coghlan, Patrick Collins, Rosalind Commins, Jonathan Cullen, Kathryn Deignan, Noel Devins, John Donald, Daire Eagney, Elizabeth Keys Farrell, Claire Foley, Tracey Gilvarry, Maureen Gleeson, Joseph Healy, Lisa Marie Hegarty, Gail Heverin, Brendan Hoey, Grainne Hynes, Gerard Kelly, Paul Lamon, Emma Lovegrove, Michael Lovett, Noel McArdle, Cormac McCarthy, Blanaid McCluskey, Aisling McKeown, Brian McMahon, Eamonn Moloney, Killian Morris, Lee Murphy, Barry Murray, Claire O'Callaghan, Olwen O'Callahan, Donncha O'Connor, Mark O'Donnell, Verona O'Donovan, David O'Farrell, Thomas O'Maileoin, Bridget O'Neill, Colin O'Neill, Fiona O'Sullivan, Mary O'Sullivan, Tomas Rosengrave, Grainne Ryan, Mary Sheehan, Andrew Tarrant, Deirdre Tuohy, Mark Walsh, Richard Colin Wester

Diplomas in legal French and German

Pictured with the recipients of the *Diploma in legal French* in November is Alan Dukes, chef du comité, Alliance Française

Ursula Kreher of the Goethe Institute with the recipients of the *Diploma in legal German*

How about abolishing income tax for solicitors?
Law Society director general Ken Murphy, solicitor and finance minister Brian Cowen, society president Owen Binchy and immediate past-president Gerard Griffin at a recent dinner in Blackhall Place to honour the newly-appointed minister

Yes indeedy
Pictured at the recent CPD seminar on the drafting of deeds are *(from left)* the Law Society's Barbara Joyce, Miss Justice Mary Laffoy, and Brian Gallagher of Gallagher Shatter, Solicitors

Distinguished front row retires

Between the three of them, they have 22 rugby international caps for Ireland. In addition, all three have served an annual term as president of the Law Society.

Laurence K Shields, Tony Ensor and Ward McEllin have now retired from the Council after no less than 67 years, collectively, as Council members.

It was a special and rather emotional few moments at the end of the October Council meeting when immediate past-president Gerard Griffin paid a warm tribute to each of them and they, in turn, said their farewells. Each had given unstintingly of his time and talent over many years, working tirelessly and effectively in the service of the profession and the public.

In addition to being president, each over the years had chaired the society's most senior committees. They will be missed.

In relation to the 22 rugby international caps they have between them – of course, neither Ward nor Laurence ever played for Ireland!

The three retiring former presidents, pictured in 'crouch and hold' position: (*from left*) Tony Ensor, Ward McEllin and Laurence K Shields

Where the heart is
Gerard Griffin, outgoing president of the Law Society, and Patrick Dorgan, outgoing chairman of the society's Conveyancing Committee, launching the committee's new client-care leaflet, *Moving home*, last month. A sample of the leaflet is enclosed with this issue of the *Gazette*

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 10 December 2004)

Regd owner: Elizabeth and Mary J Donohoe, Killalis, Shercock, Co Cavan; folio: 23783; lands: Killaliss; Co Cavan
Regd owner: Francis Flood, Carraweelis, Cavan, Co Cavan; folio: 1949; lands: Corraweelis; area: 3.7433 hectares; Co Cavan
Regd owner: Mary Kangley, Rakeevan, Bailieboro, Co Cavan; folio: 2463; lands: Rakeevan; area: 4.1581 hectares; Co Cavan
Regd owner: Patrick Bleach; folio: 9078; lands: townland of Caherhurley and barony of Tulla Upper; Co Clare
Regd owner: Alan Cummins; folio: 26326F; lands: townland of Lifford and barony of Islands; Co Clare
Regd owner: John Joseph Dooley; folio: 296; lands: townland of Craggaknock West and barony of Ibricken; area: 13 acres, 3 roods, 23 perches; Co Clare
Regd owner: the county council of the county of Clare; folio: 19466; lands: townland of Drumline and barony of Bunratty Lower; area: 0.5058 hectares; Co Clare
Regd owner: Frederick Penny; folio: 11773F; lands: plots of ground being part of the townland of Britfieldstown in the barony of Kinalea and county of Cork; Co Cork
Regd owner: Seamus Rochford; folio: 34197F; lands: plots of ground known as 31 Mount Sion Road in the parish of St Nicholas and in the county borough of Cork; Co Cork
Regd owner: Helen Hayes; folio: 4558L; lands: plots of ground being part of the townland of Carrigaline West in the barony of Kerrycurrihy and county of Cork; Co Cork
Regd owner: Anthony Jordan; folio: 48659; lands: plots of ground being part of the townland of Ballymurphy in the barony of Kinalea and county of Cork; Co Cork
Regd owner: Robert Meara; folio: 13496; lands: plots of ground being part of the townland of Dromdrasdil in the barony of Carberry East (West Division) and county of Cork; Co Cork
Regd owner: James Nunan; folio: 39779; lands: plots of ground being part of the townland of Lisnacon in the barony of Dunhallow and county of Cork; Co Cork
Regd owner: Michael O'Brien; folio: 29544; lands: plots of ground being part of the townland of Kilmoney in the barony of Kerrycurrihy and county of Cork; Co Cork
Regd owner: Patrick Rea; folio: 7680; lands: plots of ground being part of the townland of Gortroe in the barony of Condons and Clangibbon and county of Cork; Co Cork
Regd owner: Rev James Joseph Roche, Rev Richard Joseph Ronayne, Rev Daniel Murphy; folio: 9188; lands: plots of ground being part of the townland of Garranenagappul in the barony of Muskerry West and county of Cork; Co Cork
Regd owner: John Byrne, Corlea, Killygordon, Co Donegal; folio: 17840; lands: Mullaghaneary; area: 5.6175; Co Donegal
Regd owner: Bridget McLaughlin, Meenacarn, Lettermacaward, Co Donegal; folio: 14524; lands: Meenacarn; area: 2.3699 hectares and 2.1144 hectares; Co Donegal
Regd owner: Colm and Ann Butler; folio: DN13809L; lands: property situate to the east of Appollo Walk in the parish of Coolock, district of Coolock West; Co Dublin
Regd owner: Clare Feeney; folio: DN4893F; lands: a plot of ground shown as 113 Ardilaun, situate in the townland of Carrickhill and barony of Coolock, shown as plan 451; Co Dublin
Regd owner: Stephen and Grainne Kennedy; folio: DN34893L; lands: property situate to the east of Appollo Walk in the parish of Coolock, district of Coolock West; Co Dublin
Regd owner: Julie Kennedy; folio: DN97235L; lands: property being an apartment known as no 30 on the second floor of Block 2, Heather Court, Stepaside Park, being part of the townland of Kilgobbin and barony of Rathdown; Co Dublin
Regd owner: Joseph and Yvonne Waldron; folio: 32467F; lands: 40 Derry Park, Crumlin, Dublin 12; Co Dublin
Regd owner: Noeleen Cahill; folio: DN80503L; lands: property situate in the townland of Templeogue and barony of Uppercross, known as 10 Cypress Grove South; Co Dublin
Regd owner: James Joseph (Shane) Redmond and Mary Redmond; folio: DN27800L; lands: property situate in the townland of Burrow and barony of Coolock; Co Dublin
Regd owner: Fiona Sammon; folio: DN92109F; lands: property situate in the town and parish of Clondalkin; Co Dublin
Regd owner: Ann Wogan; folio: DN34190F; lands: property situate in the townland of Johnstown and barony of Uppercross; Co Dublin
Regd owner: Michael Hanlon; folio: 42151; lands: townland of Belview or Lissareaghaun and barony of Longford; area: 54 acres, 3 roods, 14 perches; Co Galway
Regd owner: Patrick O'Halloran; folio: 50139; lands: townland of Porridgerown East and barony of Moycullen; area: (1) 16 acres, 2 roods, 21 perches; (2) 42 acres, 2 roods, 15 perches (six undivided 59th parts); Co Galway
Regd owner: Shawn McMahon, c/o St Joseph's National School, Kinvara, Co Galway; folio: 24938F; lands: townland of Kinvara and barony of Kiltartan; area: 0.5590 hectares; Co Galway
Regd owner: Mary O'Reilly (deceased); folio: 12073; lands: townland (1) Woodford, (2) Bolag and barony of (1) and (2) Leitrim; area: (1) 1.5880 hectares; Co Galway
Regd owner: Emir Shanahan; folio: 3388F; lands: townland of Tooreenealagh and barony of Iveragh; Co Kerry
Regd owner: Owen and Mary J Walsh; folio: 1475F; lands: townland of Greenagh and barony of Magunihy; Co Kerry
Regd owner: Mary Curley; folio: 7147F; lands: townlands of Barrettstown and Lattensbog and baronies of Connell; Co Kildare
Regd owner: Patricia Mellott; folio: 38299F; lands: townland of Newtown and barony of North Salt; Co Kildare
Regd owner: Patrick and Carmel O'Shea; folio: 3380F; lands: townland of Coolane and barony of Kilkea and Moone; Co Kildare
Regd owner: Myrtle and Arthur Stanley; folio: 17306; lands: Srah and barony of Clarmallagh; Co Laois
Regd owner: William and Mary Bolton; folio: 8344F; lands: Kilbride, Portarlington, Co Laois; Co Laois
Regd owner: John Ramsbottom (deceased); folio: 1538; lands: Ballinclough and barony of Cullenagh; Co Laois
Regd owner: Thomas Hicker; folio: 5039; lands: townland of Cahercorney and barony of Smallcounty; Co Limerick
Regd owner: James O'Brien; folio: 1382F; lands: townland of Caherass and barony of Coshma; Co Limerick
Regd owner: Jeremiah and Maureen O'Shea; folio: 4916; lands: townland of Stookeens and barony of Coshlea; Co Limerick
Regd owner: Alice Brady (deceased), Fardrumman, Ballinamuck, Co Longford; folio: 1171F; lands: Fardrumman; area: 0.0202 hectares; Co Longford
Regd owner: Mark McQuillan, 7 Platten Road, Drogheda, Co Louth; folio: 3812L; lands: no 7 Platten Road; Co Louth
Regd owner: Mary Winifred Magee, 64 Muirhevna, Dundalk Road, Dundalk, Co Louth; folio: 3417F; lands: Marshes Upper; Co Louth
Regd owner: the county council of the county of Mayo; folio: 18268F; lands: townland of Belmullet and barony of Erris; Co Mayo
Regd owner: Gerry and Maureen Callaghan, Boyerstown, Navan, Co Meath; folio: 19065F; lands: Haggard Street; area: 0.0380 hectares; Co Meath
Regd owner: Michael and Breda Conneely, Curraghdoo, Summerhill, Co Meath; folio: 23950F; lands: Curaghdoo; Co Meath
Regd owner: Bridget Crolly, Rodanstown, Kilcock, Co Meath; folio: 26015; lands: Rodanstown; area: 0.2124 hectares; Co Meath
Regd owner: Kathleen Lynch, Fordrath, Athboy, Co Meath; folio: 22758; lands: Fordrath; Co Meath
Regd owner: Claire McCormack and Margaret Gallagher, 15 Flower Hill, Navan, Co Meath; folio: 4603F; lands: Abbeyland; Co Meath

Regd owner: Noel and Patricia Browne: folio: 6295F; lands: Clonmore and barony of Geashill; Co Offaly

Regd owner: Joan and Brendan O'Brien; folio: 12522F; lands: townland of Beagh (Brabazon) and barony of Moycarn; area: 0.186 hectares; Co Roscommon

Regd owner: Thomas Gerard Shanagher; folio: 16633; lands: townland of (1) Corbally, (2) Moheedian and barony of (1) and (2) Frenchpark; area: (1) 12.9170 hectares and (2) 0.3439 hectares; Co Roscommon

Regd owner: Bernard A Boyle (deceased); folio: 22320; lands: townland of Tonaphubble and barony of Carbury; area: 1 rood, 3 perches; Co Sligo

Regd owner: Robert Alexander; folio: 15773F; lands: townland of Lacka and barony of Lower Ormond; Co Tipperary

Regd owner: Francis John and Helen Philomena Wyatt; folio: 22263; lands: townland of Jossestown and barony of Middlethird; Co Tipperary

Regd owner: Thomas Keating; folio: (1) 1845, (2) 1846, (3) 1854, (4) 3254, and (5) 6231; lands: townland of (1), (2), (3) and (5) Coxtown East, (4) Dunmore and barony of (1), (2), (3), (4) and (5) Gaultiere; area: (1) 1.3884 hectares; (2) 3 acres, 10 perches; (3) 3 acres, 1 rood, 11 perches; (4) 6 acres, 2 roods, 15 perches; (5) 13 acres, 18 perches; Co Waterford

Regd owner: Patrick Nugent; folio: 1543; lands: plots of ground being part of the townland of Kilmacomma in the barony of Glenhiry and county of Waterford; Co Waterford

Regd owner: John Hall (deceased); folio: 3771; lands: Barnadown Lower and barony of Gorey; Co Wexford

Regd owner: Fiach McDonagh; folio: 21706; lands: Norrismount and barony of Scarawalsh; Co Wexford

Regd owner: Kevin McPhillips; folio: 28216F; lands: Kilhile and barony of Shelburne; Co Wexford

Regd owner: Bridget and Arthur O'Leary; folio: 4779 and 11890; lands: Clonee Upper and barony of Scarawalsh; Co Wexford

Regd owner: Matthew George and Laura Power; folio: 20114; lands: Haggard and Blackhall and barony of Bargy; Co Wexford

Regd owner: Oliver Plunkett Behan; folio: 5139; lands: townlands of Cronroe and Milltown North and baronies of Newcastle; Co Wicklow

Regd owner: Michael Joseph Healy of Toor, Hollywood, Co Wicklow; folio: 11921; lands: land situate in the townland of Toor in the barony of Talbotstown Lower in the county of Wicklow; Co Wicklow

Regd owner: Joseph Healy (otherwise Joe), otherwise Michael Joseph; folio: 7317; lands: townland of Granabeg Upper and barony of Talbotstown Lower; Co Wicklow

Regd owner: Johanna Kinsella; folio: 9790; lands: townland of Rathdown Lower and barony of Rathdown; Co Wicklow

Regd owner: Brendan and Margaret O'Toole; folio: 9175; lands: townland of Kilcoole and barony of Newcastle; Co Wicklow

WILLS

Byrne, Joseph P (deceased), late of 82 St Declan's Road, Marino, Dublin 3. Would any person having knowledge of a will made by the above named deceased, who died on 29 October 1996, please contact Gaffney Halligan & Co, Solicitors, 413 Howth Road, Raheny, Dublin 5

Craine, James (deceased), late of 27 Croghan Heights, Emoclew, Arklow, Co Wicklow. Would any person having knowledge of a will executed by the above named deceased, who is presumed to have died on 7 May 1997, please contact WR Joyce & Company, Solicitors, 18 Main Street, Arklow, Co Wicklow

Hickey, James (widower) (deceased), late of Cloughaleigh, Golden, Co Tipperary. Would any person having knowledge of a will made by the above named deceased, who died on 10 October 2004 or thereabouts at his residence at Cloughaleigh, Golden, Co Tipperary and formerly having addresses as Athassal Abbey, Golden, Co Tipperary and Rathclogheen, Golden, Co Tipperary respectively, please contact English Leahy Donovan, Solicitors, 8 St Michael Street, Tipperary town

Meehan, Michael (deceased), late of 77 Casino Road, Marino, Dublin 3. Would any person having knowledge of a will made by the above named deceased, who died on 11 April 2004, please contact Dundon Callanan, Solicitors, 17 The Crescent, Limerick; tel: 061 411 022, fax: 061 411 027

Tarpey, Daniel (deceased), late of Carrowkeel, Ballyhaunis, Co Mayo. Would any person having knowledge of a will executed by the above named deceased, who died on 15 October 2004, please contact John F Mitchell & Co, Solicitors, Main Street, Headford, Co Galway; tel: 093 36622

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

England and Wales solicitors will provide comprehensive advice and undertake contentious matters. Offices in London, Birmingham, Cambridge and Cardiff. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London 8H; tel: 0044 2088 17777, fax: 0044 2088 896395

London solicitors will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU; DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 816723, e-mail: arobbins@ parfitts.co.uk

Wanted: seven-day on licence. Details to Kevin P Kilraine & Co, Solicitors, Mohill, Co Leitrim; tel: 071 963 1170, fax: 071 963 1558

DISTRICT COURT PRACTITIONERS
Road traffic offences (in particular)

Are you unsure whether your client was summoned to appear in the correct District Court jurisdiction?
I can supply definitive proof of District Court boundaries, using the digitally processed cartographic data used in my District Court map, but with far greater resolution (to within a few metres).
Please contact Des Fitzgerald at tel: 091 503 823, fax: 091 592 614; DX 4543 Galway, Mary St for details

Need typing in a hurry? Experienced typist available to work from own home – dictaphone typing, reports, computation, thesis, reports, and so on, welcome. Regular or once-off assignments accepted. Confidential service with quick turnover at competitive rates. Please contact 087 631 9469

Galway agent – qualified solicitor available to act in civil and criminal matters in all courts throughout Galway city and county. Also town agent service for issuing and service of court documents. Contact James Seymour of Seymour & Co, 97 Manor Court, Knocknacarra, Galway; tel: 086 815 2932, fax: 091 510 897

TITLE DEEDS

In the estate of Andrew E O'Reilly (deceased) and in the estate of Andrew H O'Reilly (deceased). Property comprising a site at Roundwood in the parish of Derrylossory, barony of Ballincor North in the county of Wicklow. Anybody with any information regarding the whereabouts of the title documents relating to the above property purchased by Andrew E O'Reilly on or about 18 April 1975, please contact O'Regan Little, Solicitors, 179 Church Street, Dublin 7 (reference PL/BN/McD024)

In the matter of the Landlord and Tenant (Ground Rent) Acts, 1967-1994: an application by Eoghain Kelly, David Kelly, John Kelly, Aoibhlinn Kelly, Barry Kelly and Patricia Kelly: notice of intention to acquire fee simple (section 4)
Take notice that any person having any interest in the freehold estate of the fol-

lowing property: all that and those the dwellinghouse and shop situate at Main Street in the town of Castlebar with the appurtenant thereto belonging, which said premises were formerly held as a yearly tenant from one Mary Anne Gallagher at the yearly rent of thirty pounds (£30) and they are now held under the George Ellis estate at the yearly rent of thirty-seven pounds, ten shillings and zero pence (£37.10s.00d), situate in the barony of Carra and county of Mayo.

Take notice that Eoghain Kelly, David Kelly, John Kelly, Aoibhlinn Kelly, Barry Kelly and Patricia Kelly intend to submit an application to the county registrar for the county of Mayo for the acquisition of the freehold interest in the aforesaid property, and any party ascertaining that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days of the date of this notice.

In default of such notice being received, Eoghain Kelly, David Kelly, John Kelly, Aoibhlinn Kelly, Barry Kelly and Patricia Kelly intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Mayo for direction as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned premises are unknown or unascertained, which said application shall be heard on Monday 21 November at 11am at the Courthouse, Castlebar, in the county of Mayo, in court no 4 or the earliest opportunity thereafter.

Date: 10 December 2004
Signed: Thomas J Walsh (solicitor for the applicants), 1 Mill Lane, Main Street, Castlebar, Co Mayo

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 Alhdof Limited
Take notice that any person having an interest in the freehold estate of the following property: all that and those the factory premises situate at Brookfield Road, Kilmainham in the city of Dublin, being the premises held under a lease dated 1 August 1967 and made between Thomas O'Reilly of the one part and Terence Francis Saunders and James P Dawson of the other part for the term of 132 years from 1 November 1965 at a yearly rent of £50.

Take notice that Alhdof Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid 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, Alhdof Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
Date: 10 December 2004
Signed: McEvoy Partners (solicitors for the applicant), Canada House, 65-68 St Stephen's Green, Dublin 2

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by Mary O'Boy
Take notice that any person having an interest in the freehold estate in the following property: all that and those the premises known as number 75 Summerhill in the parish of Saint George and city of Dublin, being part of the premises comprised in and demised by the indenture of lease of 8 August 1878 between the Honourable Charles Spencer of the one part and John Thompson of the other part.

Take notice that Mary O'Boy intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the fee simple 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 property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Mary O'Boy, intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown or unascertained.
Date: 10 December 2004
Signed: Reddy Charleton & McKnight, 12 Fitzwilliam Place, Dublin 2

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by Patrick Morrissey Limited
Take notice that any person having an interest in the freehold estate of the property known as all that and those the premises known as 147 Upper Leeson Street in the city of Dublin, held under an indenture of lease dated 4 March 1899 and made between Agnes Augusta Chambers of the first part, the Reverend Charles John Ridgeway and Henry George Baily of the second part, Catherine Mary Baily of the third part and Thomas Saul of the fourth part for the residue of a term of 200 years from 14 December 1840 at a peppercorn rent and the covenants on the part of the lessee to be performed and conditions therein contained.

Take notice that Patrick Morrissey Limited has submitted an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Patrick Morrissey Limited intends to proceed with the application before the county registrar for the county of the city of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.
Date: 10 December 2004
Signed: Ross Hayes, Solicitors (solicitors for the applicant), 25 Mespil Road, Dublin 4

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 Fusano Properties Limited
Take notice that any person having an interest in the freehold estate of the following properties: all that and those the properties known as 32, 33 and 34 Queen Street and formerly known as numbers 32, 33, 33A, 34 and 34A Queen Street, situate in the parish of St Paul and city of Dublin, together with the yards, outbuildings and appurtenances forming part thereof, being the land originally demised by the lease dated 1 November 1821 made between William John Curtis of the one part and Thomas Gorman of the other part for the term of 999 years from 1 November 1821, subject to the yearly rent of £26.0s.0d thereby reserved and the covenants and conditions therein contained.

Take notice that Fusano Properties Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties are called upon to furnish evidence of title to the aforementioned properties to the below named within 21 days from this notice.

In default of 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 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 above properties are unknown or unascertained.
Date: 10 December 2004
Signed: Beauchamps Solicitors (solicitors for the applicant), Dollard House, Wellington Quay, Dublin 2

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by George Sothern relating to no 37 Dublin Street, Carlow
Any person having an interest in the freehold estate or any superior or intermediate interest in the property known as no 37 Dublin Street, Carlow, which is comprised in folio 1438L, Co Carlow and is held along with other property under lease dated 18 December 1852 at the yearly rent of £25.

Take notice that the applicant, George Sothern, intends to apply to the county registrar for the county of Carlow for the acquisition of the freehold interest and all intermediate interests in the above property. Any party

asserting that they hold an interest superior to the applicants in the said property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date hereof.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the nearest opportunity after the end of 21 days from the date of this notice and will apply to the said county registrar for the said county for such direction as may be appropriate on the basis that the person or persons beneficially entitled to such freehold interest or intermediate interest in said property is unknown or unascertained.

Date: 10 December 2004
Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin (reference: 00267.0019. NBC)

In the matter of the Landlord and Tenant (Ground Rents) Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by The Liffey Trust Limited

Take notice that any person having an interest in the next superior interest or freehold estate of the property known as 117-126 (both inclusive) Upper Sheriff Street in the city of Dublin, being a portion of the property held under indenture of lease dated 1 March 1867 between William Harte and Newton Williams of the first part, Edward Arthur Carolin of the second part, Charles Henry Carolin, George William Carolin, Amelia Ismena Carolin and Susanna Adeliza Carolin of the third part and Richard Martin of the fourth part for the term of 999 years.

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

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

Date: 10 December 2004

Signed: O'Donnell Sweeney (solicitors for the applicant), One Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the Landlord and Tenant Acts, 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978: an application by Mary Walsh
Take notice that any person having any interest in the freehold estate of the following property: premises consisting of a former ground-floor shop premises with stores and flat overhead, situated at Bridge Street in the village of Knocklong in the barony of Coshlea and county of Limerick, the site of which is shown outlined in red on the map lodged with the application hereafter referred to.

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

In default of any such notice being received, Mary Walsh 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 Limerick 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 said premises are unknown or unascertained.
Date: 10 December 2004
Signed: Kennedy Frewen O'Sullivan (solicitor for the applicant), St Michael Street, Tipperary Town

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Locum solicitor required from beginning of February for three to four months. General practice experience required. Please apply to Patricia Holohan & Co, Solicitors, 57 Flower Hill, Navan, Co Meath; e-mail: patriciaholohan@eircom.net

Locum solicitor required, general practice experience, from February to June/July 2005. Full time or part time. Excellent conditions. Please contact: Farrell McDonnell Sweeney & Co, Solicitors, Abbey Street, Roscommon; tel: 090 662 6102, fax: 090 662 5394, e-mail: marieconroy@eircom.net

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Solicitor required for conveyancing and probate. Please reply with CV to box no 102/04

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