Gazette LawSociety

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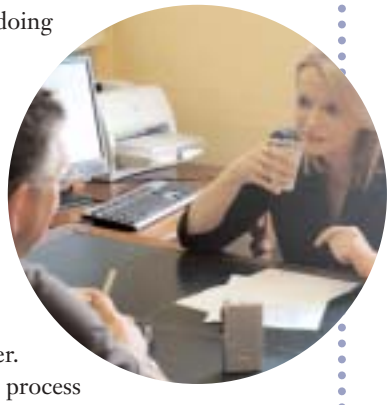

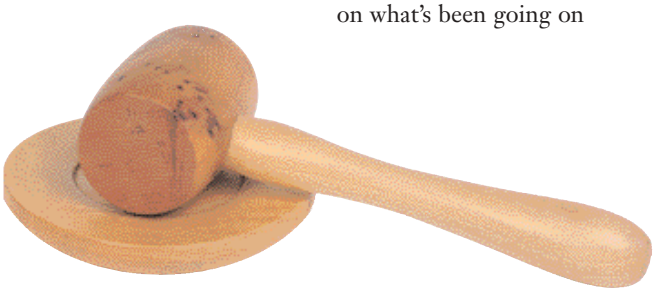

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Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.
E-mail: gazetteII@lawsociety.ie Law Society website: *www.lawsociety.ie*

Volume 99, number 6
Subscriptions: €57.15

NATIONWIDE
News from around the country

DUBLIN

The numbers get higher and higher

There are now almost 3,000 solicitors in the Dublin Solicitors' Bar Association, which is a record number, according to its president Orla Coyne. The DSBA says that its membership is currently 2,800 and believes that this recognition that the association is well regarded and plays a useful role for solicitors. In an unprecedented move, the Legal Aid Board has arranged for all of its solicitors to be members of the DSBA.

CPD on-line

The DSBA continues with its plans for on-line continuing professional development courses for members, at a venue and time to suit the individual solicitor. The initiative is a reaction to what president Orla Coyne has been hearing from her meetings with firms and the huge pressures on time that many solicitors working in offices have in trying to fulfil their CPD obligations.

'The fact that users will be able to pick and choose when, where and what they want to participate in, and from the comfort and convenience of their own office, is recognised by many to be hugely attractive', says Coyne. It is planned to inaugurate this project in the autumn and full details will be announced shortly.

Out and about

The DSBA recently met colleagues in the Tallaght area. 'We were grateful for the attendance of the president of the Law Society, Owen Binchy, and the director general, Ken Murphy, who briefed colleagues in relation to current issues affecting the profession', according to association secretary Kevin O'Higgins.

Leave a Tip
Director general Ken Murphy and president Owen Binchy pictured at the recent AGM of the Tipperary Solicitors' Bar Association in Thurles

Residential Tenancies Act

The *Residential Tenancies Act* could have the unintended consequence of applying to long leases of the type used in apartments, according to the DSBA. This was confirmed by senior counsel, and the drafting error in the legislation has been brought to the attention of the parliamentary draughtsman's office. The Private Residential Tenancies Board has given assurances that it would never be their intention that landlords register apartment-type leases, and solicitors can be assured that no consequences will flow from the non-registration. We are advised that amending legislation to close off what the government department regards as no more than a theoretical possibility will be introduced as soon as possible.

LEITRIM

Enough is enough

In a dramatic statement about facilities, District Court Judge Sean McBride, newly-appointed to Co Leitrim, has refused to sit in Mohill Courthouse and has transferred the lists to Ballinamore Courthouse.

'People would usually protest at having to travel. But there has been widespread support for the action, because of the appalling conditions that we had to work in at Mohill', noted Gabriel Toolan, secretary of the Leitrim Bar Association. The court had to function in an old bingo hall in Mohill. The library had now moved from the court building in Ballinamore and they were talking to the Courts Service about now improving the facilities in Ballinamore Courthouse.

'Judge McBride has made a good impression since coming to Leitrim, and his pragmatic approach to issues before him is welcomed', said Toolan. Judge McBride replaced Judge David Maughan, who has been assigned to Dublin.

WEXFORD

Speak up

The Courts Service is reaching out and trying to remedy the shortcomings in facilities for solicitors and other court users, according to the president of the Wexford Solicitors' Association Helen Doyle. The over-burdened Circuit Court has now been given extra sittings, which are reducing the congestion.

'We had a recent meeting in Enniscorthy with Courts Service representatives, and we made progress on facilities here in such matters as seating arrangements, basic comforts in court and court security', she said. It was important that the Courts Service, which is now charged with the administration of court buildings, was aware of problems at practitioner level around the country.

Hello there

Local solicitors' associations are organising get-togethers for solicitors who, in earlier times, would have already known each other socially.

'We had a "social day" on 18 June for solicitors and their partners and children in New Ross, which was attended by almost 100 people', noted Helen Doyle. The association felt that it now had a role to play in introducing solicitors to each other. 'Because of the numbers of solicitors and new practitioners and sheer time pressure, we do not get to meet each other as we should', she added. The barbecue talk was over sausages and wine, a winning combination in anyone's book. G

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

Society slams equity release schemes

The Law Society has hit out at equity release schemes targeted at the elderly and has singled out the Bank of Ireland (BoI) for criticism. The society is particularly annoyed at the BoI's *Life loan* equity release scheme.

According to Pat Dorgan, chair of the society's Conveyancing Committee: 'We have fundamental concerns about all these products, but we have particular difficulties with the Bank of Ireland one'. The BoI scheme allows its customers to borrow a lump sum based on the value of their property. The loan is paid after the borrower dies or moves out of the house.

The Law Society believes that the bank is imposing more rigorous conditions on lenders than similar equity release schemes in Britain. It has taken particular exception to the requirement that borrowers make a will and appoint executors. It is also worried about the requirement to name the executors to those wills.

Equity release schemes targeted at the elderly

'Apart from the basic principle that an executor has no legal status until the testator's death, this requirement involves the borrower in a waiver of confidentiality that seems quite unnecessary', says Dorgan. He added that the bank's requirement that named executors must agree to co-operate with the bank after the testator's death was 'draconian'.

'The Conveyancing Committee is aware of a number of cases where elderly people's twilight years were blighted by arguments between members of their family who had become aware of the provisions of a will', said Dorgan.

The society is so concerned that it has refused to allow certificates of title to be used in connection with the *Life loan* product. Dorgan added that the society had been lobbying the Bank of Ireland to change the scheme's conditions for two years but with little success.

Gazette editor plays the green card

Law Society Gazette editor Conal O'Boyle is to leave the award-winning magazine that he relaunched in 1997 to take up a new job as editor of the *Kildare Nationalist* newspaper.

'It's been a blast', said O'Boyle. 'The people who produce the *Gazette* are among the very best in the business. It's been a privilege to work with them, and the *Gazette* is the success it is largely because of their dedication and talent. If I miss anything, it will be the fun of working with Nuala, Garrett, Catherine, Valerie and Seano. You couldn't beat them with a big stick – and God knows I've tried.

'The good people of Kildare can look forward to hard-hitting investigations of outlandish ape antics and a revisionary attitude to history, particularly where the Duke of Wellington is concerned.

'I'm proud of what we achieved with the *Gazette*, and I'll be sorry to leave my friends and colleagues in Blackhall Place. I have no doubt that the new editor will lead the *Gazette* to even greater success. Oh yeah, and buy the *Kildare Nationalist*'.

O'Boyle: buy the *Kildare Nationalist*

Commenting on the move, Law Society director general Ken Murphy said: 'Conal's achievements with the *Gazette*, in particular its transformation from a journal that was colourless in every sense of the term into an award-winning, vibrant, highly-readable and relevant magazine that is on a par with the very best legal magazines to be found anywhere, have been remarkable. Both the society and the profession have benefited greatly from his nine years in the *Gazette* editor's chair.

'The eye-catching design and energy of the magazine showed Conal's understanding that it does not matter how erudite or valuable a legal article may be if no-one reads it. Getting the balance right between readability and relevance was always a challenge, but was usually achieved with aplomb. It was this that brought editors from law societies in neighbouring jurisdictions to be taught and in turn to copy the *Gazette*'s winning formula.

'Conal's personality and talents will be missed in the Law Society. We wish him and his wife Kathleen – who had her own valued career in the Law Society – every success and happiness in the future'.

Teaching opportunities in the Law School

The Law Society plans to run two separate professional practice courses in 2005, *writes TP Kennedy*. The first of these will begin on 26 September and run between 9.30am and 4pm. The second will begin in December and run until May 2006, with its teaching hours running from 4.15pm until 10pm. Due to the introduction of this second course, we are anxious to add to the valued pool of solicitors who are currently contributing to our courses.

We invite solicitors who have been qualified for two years or more to consider doing some teaching for the Law School. We also welcome applications from those with less than two years' practice experience but with specialist qualifications or experience. Educational training (including the use of IT and visual aids) and payment for teaching will be provided.

If you are interested in getting involved, please write to either myself or Geoffrey Shannon (Education Centre, Law Society of Ireland, Blackhall Place, Dublin 7) with a brief outline of your practice experience and any additional qualifications.

US judge bemoans 'decline in civility'

US Federal Court judge Patricia Gaughan has highlighted a 'general decline in civility among lawyers' in the United States and has suggested that some of the legal profession's PR problems might be self-inflicted. Gaughan was a guest of the Mayo Solicitors' Bar Association and made her comments at Castlebar courthouse on 14 June, *writes Kathy Burke*.

Gaughan cited a 1992 American Bar Association survey that found that while 79% of people viewed police favourably, the comparable figure for attorneys was 40%. Only stockbrokers and politicians rated lower. She said that by 2002, attorneys' rating had fallen to 19%. However, 58% of respondents were satisfied with their own attorney, she added.

Gaughan: can't we all just get along?

Gaughan said that the ABA research showed that US lawyers were regarded as arrogant, greedy and uncaring, with poor ethical standards, and that people found their TV advertising distasteful. But she observed that people go to lawyers at their worst moments in life, and they are angry when they perceive that 'murderers get off through a legal loophole', whereas lawyers would see it as safeguarding constitutional rights.

'Or, unfortunately, it could be the truth', she said. 'I'm embarrassed to tell you that we have a general decline in civility among lawyers. There's a win-at-all cost attitude'.

Malocco struck off

The president of the High Court made an order on 28 June striking the name of Elio Malocco off the roll of solicitors.

This followed a finding of the Disciplinary Tribunal in 2000, after a 13-day hearing, that Malocco had been guilty of misconduct.

He then took a judicial review challenge to the procedures of the tribunal, which was dismissed by the High Court in 2002. Malocco subsequently issued proceedings in the High Court, which he in turn appealed to the Supreme Court, but he failed to obtain an order preventing the Law Society applying to have him struck off.

Malocco had not held a practising certificate since 1991, when the High Court suspended it on the application of the Law Society. He was convicted in 1993 of six counts of dishonesty in relation to his practice as a solicitor and received a five-year sentence. He lost an appeal against conviction in 1996 and remained in custody until 1998.

ONE TO WATCH: NEW LEGISLATION

The *in camera* rule and section 40 of the *Civil Liability and Courts Act, 2004*

Section 40 was commenced on 31 March 2004 by SI 544/04. It remedies some of the problems with the *in camera* rule as they affect family law proceedings. Sub-section 2 lists 11 sections in ten enactments to which the section applies and, although it is not listed, the section also applies to the *Child Abduction and Enforcement of Custody Orders Act, 1991*. This is because that act is stated to be construed as one with the *Courts (Supplemental Provisions) Act, 1961*, section 45, which is included. Other acts that might have been expected to be listed are the *Guardianship of Infants Act, 1964* and the *Adoption Acts*.

Court reports

In relation to the listed enactments, nothing is to prevent a barrister, solicitor or person specified by ministerial regulations preparing a report of proceedings, or the publication of such a report, or the publication of a decision by the court in such proceedings, provided that information identifying a party or any child is withheld. A person qualified to report (as above) may attend proceedings, but the court may impose directions for attendance, and in special circumstances may give a reasoned direction to prevent access. No regulations have been made as yet to identify persons entitled to report.

The report must be prepared in accordance with rules of court. Rules have now been made under section 40 for the superior courts (SI 247/05, effective from 2 June 2005) and for the District Court (SI 256/05, effective from 3 June 2005). The rules are described below. Thus, access to family cases in the superior or district courts for reporting purposes has been possible since early June. Access in the Circuit Court must await rules of court.

Copies of orders to third parties

Sub-section 4 allows a party to give copies of orders in the proceedings to any person and subject to such conditions as the minister may prescribe by order. This is not a blanket permission. The people to whom copies of orders may be given must first be prescribed by ministerial regulations, and none have been made to date. It is difficult to work out a list of categories of people who should be entitled to receive orders, and this may be a reason for the delay.

Support person

Sub-section 5 permits a party to be accompanied by another person, subject to the approval of the court and any directions it may give. This enables an emotionally fragile party to bring a friend for support, and is a welcome development. Under new *Rules of the superior courts* and of the District Court (SI 247/05 and SI 256/05), procedures are laid down for the completion of a form by the accompanying person and its lodging either on the day (if agreed with the other party) or previously by motion on notice (if not agreed), at least seven days before the hearing. Similar rules for the Circuit Court are expected.

Complaints against professionals

Sub-section 6 deals with the problems arising from the *in camera* rule where it prevented any review of the actions of professional persons involved in family and child cases. In cases under the listed enactments, documents, information and evidence may now be disclosed to a body or person that is performing any statutory functions involving a hearing, inquiry, investigation or adjudication. Further, the minister may prescribe by order other bodies or persons when they are involved in the same activities, and he did so by SI 170/05 on 31 March 2005. The prescribed bodies are:

- The Barristers' Professional Conduct Tribunal of the Bar Council
- The benchers of the Honourable Society of King's Inns
- The Professional Conduct Appeals Board of the Bar Council

Society forces Revenue Commissioners climb-down on first-time buyer relief

Law Society lobbying has resulted in a change of heart by the Revenue Commissioners and a reversal of their policy that threatened stamp duty relief for people who were helped to buy a house by their parents, *writes Catherine O'Flaherty*.

This controversy started with the publication on the Revenue's website in April of a revised 'frequently-asked questions' item that contained an interpretation by the Revenue of who qualifies as a buyer of a property that was at odds with the position as understood up to that point by solicitors, the lending institutions and the public at large. The Revenue said that any person who provides part of the purchase monies or who is a party to any borrowings is regarded as a buyer of the house and the relief would be lost unless that person was also a first-time purchaser.

Revenue saw sense on stamp duty relief

The Revenue's view was that the house was held for the person providing the monies used in the purchase by way of a presumed resulting trust. This interpretation would have prevented most parents from continuing to join as co-borrowers with their children. The interpretation resulted in a huge number of queries to the Conveyancing Committee's helpline. Apart from the loss of relief, practitioners were worried that it would also have called into question many transactions already completed on behalf of clients in relation to loans advanced by the lending institutions up to the time of the Revenue publication in April.

Conveyancing Committee stalwart Patrick Dorgan threw himself into a round of interviews, putting the Law Society's arguments across in both the print and broadcast media. His work resulted in widespread coverage and led to statements from minister Noel Ahern and further questions in the Dáil on the issue. This culminated in the Revenue's announcement that a parent could join as co-mortgagor with the first-time buyer without losing the relief.

- The Professional Practices Committee of the Bar Council, and
- The Professional Practices Committee of the King's Inns.

This sub-section now enables the Law Society to investigate complaints against solicitors arising from family law cases, details of which were previously inaccessible because of the wide way in which the *in camera* rule was interpreted. Other bodies may be included in future, for example, those regulating psychiatrists and psychologists.

Any such hearing or inquiry must be conducted in private, and no document, information or evidence may be published.

Disclosure to third parties

Sub-section 8 applies to a court that is hearing proceedings under one of the listed enactments. It gives the court discretion on its own motion or on application by a party to order disclosure of documents, information or evidence connected with a case to third parties, if such a disclosure is required to protect someone's legitimate interests. The wording of the sub-section suggests that only the court actually hearing the case can give such an order and therefore, by implication, if a case has concluded, no other court can give this order. Further, third parties may not apply themselves. This may give rise to difficulties.

Nevertheless, this will give some protection to third parties, who may have a valid requirement to see an order made in a family law case, as for example arose in *Tesco v McGrath* (unreported, High Court, 14 June 1999). In that case, Mr McGrath was able to extricate himself from a contract for the sale of land to Tesco because Morris J determined that matrimonial proceedings and any orders under those proceedings could not be produced. Other cases giving rise to difficulty in conveyancing practice were *MP v AP* ([1996] 1 IR 144) and *RM v DM* ([2000] 3 IR 373).

The sub-section will also enable information concerning children to be released to schools, the Health Service Executive and others on the application of a party or the court's own motion, for the children's protection or assistance.

Existing cases

Lastly, sub-section 10 provides that this section applies to proceedings brought and decisions made both before and after commencement of this section.

Rules of court

The *Superior court rules* and the *District Court rules* are similar. They make provision for admission to proceedings to undertake the preparation of a report. Prior to or at the commencement of proceedings, the person must identify him/herself to the court and apply for directions in accordance with the act. The court must be satisfied that the person is qualified under the act and must hear any submissions from the parties, and may allow the application, subject to any directions.

A rule is also made to deal with an application by a party for the disclosure to a third party of documents, information or evidence under s40(8). Application is to be made by motion to the court on notice to the opposing party, grounded on affidavit.

Clearly, regulations still remain to be made to fill out the scheme of the section. During the Dáil debate, the minister accepted that achieving a balance between the different interests concerned was difficult, and he undertook to review the section in two years. Despite these reforms, the operation of the *in camera* rule in family and other areas of law can still be unsatisfactory and result in injustice.

The Law Society's Law Reform Committee proposes to examine this subject next year. G

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

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ECHR gives press bad news

Michael Kealey reports on developments in relation to the practical application of the *European convention on human rights*

On 16 June, the European Court of Human Rights rejected a claim by Independent Newspapers, owners of *The Independent* in the UK, that the limited guidance given to juries in defamation actions in Ireland infringed its right to freedom of expression guaranteed by article 10 of the *European convention on human rights*. In doing so, the court distinguished its 1995 decision in *Tolstoy Miloslavsky v the United Kingdom*, when it decided that an award of stg£1.5m infringed the ECHR as it was disproportionate to the damage done and the jury making it had not been given adequate guidance.

The decision was the end of a long road, starting with a comment piece in the *Sunday Independent* almost 13 years ago. In July 1997, a jury awarded former minister Proinsias de Rossa damages of IR£300,000 (about €381,000) for libel over an article in December 1992. Two years later, the Supreme Court upheld the award. Independent Newspapers appealed to the European court and its case against Ireland was argued in October 2003. Ironically, for an institution that has sat in judgment on allegations that domestic courts have failed to decide cases within a reasonable time, the European court took almost two years to deliver its decision.

Serious defamation

The jury had decided that the article falsely alleged that Mr de Rossa was involved in or tolerated serious paramilitary crime, was anti-semitic and supported violent communist oppression. The timing of the article was significant. It appeared as Mr de Rossa was leading negotiations for the formation of what was to become the 'Rainbow Coalition'. All sides agreed the defamation was serious. Nonetheless, the newspaper argued that the award was excessive and disproportionate to any damage done to Mr de Rossa's reputation.

Importantly, the *Sunday Independent* sought to challenge the system whereby juries determine the size of the award without any detailed guidance by the trial judge. It alleged that this procedure in practice leads to erratic and often excessive awards. In 1997, the Irish Supreme Court had held in *Dawson v Irish Brokers Association* (unreported, Supreme Court, 27 February 1997) that 'unjustifiably large awards, as well as the costs attendant on long trials, deal a blow to the freedom of expression entitlement that is enshrined in the constitution'.

The newspaper pointed out that, in 1993, the Supreme Court had upheld an award made to a barrister, Donagh McDonagh, against *The Sun* newspaper for a very grave defamation. In *McDonagh v News Group* (unreported, Supreme Court, 23 November 1993), the Supreme Court had determined, however, that the award of IR£90,000 was at 'the top of the permissible range'. The newspaper argued that it was illogical that a jury should determine the award in the *de Rossa* case without having the benefit of this information. Only if they knew the Supreme Court's views on an appropriate award for a serious libel could the jury properly determine the compensation to which Mr de Rossa was entitled. Independent Newspapers said that juries should also be told the level of awards in personal injury actions so as to make appropriate comparisons with damage to reputation. If such guidelines and procedures were not in place, the Irish legal system did not adequately protect the defendant's right to freedom of expression.

De Rossa: false allegations

Margin of appreciation

In its substantive defence, the state relied on the latitude given to Ireland by the 'margin of appreciation' and stressed the significant difference in size between the award against Independent Newspapers and that made in *Tolstoy Miloslavsky*. It said that there were distinguishing features between the UK and Ireland in the guidelines given to the jury and in the roles of the appellate courts.

As the Supreme Court in *de Rossa* had stressed that 'the damages awarded by a jury must be fair and reasonable … and must not be disproportionate to the injury suffered', Irish law had met its convention obligations to balance the rights of free expression against good name.

Independent Newspapers argued that the circumstances of *de Rossa* could not realistically be separated from those in *Tolstoy Miloslavsky* and if the law in England at that time was a breach of article 10, then so must the law in Ireland.

By a six-to-one majority (Judge Barreto dissenting), the European court preferred the state's arguments. The court stressed that a 'state remains free to choose the measures which it considers best adopted to address domestically the convention matter at issue'. As the trial judge in *de Rossa* had, among other things, given the jury an example of a relatively minor defamation case (without naming it or letting the jury know the size of the award), his charge could be distinguished from that in *Tolstoy Miloslavsky*. Finally, 'the requirement of proportionality distinguishes the appellate review at issue in the present case (by the Irish Supreme Court) and *Tolstoy Miloslavsky*'.

Impetus for change

As long ago as 1991, the Law Reform Commission said that Irish law failed in its two main aims: to protect persons from unjustified attacks on their good name and to allow for the publication of matters of public interest. It proposed reform including giving guidance to juries. Its stance was supported by the Mohan Committee. Despite this, defamation law remains unreformed. The European court's decision is unlikely to act as an impetus for change. G

Michael Kealey is a solicitor with the Dublin law firm William Fry.

Letters

CPD courses are good value for money

From: Stuart Gilhooly, chairman, Law Society Education Committee

With reference to the letter in last month's *Gazette*, I would like to respond to the various queries that were raised in relation to the continuing professional development scheme.

In September 1999, the Council of the Law Society resolved that a CPD task force should be established to determine specifically whether CPD should be recommended for solicitors in Ireland. There was widespread consultation with the solicitors' profession on this matter in order to ensure that the views of all interested parties were considered. In February 2000, each bar association was also invited to make its views known. Extensive research was completed into the operation of CPD in other jurisdictions and in other professions. The CPD requirement introduced in Ireland is minimal when compared to most other legal jurisdictions.

The task force considered the point about CPD being an additional financial burden, and it stated that the current courses on offer represent good value for money and a cost that is easily recouped from the efficiencies and knowledge gained from attendance at these seminars. The society has also borne in mind that, when providing these lectures, they should make a modest profit only, and to that end, we have reduced the prices on a variety of seminars in the current cycle. We have also provided seminars that were run below cost (€25 per seminar) and more of these will follow. In addition, the Law Society has run a sizeable number of seminars for which no fee was charged. Any profit enables the society to run loss-leader seminars in areas and on topics that a commercial provider could not do.

While it is undoubtedly the case that many solicitors ensure that they keep abreast of developments and changes in the law, the evidence was that few had done so in a systematic way. The habit of life-long learning is essential in the current competitive market place.

The CPD task force also considered the point in relation to whether it would be desirable to allow market forces to prevail, which might 'sort out the wheat from the chaff'. The solicitors' profession holds itself out as a group whose unique characteristics justify self-regulation. This brings with it a concomitant responsibility to prescribe educational standards on which the public can rely. The current CPD scheme discharges this responsibility. It demonstrates to the public that the profession values educational standards to the extent that it is prepared to prescribe and enforce a minimum post-qualification educational requirement.

There is no question of the Law Society forcing practitioners to attend certain types of courses. Indeed, the task force recommended that the society should not advise as to the appropriateness or otherwise of particular providers, but should rely on solicitors' good judgement as to what course is relevant as a method of fulfilment of the CPD requirement. This therefore ensures that solicitors complete their requirement by attending courses of relevance for their own practice development.

It is axiomatic that any prescribed regime of CPD must have some sanctions in respect of non-compliance if it is to have any meaning. The CPD scheme does indeed impose obligations on the profession, but they would not be considered 'draconian'. Indeed, as the scheme is one of self-certification, solicitors need return their completed CPD record card to the society at the end of the cycle and sign the declaration that they have completed their required hours. A random audit will take place in the first quarter of a new cycle, and only then will disciplinary measures come into play if practitioners cannot prove their attendance at seminars they have listed on their record cards.

Part-time solicitors and those that are semi-retired are still deemed to fall within the scheme, as they hold practising certificates. Also, the initial CPD cycle, which commenced on 1 July 2003, does not end until 31 December 2005, thereby allowing 2.5 years to complete the current requirement of 15 hours' group study and five hours' private study.

I am disappointed that some solicitors are unhappy with the regime, but it does appear that a majority of solicitors are embracing the new system and the feedback we have received has generally been very positive.

Yay for the library!

From: Stephen Maher, Solicitor, Dublin

I had cause yesterday to need to look up a case in the *Irish jurist* and also to obtain an extract from a book on the Registry of Deeds. Having looked up the website and the section dealing with the library, I ascertained that the books were in the library. I sent an e-mail to the library requesting copies if they were available, and within ten minutes I got a response to say they were available and that I would have them in this morning's post by DX. Total cost of copies including VAT: €12.

What a great service we have, and we owe a great debt of thanks to the hard-working staff in the library who can provide such an efficient service for us practitioners.

We should all use it more.

A step in the right direction

From: John J McCarthy, Ballincollig, Co Cork

I wish to refer to the letter of Richard E McDonnell in last month's issue of the *Gazette* in connection with CPD.

I must support his view that CPD should be provided for by the Law Society without any additional charge. I think we are paying enough for our practising certificates and this should automatically cover access to CPD courses without any further payment. Yes, it can be extremely difficult for some sole practitioners who run their offices on a tight budget and on part-time and locum solicitors who practise only intermittently or on a part-time basis to be expected to pay for CPD courses, which are quite costly to say the very least.

As we are all aware, CPD is now compulsory and may lead to disciplinary action being taken or even being struck off the roll for non-attendance of CPD courses.

I believe that if solicitors had not to pay for attendance at CPD courses, it would engender within the profession a greater sense of morale and a willingness to attend the courses and thus may lead to greater compliance into the future.

Maybe at this early stage of CPD and as a step in the right direction, the Law Society would at least consider subsidising the cost of these CPD courses.

Are there any more solicitors out there with the same viewpoint?

Strawberry fields

From: John Garahy, secretary, Wexford Solicitors' Association

In reference to the letter from Richard E McDonnell regarding the costs of continuing professional development, the cost of the seminars run by the County Wexford Solicitors' Association is €75 per seminar. We have arranged three seminars to date in 2005 and anticipate arranging two or three more prior to the end of the year.

Send in the clowns

From: Andrew J Cody, Solicitor, Kildare

I am curious about the Law Society's CPD course on 'Circus Court litigation'. Perhaps we are to be trained as court jesters to compete with the fancy dress brigade appearing in 18th century wigs and gowns.

As for the appointment of a presiding judge, there's a difficult question!

Oaths and affidavits

From: Frank O'Mahony, O'Mahony Farrelly O'Callaghan, Bantry, Co Cork

I find that the most usual response of the busy businessman today who has been sworn is to the effect of 'where do you want me to sign?' I imagine that when the first medieval knight took an oath, the fear of hell's fire or the value of his honour, or perhaps both, influenced him. But it's now 2005 and perhaps the oath and the affidavit are seen as sacred rites in a more secular world.

Time to go?

Personal reflections

From: Brendan Fitzgerald, Solicitor, Dublin

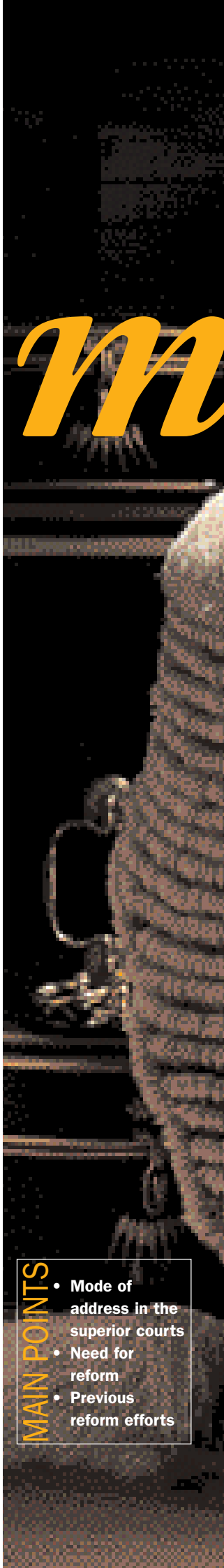
The articles by Conal O'Boyle and Robert Pierse in the May issue of the *Gazette* on the Law Society's annual conference in Kracow were most interesting, as the conference was held in such a historical setting and at such a historical time of the death of Pope John Paul II, that great son of Poland.

Robert Pierse's article considered the Auschwitz experience as providing serious thought to legislators on the distinction between law and justice. His quotation from Pope John Paul's last book, *Personal reflections*, seemed apt to the title and theme of his article. *'The law established by man, by parliaments and of every other human legislator, must not contradict the natural law, that is to say, the eternal law of God'.*

In the scenario of Auschwitz and the Polish experience, the natural law seems to be the clear antidote and the true philosophy of law based on the nature and dignity of the human person.

Our courts here have acknowledged that the natural law is the basis of the *Constitution of Ireland* as evidenced by the preamble and the fundamental rights articles, as guaranteed to be protected by the state, as being antecedent both to it and to all positive law, and as part of a higher law immune from change and inviolable.

Lords and m



One aspect of Irish court procedure that non-lawyers find surprising is the mode of address used towards judges in the superior courts. Brian Conroy tugs his forelock and makes the case for reform

The man on the Cabra omnibus, weaned on *Matlock* and *The Practice*, tends to assume that judges should be addressed as 'your honour'. Failing this, laymen at least expect lawyers to use a term that is not evocative of the British aristocracy. And yet it remains the case that still, in the infant years of the 21st century, a visitor to court will hear counsel peppering their addresses with references to 'my lord' and 'your lordship'. It would appear that this area of court procedure is over-ripe for reform.

Only our rivers

The obvious assumption would be that the mode of address 'my lord' was brought here by the English after their invasion and occupation of Ireland and was supposed to indicate the aristocratic standing of the judiciary. On this basis, it is easy to dismiss the use of the phrase as completely inconsistent with the manner in which justice should be administered in a modern republic. Academics and practitioners seem to have avoided setting their thoughts on this matter on paper, but several politicians have made clear that this is their understanding of the roots of this mode of address.

In a 1995 Dáil debate, John O'Donoghue, later to become justice minister, dismissed the traditional mode of address as a colonial hangover: *'Symbolic vestiges of what one might describe as old Victorian decency have no place in post-colonial Ireland. The time has come to express the view that this is a young republic in a new Europe and that the addressing of a judge as "my lord" is now arcane, belongs to a different age. We do not have nobility or lords; insofar as there are lords, my understanding is that they are attached to the British House of Lords'.*

Probably unknown to himself, he was echoing the somewhat more strident comments made by a Mr Sherwin in a Dáil debate more than 30 years before: *'I deplore hearing people falling over themselves, worshipping judges and justices … Apart from the fact that we are now a republic, I do not think that we should persist in this servile form of address. If they addressed people by titles like that in France during the Revolution, they would be sent to the guillotine immediately'.*

Reacting to Mr Sherwin's comments in the course of the same debate, Thomas O'Higgins drew a very different picture of the history of these modes of address, finding their origin in the ecclesiastical law of this country: *'It was suggested … that to address a judge as "my lord" or to refer to him in the third person as "your lordship" was in some way a remnant of some alien view and in some way servile and servient. Of course, it has nothing to do whatever with the practice in the British courts and it is well that that should be said. It is part of the tradition which arises from the fact that the forms in our courts are associated exclusively with canon law and with the ecclesiastical courts and the title "my lord" has come to us from the fact that in the years gone by it was the practice in the ecclesiastical courts that applied. As frequently the presiding person in the old ecclesiastical court was a bishop, the title and style of address – "my lord" – was associated with these courts. Although our conventions and relations between citizens are no longer based on the canon law, it has survived into the ordinary law of the land. That is history and those who have taken part in the second reading, thinking that they were having a tilt at something British, should re-examine the way they are aiming their lances, because they are not tilting at anything British; they are tilting at something which is part of our Christian heritage in this country. I do not think that any Christian in this country*

MAIN POINTS

- Mode of address in the superior courts
- Need for reform
- Previous reform efforts

asters?

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of any denomination who recognises bishops in his religion would regard it as being in any way wrong or servile or in any way improper to address a bishop as "my lord".'

Of gods and men

Quite apart from the fact that in modern Ireland there would be almost as many objections to drawing a mode of address from a religious as from a colonial context, it is not clear that Mr O'Higgins's analysis of the phrase's historical origins is entirely persuasive. The terms 'lord' and 'lordship' were unknown in the Brehon courts, and only began to be used here in courts that constituted part of the administration of British rule. Hence, although the use of this mode of address may have been inspired by canon law, it seems to have been drawn from British ecclesiastical courts. So it would appear that the historical origins of this mode of address are both religious and colonial.

Regardless of its origins, it is clear that the phrase 'my lord' is now generally seen as having connotations of servility and colonialism. Thus, the phrase 'your honour' was adopted in the courts of Australia, New Zealand and the United States following independence. It has been said that the procedure before the Dáil courts that existed in Ireland between 1920 and 1924 was distinguished by an 'absence of sonorous titles', so presumably the phrase was not used in those courts. And it appears that bishops in the Catholic and Anglican churches should now be addressed either as 'the most reverend' or 'the right reverend'. So any religious significance the phrase once had has now disappeared, leaving it to be associated almost exclusively with a servile attitude towards the British nobility.

This seems enough to demonstrate that the modes of address currently used have a very strong association with the British aristocracy, which makes their use inappropriate in a modern republic. And there are at least two more reasons for reform.

First, the expressions 'lord' or 'lordship' are unsuitable when a female judge is presiding. It has been reported that Ms Justice Mella Carroll refuses to use the title and insists on being addressed as 'judge'. The option of calling female judges 'my lady', which has been adopted in England, is not reasonably available here, because this would move us even further towards a situation where Irish judges appear to claim aristocratic standing.

Second, there is the small matter of article 40.2.2 of the constitution, which provides that 'no title of nobility or of honour may be accepted by any citizen except with the prior approval of the government'. It may be argued that the use of the current modes of address conflicts with the spirit, if not the letter, of this provision. This is not to claim that a constitutional challenge to the modes of address would have any chance of succeeding, but merely to emphasise how inconsistent with the ethos of our constitution the current practice is.

Since independence, elements in the legislature, recognising the inappropriate nature of the traditional modes of address, have tried repeatedly to reform them. At the time of the Dáil debates on the bill that was to become the *Courts of Justice Act, 1924*, there was fierce opposition from those deputies who had links with the bar, as well as from Labour deputies and from several independents, to what were seen as government attempts to harness the independence of the judiciary. As regards the superior courts, resistance centred around the issues of mode of dress and address: it was felt that the bar and the bench should be free to decide on the robes to be worn and the judicial titles used.

'The terms lord and lordship were unknown in the Brehon courts, and only began to be used here in courts that constituted part of the administration of British rule'

Independence movements

In the Seanad, Lord Glenavy, who was then chairman of the Judiciary Committee (having previously been both lord chief justice and lord chancellor of Ireland), launched a withering attack on section 35(6) of the bill, which purported to give the minister for home affairs power to make orders in respect of the mode of address to be used towards judges: *'The sooner that clause is out of the bill, and a corresponding clause dealing with other courts, the better, in my opinion, for the credit of the government. It will make for the removal of any possibility of their coming in conflict, in fact the certainty of their coming at a very early stage in conflict, with the bar and the bench, and, above all, for preserving, in this respect, the sanctity of our constitution'*.

The opposition must have fallen on deaf ears, because the section duly became law. But, probably fearing that further outcries were certain to follow such action, the government deemed it impolitic to interfere with the traditional modes of address for the time being. The minister did go on to make provision for the modes of address before the superior courts in the guise of order XXX, rule 1 of the *Rules of the High Court and Supreme Court 1926*, which provided that 'every judge of the Supreme Court and the High Court may be addressed therein in the manner at present in use, or by the Irish equivalent thereto'.

Thus, the *status quo ante* was preserved, and judges continued to be addressed as 'my lord'. Of course, the rules did give counsel the option of addressing a judge as 'a thiarna breithimh'. However, beginning a pattern that has been repeated up to the present, the overwhelming majority of barristers refused to replace the traditional mode of address with its Irish equivalent.

Soldiers of destiny

The situation continued undisturbed until the initiation of the *Courts (Miscellaneous) Provisions Bill, 1959*. The Fianna Fáil government of the time had expressed its fervent desire to see the use of the expressions 'lord' and 'lordship' discontinued, primarily because of the concerns voiced about their colonial and servile overtones. Section 45 of the bill aimed to force the bench and bar to substitute less deferential and more 'Gaelic' modes of address for

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these expressions. The proposed section 45 was phrased as follows:

- The chief justice shall be addressed in court as 'a phríomh-bhreithimh'
- Each other judge and justice of the District Court shall be addressed as 'a bhreithimh'
- Where a court consists of more than one judge, they shall be addressed as 'a bhreithiúna'.

Predictably, the proposed provision was vehemently opposed both by opposition politicians and by the legal profession. While an interesting aspect of the Dáil debates on the measure was that many of its opponents seemed more exercised about the inelegant Irish in which it was phrased than by its substance, the primary focus of the outcry was again the claimed interference with the independence of bench and bar.

The proposed section 45 was eventually deleted from the bill, ostensibly because the Superior Courts Rules Committee had undertaken to substitute new modes of address for the old expressions. The new prescribed modes of address were contained in the *High Court and Supreme Court Mode of Address Rules 1961*: 'the judges of the Supreme Court, the High Court (including the Central Criminal Court), and the Court of Criminal Appeal respectively shall be addressed, in Irish or English, by their respective titles and names, and may be referred to, in Irish, as "an chúirt", or, in English, as "the court"'.

The government clearly believed that the result of the new rules would be that the old colonial mode of address would be discontinued.

Had the goal of the changes made to the court rules in 1961 been achieved, only the most gnarled of practitioners would now recall a time when judges were addressed as lords and lordships. However, the provisions of the court rules as to mode of address have essentially been ignored for well over 40 years.

Change of address

The provisions of the *Mode of Address Rules 1961* were replicated in the body of the *Rules of the Superior Courts 1962* and then became order 119, rule 1 of the *Rules of the Superior Courts 1986* – the text is almost identical to that in the *Mode of Address Rules*.

But it appears that the provision has had almost no effect in practice. Barristers in the High and Supreme Courts almost invariably address judges either as 'my lord' or, less frequently, as 'the court'. Anecdotal evidence suggests that only a tiny minority of barristers ever use the mode of address 'judge' when appearing before the superior courts. So amending the court rules has had little, if any, impact on the modes of address actually used in the courts – meaning that the result anticipated and desired by those who proposed these reforms has not come about.

There has been one recent initiative. When the *Courts and Courts Officers Bill, 1995* was being debated in the Dáil, John O'Donoghue proposed an amendment: 'From the date of operation of this act, a judge sitting in any court shall be addressed as "bhreitheamh" or "judge"'.

The then justice minister, Nora Owen, opposed the amendment, relying on the traditional argument that undertaking such reform through legislation

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would interfere with the independence of the bench and bar. However, she was willing to concede that the aim of the proposed amendment was laudable.

Michael McDowell also professed to support the aim of the amendment, saying 'the titles used are effectively Anglo-Norman titles which are not appropriate any more', but again argued that the Superior Courts Rules Committee was the appropriate organ to deal with such reform.

The suggested amendment was eventually withdrawn. But the whole discussion seemed to be based on the mistaken view that the *Rules of the Superior Courts* then in force provided that practitioners must address judges as 'lord' or 'lordship' and that these rules could be amended so as to change the practice. The parties involved were either unaware or had forgotten that the rules had been changed more than 30 years before and the practice of calling judges 'my lord' survived merely as a matter of convention. So the point that the rules committee could do nothing more to reform court practice in this area was never raised. Had the true situation with regard to the rules been brought to the attention of the parties involved in the debate, a less deferential attitude to bench and bar might have been adopted.

Tempus fuggedaboutit

It is abundantly clear that those responsible for regulating the modes of address, the legislature and the Superior Courts Rules Committee, have indicated their preference for reform. The stumbling block has been the difficulty in forcing the bar to change. In keeping with the King's Inns motto of *nolumus mutari* ('never shall we change'), counsel appearing before the courts have clung to the traditional mode of address, many of them perhaps unaware that this approach to addressing the judge has long since been devoid of a textual foundation.

The only realistic means of changing the mode of address used is through a statutory provision that makes it mandatory for counsel to address the court using the simpler phrase 'judge' or, in the Irish language, 'a bhreitheamh'. While objections to such an interference with the independence of the profession could again be raised, this possibility should not be of decisive importance, given the demonstrated readiness of the legislature to intervene in other areas of court practice. Opponents of reform could legitimately argue that, if changing the court rules has not changed the practice, there is no reason why a statutory amendment should do so. But this ignores the fact that a legal practitioner is more likely to pay heed to a legislative provision than to a mere rule, being aware more than anybody of the risks involved in law-breaking. It would be a brave and foolhardy barrister who would continue to address a judge as 'my lord' in the face of a legislative provision that could be used by the court or by opposing counsel to take the wind out of his sails at any time.

Wild colonial boys

One final objection might echo Juliet's 'What's in a name?' A cynic might argue that the manner in which we address the judiciary is of no importance, because what matters is the substance of the decision handed down. But as Juliet discovered to her cost, names do matter, and it is important that Irish court practice does not continue to be blighted by the use of a nomenclature that is objectionable both because of its colonial connotations and its unsuitability in a modern context where men and women of all backgrounds may sit on the bench.

A legislative amendment abolishing and replacing the old modes of address once and for all would be a welcome and necessary reform. G

Brian Conroy is in his final degree year at the King's Inns. This article is based on the essay that won the 2005 Law Society Student Law Reform Essay Competition.

There's something MAR

When someone as volatile as Michael McDowell describes you as 'fiery', you've got to be doing something right. Straight-talking deputy director general Mary Keane tells Conal O'Boyle about her career and the challenges facing the profession

MAIN POINTS

- Deputy director general
- Policy, communication and member services
- Some straight talking

Mary Keane is not backward in coming forward. She has strong opinions and she's not afraid to share them. Which is just as well since the 43-year-old deputy director general is in charge of policy and communication. And she makes no bones about which policies should be communicated, and who's to blame when they aren't.

'The media are very negative in Ireland, and not just in relation to lawyers. If you were a martian who landed in Dublin today, you would think that lawyers were involved only in personal injuries work and in tribunals', she says. 'But lawyers facilitate the business community every day; they are involved in protecting children and the elderly; they prosecute criminals and defend the innocent; they transfer property, form companies and resolve disputes – yet you won't read much about any of that.

'It's not as if the media don't know about the good news stories; it's just that they aren't interested. Let me give you an example. The Law Society published a law reform paper on discriminatory planning conditions recently and had a press conference to launch it. The topic is of genuine interest to many people whose lives are affected every day by decisions made by the planning authorities. But the report hardly got a mention in the papers. Yet you could paper your walls with the same old story being run and re-run about the 25 offers made by the Personal Injuries Assessment Board.

'I suppose it's just easier for journalists to regurgitate PIAB's press releases than put some effort into a new and interesting topic. Or maybe it's just not politically correct to say anything positive about the legal profession'.

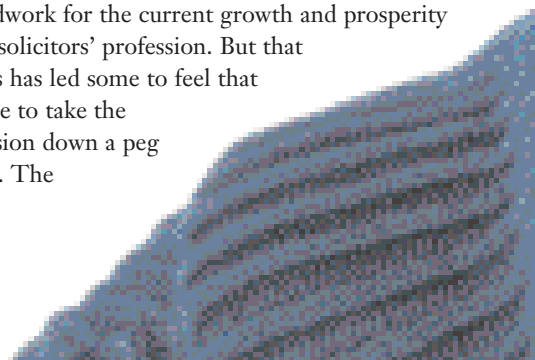
Legally blonde

Keane joined the Law Society in 1992 as policy development executive. A barrister, she had spent a number of years in the civil service before deciding to study law in UCD. A stint with Price Waterhouse preceded her arrival at the society.

Perhaps it was the fact that they shared the same civil service training, but Keane hit it off with the-then director general Noel Ryan and quickly became his right-hand woman. Those were challenging times for the country and the profession at large. Ireland hadn't yet spawned the Celtic pups who would eventually learn to relish sun-dried tomatoes and advocate loudly the case for eggs benedict on ciabatta bread.

'Noel was the most intelligent person I've ever worked with', says Keane, 'in either the public sector or the private sector. He was a tough taskmaster, and anything you would propose he certainly made you go to the ends to prove the value of what you were saying or to justify the argument you were making. I learnt an awful lot from him. He was a man of vision'.

She believes it was that vision that laid the groundwork for the current growth and prosperity of the solicitors' profession. But that success has led some to feel that it's time to take the profession down a peg or two. The



about Y

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MARY KEANE

FACT FILE

Education: Convent of Mercy, Claremorris, Co Mayo; BCL, University College Dublin, 1985; BL, King's Inns, 1989

Career: Department of Industry and Commerce, 1980-1982. Companies Registration Office, 1985-1990; Price Waterhouse tax department, 1990-1992; Law Society of Ireland 1992 to date

Law Society career: Joined Law Society in 1992 as policy development executive. Appointed deputy director general in December 1996, at the tender age of 34. Appointed director of new department – Policy, Communication and Member Services – in December 1997

'The solicitors' profession will weather the storm of criticism levelled against it, but it needs to do more to help itself'

establishment of PIAB is a case in point – and Keane is not one bit afraid to tell it like it is.

'If I had an injury in the morning, I certainly wouldn't want my case adjudicated on by someone I've never met, who has never met me, and who operates out of a call-centre paid for by the insurance lobby. The only positive thing about PIAB is that at least it's based in Ireland. At the beginning, there were rumours that it was going to be outsourced to India because that would save money on wages, but sense prevailed on that particular idea – at least for the moment.

'Even though the on-going running costs will be picked up by the insurance industry, the establishment costs are paid by the exchequer. These costs have now exceeded €13 million. PIAB issued their first 25 assessments last month amid great fanfare, and they're now up to 130. That seems like a poor return, given that they've been operating since July of last year. We predicted that the real losers in the post-PIAB era would be genuine claimants. It seems now that the country's taxpayers can be added to the list'.

Towering inferno

Keane is unique in many aspects. She is the first and only female director in the history of the Law Society. Ditto for deputy director generals.

Once described by Michael McDowell as 'fiery', Keane was appointed by the justice minister to his Expert Group on Codification of the Criminal Law. She was also asked to be the external representative on the audit committee of the DPP's Office.

Her own particular areas of expertise include the *Solicitors Acts*, the *Investment Intermediaries/Investor Compensation Acts* and the money-laundering legislation as it affects solicitors. She may indeed be the country's foremost expert in regard to the latter.

She explains that the Irish money-laundering regime springs from an organisation called FATF – the Financial Action Task Force – which, effectively, is the unelected 'world policeman' in relation to suspected money-laundering. It was established at a G-7 (now G-8) summit held in Paris in 1989, with a commitment to combat international drug trafficking and organised crime. Membership currently stands at 33, with the EU counting as one

of that number. It's a world club that any self-respecting democratic state would want to be a part of. All of the objectives of FATF are very laudable. And, of course, as a member of the EU, Ireland has signed up for the FATF agenda. So far, so good.

However, as Keane points out, what we now have is a situation where solicitors have a statutory obligation to collect information on their clients and report them to the gardaí and the Revenue in circumstances where they 'suspect' that something dodgy might be going on. Even though the original aim was to combat international drug-trafficking or organised crime, the actual effect of the domestic legislation is to provide a source of information to the authorities primarily where there might be suspected tax evasion and welfare fraud. Some might say 'so what?' These are hardly defensible activities.

French connection

Well, as Mary Keane would have it, if the state wanted to address its national tax or fraud issues in this way, it should have done so openly and fairly.

'To sneak in increased Garda and Revenue powers on the back of an international drug-combating agenda is an abuse of the legislative process which has led to a dilution of the fundamental right of solicitor/client confidentiality', she argues. 'I doubt if very many drug barons have been prosecuted as a result of these powers, but there's probably a few grannies who have had surprise letters from the taxman. It's reassuring to know that the forces of law and order are keeping us safe in our beds from such dreadful people'.

Mary Keane is living proof that if you want something done, ask a busy person. Her department, called Policy, Communication and Member Services (PCMS), is also responsible for the Law Society's submissions to government, law reform initiatives, library services, public relations activities and the provision of support services to the profession.

The society will shortly be recruiting a new support services executive to co-ordinate and publicise existing services and develop new ones for members. Keane believes that this initiative will deliver practical benefits because, for the first time, members will know that there is a named individual in Blackhall Place who will assess their requests and direct them to the relevant person or department.

'The key to the success of the relationship between the society and its members is the provision of information', she says. 'Our members aren't terribly interested in "frilly" products, such as discount cards and promotional offers – those were the members' services of the 1970s. What is important is that we deliver services that keep the profession informed and that distill the mountains of data coming from government and the EU into manageable chunks.

'We have an excellent library and information service, used by almost 70% of law firms, with an average of 500 enquiries and book loans a month. We have our award-winning *Gazette*, with a circulation of 10,000 each month, and a website that averages 10,000 hits per day. Within the next six months, we'll be launching an e-zine (a regular e-mail newsletter) to the profession and, at the same time, we'll be launching a campaign to encourage greater use of the website by members.

'The profession is starting to appreciate the real value of electronic information for their practices, but there's even more value for them if they take the time to familiarise themselves with our website'.

The perfect storm

Keane believes that the solicitors' profession will weather the storm of criticism levelled against it, but that it needs to do more to help itself. She is typically forthright in her views but, given her unique position, her analysis should make any thoughtful solicitor think more deeply about the way he does his job.

'The society can't solve the profession's PR problems', she argues. 'Solicitors have to do that for themselves. And the key to that is providing a proper service, thinking about their clients, answering their calls promptly, and providing the service they purport to provide. The only way for them to prosper is to work hard and to do the best by their clients. And I do think the vast majority of the profession actually does that, but the PR impact of those who don't actually affects everybody.

'There is a widespread belief that all solicitors charge an absolute fortune and provide nothing for it. Solicitors' services are not cheap – there's no doubt about that – but then neither are consultants' services. If you get a good service from the professional that you go to, most people are happy to pay for it. It's only when they don't get the good service they expect that they are unhappy about it. I know it's hard to take the constant media battering but that's part of life. You just have to get over it'.

In the meantime, you can rest assured that Mary Keane will be doing her damnedest to communicate the Law Society's policies even to those who don't want to listen – using both barrels if necessary. G

CONTRACT LAW: *an opportunity for re*

Irish contract law is a mess, and EU intervention in the area is not much better. Now the EU has decided to embark on a process of reform, and the scope and ambition of what it contemplates is breathtaking. Paul Keane reports

MAIN POINTS

- Confusion in Irish and European contract law
- EU review of the entirety of contract law
- Law Society response

Contract law is at the heart of all business transactions. Irish contract law has evolved through judicial decisions and piecemeal legislative intervention. In recent years, a great deal of that intervention has been driven by directives promulgated by the EU, mainly for the protection of the consumer.

It has long been recognised that there are major difficulties with the EU legislation (the so-called '*acquis*'). The *acquis* is inconsistent, does not define terms, or, where it does define them, uses them differently in various parts of the *acquis*. Some parts of the *acquis* provide for different rules in similar situations. There are even examples of inconsistencies in the one directive.

At national level, there are further difficulties. Directives merely set a minimum standard for harmonisation of the basic rules in a particular area and are intended to be elaborated upon and implemented by national legislation. There are, however, substantial differences in the manner in which directives are implemented throughout the EU. The result is that, even in areas governed by the *acquis*, there are divergences between legal rules throughout the EU.

In some sectors, such as the insurance sector, where efforts have been made to create an internal market, such divergences make it very difficult for an insurance business to operate on an EU-wide basis.

In Ireland, we have transposed directives, particularly in the consumer area, in a lazy way, by simply deeming them to have full legislative effect. In many cases, we have not bothered to place the directive within the existing Irish legal context. For example, the *Unfair contract terms directive* was adopted by statutory instrument without a backward glance at the over-lapping provisions of the *Sale of Goods and Supply of Services Act, 1980*. Our ill-considered approach has also meant that no effort has been made to correct or filter the errors in EU legislation in the course of implementation in Ireland.

In 2001, the EU Commission launched a process of consultation and discussion about the way in which problems resulting from the divergences between national and EU contract laws should be dealt with at European level. In February 2003, the commission communicated an action plan to the European Parliament and the council. The action plan suggested a mix of measures in order to solve these problems.

The way forward

In its document *The way forward*, published in October 2004, the commission set out its proposals in relation to three measures that had been identified in the action plan:

form

- **To increase the coherence of EU contract law.** This is the main focus of the commission's activities
- **To promote the use of EU-wide general contract terms.** This is to be done by the establishment of a specific website to promote the development and use of EU-wide standard contract terms. In effect, this will merely be a platform for the exchange of information between industry groups on existing and on planned EU-wide general contract terms. The commission, however, will have no hand in the preparation or approval of these contract terms. This is a measure that can be implemented immediately
- **To examine the usefulness of the adoption of an optional instrument.** An optional instrument is a statement of contract rules that parties could adopt and adapt for their own purposes.

The development of an optional instrument, however, is only a possible project. It will only be initiated if it is concluded that it would be useful to have such an optional instrument. But the mention of such a possibility has awakened in certain quarters fears of a conspiracy to subvert the sanctity of national laws through the creation of a pan-European civil code. The fact that researchers chosen by the commission had been part of a group working on such a civil code was seized upon as further evidence of such a conspiracy. The commission has been at pains to say that no such decision has been made and that, indeed, at the moment there does not exist the legal or political basis for any such decision.

Coherence of EU contract law

The commission is adopting a twin-track approach. It will itself embark on an exercise of examining how consumer protection rules are being applied and what effects they are having. This will identify areas of consumer law that require urgent attention.

On the other hand, the commission wants to develop a handbook of contract law that would serve as a statement of the common rules in European contract law and that would be available as a framework within which new and amending legislation would be drafted. The commission calls this framework a 'Common Frame of Reference' (CFR). It has appointed a consortium of researchers, whose task will be to prepare the CFR.

The action plan had suggested that the CFR would set out principles, definitions and some model rules of contract law. However, *The way forward* proposes a much more elaborate document. It sees an initial chapter setting out the common fundamental principles of European contract law

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and the exceptions to those principles. A second chapter would set out definitions of legal terms. A third chapter would set out model rules. The headings for the suggested model rules indicate a comprehensive restatement of the law of contract.

The researchers are expected to deliver a final report by 2007. That report will contain a draft of the CFR. By 2007, the commission will also have identified the elements of the existing consumer legislation that need to be reformed. After the publication of the researchers' report, the commission will prepare a green paper. There will be a period of political consultation, and the intention is that the CFR should be adopted by the commission by 2009.

The commission has prepared a timetable of workshops to take place in 2005 and 2006. These workshops are to deal with the proposals of the researchers in relation to each of the areas of contract law that will build to a comprehensive restatement. The commission has also established a network of experts on contract law (the 'CFR-Net'). The CFR-Net is intended to be composed of experts nominated by stakeholders, who will review the work of the researchers from a practical point of view.

Law Society's response

The Law Society has taken a leading role in Ireland in relation to the commission's proposals. The commission organised a major conference in May 2004 to consider the action plan. There were 300 delegates representing stakeholders and governments from all over Europe at that meeting, which was addressed by the-then Irish commissioner, David Byrne. The Law Society was the only Irish organisation represented. The society was also represented at the conference to consider the *Way forward* document.

In order to ensure that the society would deal with the matter in a structured fashion, it engaged Professor Robert Clark to prepare a detailed briefing document for the information of the relevant committees and representatives of the society.

The society was also represented (by myself) at two workshops held in March 2005. The first one related to services, including specific areas such as construction, processing, storage, design, information and medical treatment. The other dealt with the not-inconsiderable topics of commercial agency, franchise and distribution agreements.

Why should we bother?

Even if the CFR were to be used exclusively as a handbook for the commission's own legislative purposes, it is important that Ireland's specific concerns be taken into account in the preparation of such a restatement of the law. Of course, we and the UK are the only countries in Europe that have adopted the common law. We have an interest, accordingly, in making common cause with our neighbours.

However, if the CFR does develop as a generally recognised restatement of the law of contract in Europe, it becomes all the more important that we do our utmost to ensure that it suits our legal and commercial environment.

Apart from these European considerations, a European restatement of the law of contract could serve as a basis for a co-ordinated and structured reform of our own contract law. Such reform is long overdue. G

Paul Keane is managing partner of the Dublin law firm Reddy Charlton McKnight and the Law Society's representative to the network of experts on contract law established by the European Commission.

SCOTCH ON

Like its counterparts in this country, the Scottish legal profession is coming under scrutiny from consumer and competition bodies. Paul Rogerson brings us up to speed on what's been going on

MAIN POINTS

- **Scottish legal profession**
- ***Clementi* report**
- **Alternative business structures**

Scotland's 10,000 lawyers are jealously proud of the nation's independent legal system. To some observers, it appears as magisterially remote and immutable as the serene facades of Edinburgh's Georgian New Town. However, Sir David Clementi's government-commissioned report revolutionising the provision of legal services in England and Wales has thrown the Scottish profession into something of a ferment. The issue of how – and indeed if – Scotland should accommodate similar reforms has exposed deep divisions that are proving difficult to bridge.

The 9,000-strong Law Society of Scotland has voiced little enthusiasm for *Clementi* but has steered clear of outright hostility, to nobody's surprise. To adopt an unequivocal policy stance would be awkward, because the body's ruling council is itself split on how to deal with the issues the report raises.

A further headache is presented by the devolutionary process that created the Scottish Parliament in 1999. Were *Clementi*-style reforms to be introduced in Scotland, they would involve a fundamental shake-up of legal regulation, which is a matter for the Scottish Executive. However, ensuring fair competition in legal services is a matter 'reserved' to Westminster and falls within the remit of the London-based Office of Fair Trading (OFT). All very unsatisfactory. So, who gets to call the shots?

Horse of a different colour

Cathy Jamieson, justice minister at the Scottish Executive, attempted to address the issue last year by launching a review of Scotland's legal services markets that ran in parallel with renewed efforts to update regulation (see **panel**). The forum was expected to report six months ago, but has yet to do so.

Whatever its findings, questions have already been asked in the Scottish Parliament about the forum's credibility. The group has about 20 members, including civil servants and academics, but consumers are directly and independently represented by just three – representatives of the Scottish Consumer Council (SCC) and Citizens' Advice Scotland, and the OFT. The law society alone has at least two direct and one indirect representatives – including chief executive Douglas Mill and lobbyist Michael Clancy, who is the society's director for parliamentary liaison.

Sceptics were handed further ammunition when respected consumer watchdog Grahame Horgan, principal enforcement officer at the OFT, was manoeuvred off the taskforce following protests by the law society. Duncan Murray, the society's president, alleged in correspondence that Horgan was guilty of a 'conflict of interest' and had 'compromised' the group's work. In particular, Murray said, an OFT plan to investigate the society's ban on solicitors paying referral fees breached an assurance by Horgan that no additional formal OFT action was planned over society rules.

Murray first demanded that Horgan be replaced in a letter to OFT director general John Vickers in October 2004. 'Let me state, for the record, that the society has no intention of subverting either EU or UK competition law', Murray assured Vickers. 'The society is of the view that the work of the group is compromised by the presence of Mr Horgan'. Horgan, the OFT's professional services expert, agreed to step down in favour of another OFT official, Alan Williams. He managed a parting shot, however.

Horgan warned the society that its tariff of recommended charges – the so-called 'table of fees' – might breach competition law. This raised the prospect of a full-blown OFT investigation, amid suspicions that the law society had been co-ordinating the pricing of solicitors' services ranging from simple phone calls to complex property deals. The society pre-empted any further action by scrapping the 'table of fees' a few days after the watchdog's warning was made public.

Scottish ministers are unconcerned by the working party's apparent domination by solicitors and advocates, but some who want to compete with lawyers on their own turf are not. One aggrieved party is the industry body representing patent attorneys, the Chartered Institute of Patent Agents. CIPA wants the Scottish Executive to sweep away the ban on people other than solicitors and advocates being paid to represent clients in Scottish courts. The institute asked for a berth on the working group to press its case, but was rebuffed.

Both the OFT and the Scottish Consumer Council have backed the amendment of the *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990*. Certain sections of the act, which were never commenced,

THE ROCKS

Donald, where's your troosers?

would allow interested parties to apply for rights of audience in a Scottish courtroom. Such a concession already exists in England and Wales in relation to members of both CIPA and the Institute of Legal Executives.

To ensure the passage of sections 25-29 at the time of the original bill, ministers gave an undertaking that they would not be implemented until other reforms in the 1990 act – in particular, the introduction of solicitor-advocates – had been given time to bed down. Precisely why the commencement process was never set in train remains unclear.

Closing the stable door

The stakes were raised further this year when it emerged that the last Conservative administration at Westminster set a target date of mid-1996 for commencing sections 25-29, years before the Scottish Parliament was established. Yet nearly ten years later, the sections remain to be commenced. Critics of the legal profession stress that greater competition could pose a threat to some lawyers' fees by offering cheaper alternatives to consumers.

Another key proponent of reform in Scotland is the fledgling Association of Commercial Attorneys, a lobby group comprising individuals with law degrees and fellows of the Chartered Institute of Arbiters. One of the association's members, Bill Alexander, petitioned the Scottish Parliament in January 2003, demanding that sections 25-29 be commenced. He argued that the solicitors' monopoly 'has resulted in huge costs to the private and public sector and has also resulted in instances where parties cannot afford their legal rights'.

'The only reason some solicitors can charge £200 an hour is because that monopoly exists', he has said.

Harsh words. Yet it would be wrong to suppose that all is sweetness and light within the profession itself. Consider Clementi's proposal that law firms should be allowed access to external capital. Dundas & Wilson, the nation's second-largest law firm, fired a remarkable shot across the bow of the profession's conservative tendency recently when it warned that it could abandon Scotland if denied those rights.

Not literally, of course. Senior partner Chris Campbell said D&W would simply channel its services through the parallel limited liability partnership it has incorporated for its London office. However, if one of the nation's most respected legal firms were to become an English firm with a Scottish outpost, this would be viewed as the thin end of the wedge. Other major indigenous firms with English offices would surely follow suit. Petrol was poured onto the flames again when Clementi himself made a rare foray north of the border. The cream of the profession turned out to hear him speak at their spiritual home, Edinburgh's Signet Library.

As befits a former deputy-governor of the Bank of England, Clementi was discreet, avoiding speculation

KEEPING IT REGULAR

Cathy Jamieson, justice minister at the Scottish Executive, recently published a consultation paper proposing changes that would remove ultimate control over the resolution of complaints about Scottish lawyers from the governing bodies, the Law Society of Scotland and the Faculty of Advocates. The paper suggests that piecemeal reforms have failed to win public confidence. Pressure on the executive to act has intensified as the law society and bar council south of the border have moved to separate their representative and regulatory functions.

Public complaints over how Scotland's lawyers are regulated have soared since 2001. In that year, the regulator of last resort, the Scottish Legal Services Ombudsman, received over 100 complaints about the way the law society and faculty handled complaints about their members. In the year to 31 March 2005, she dealt with over 500, a 27% rise on 2004 alone. Over 90% were about the society.

The Scottish Parliament's Justice 1 Committee produced a string of recommendations for improving complaints-handling three years ago, while endorsing the regulatory role of the professional bodies. Controversially, however, the committee's suggestion that the ombudsman's powers be enhanced was ignored. The executive also failed to act at that time on the proposal that her office could act as a 'clearing house' for all complaints about lawyers and that she should monitor the progress of those complaints.

At present, the ombudsman, who is not a lawyer, can only get involved when a client's attempts at resolving their complaint with either the lawyer or professional body have failed. Even then, she has no power to force the society or faculty to comply with her recommendations on matters such as compensation. The two bodies can, and frequently do, ignore them.

The options outlined in May's consultation paper include strengthening the ombudsman's powers and setting up a totally independent complaints-handling body with a non-lawyer majority. The law society, in particular, is lobbying hard to retain its regulatory function, pointing to the improvements it has made in recent years. These include 50% lay representation on society committees and more expeditious handling of complaints.

The society has also called for legal powers to discipline solicitors for their conduct and suspend a solicitor who does not co-operate with a complaints investigation.

in his speech about how his reforms might affect Scotland. More interesting was the question-and-answer session, when he was taken to task by Douglas Connell, joint senior partner of top Scottish private client law firm Turcan Connell.

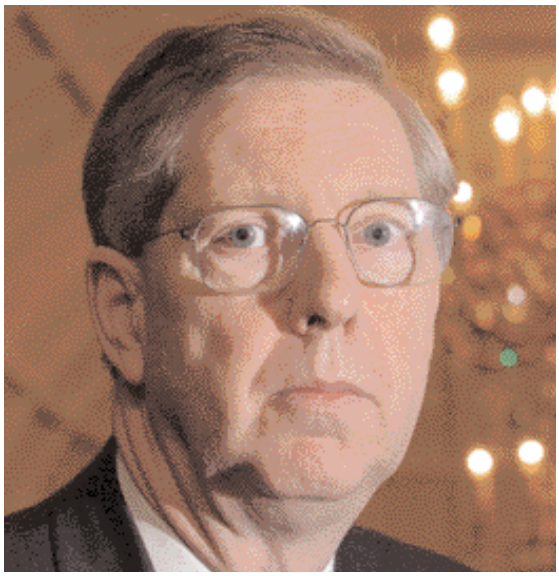
Remarkably, Connell accused Clementi of being insufficiently radical, not a charge that has been levelled at the Prudential chief too often in recent months. He voiced disappointment that the report settled on the 'half-way house' of legal disciplinary partnerships (LDPs), under which non-lawyers such as human resource or finance directors would be able to take an ownership stake in a law firm. The Turcan Connell supremo wants official sanction for full-fledged multi-disciplinary practices – in which accountants, lawyers, financial advisers and other professionals could co-own 'one-stop shops' for professional services.

'The Law Society of Scotland has voiced little enthusiasm for Clementi but has steered clear of outright hostility'

Merger, she wrote

The demand stems from personal experience. Along with Robert Turcan, Connell led the demerger in 1997 of the private client business of Dundas & Wilson into Turcan Connell, whose employees include fund managers, accountants and actuaries.

'I think your report was lacking in boldness',



Clementi: potential for regulatory overload

Connell told Clementi. 'I am already in an MDP, but under the current regime I have to employ non-lawyers. I would like them to be able to be involved in our business'.

Clementi responded by pointing to the potential for regulatory overload. 'My view is that we cannot get to grips in England and Wales with MDPs before we get to grips with LDPs. In a few years it could work, and we could see lawyers working alongside accountants', he said.

Some believe that it is in this latter respect where Clementi's proposals could be disproportionately beneficial to Scotland – a geographically diffuse market with many small and far-flung professional firms. Douglas Connell certainly believes that a relaxation of the rules on 'one-stop shops' could have major benefits for small, professional services providers across Scotland, a lot of whom he believes are at serious risk of failure.

'They should be able to share overheads. There is an opportunity for us in Scotland to take the lead and create a structure that meets clients' needs', he said.

Interestingly, the heads of Scotland's leading accountancy bodies have said they will be seeking talks with the law society to consider any opportunities that may arise from the possible relaxation of rules on law firm ownership.

So where now for the Working Group for Research into the Legal Services Markets in Scotland? It seems that the forum will consider its final report at a meeting on 23 June. Yet this may not mark the end of the debate. At the latest meeting for which minutes are available, in April, the group agreed to consider whether it should reconvene 'at a later stage' to think about a further phase of work on wider issues such as the *Clementi* proposals. One had assumed that was its remit all along.

It may be some years yet before Scotland sees a significant liberalisation of its legal services sector. G

Paul Rogerson is business correspondent with the Scottish newspaper The Herald.

Tech trends

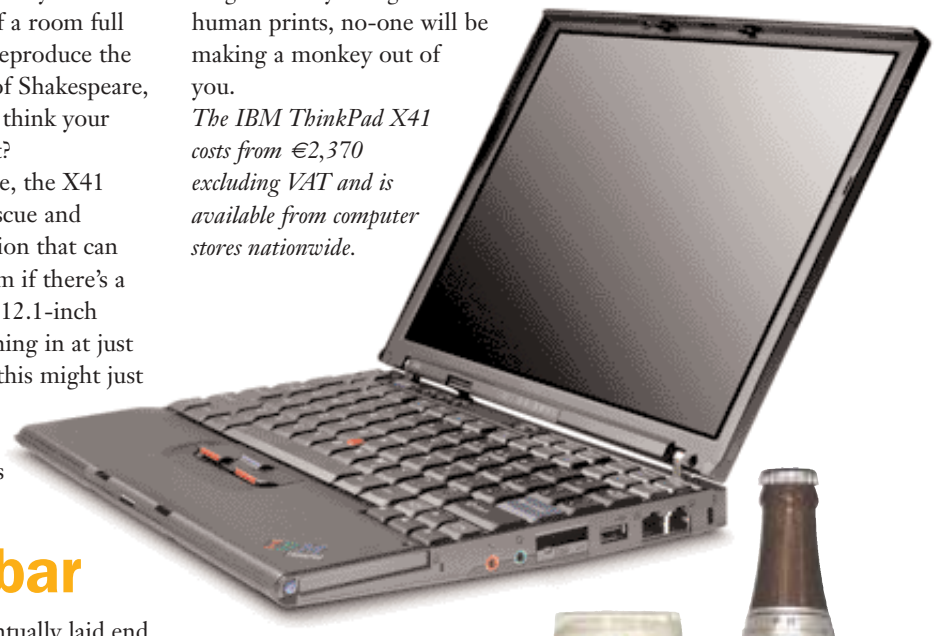
What do you mean, you don't have a chimp?

You know how it goes. You step out of the office for a sandwich and as soon as your back is turned, some cheeky chimp is at your laptop trading bananas on e-Bay. And when you get back, the hairy-handed horror has deleted all your work. Well, now you need suffer the indignity of ape-related IT failure no longer.

The IBM ThinkPad X41 features a biometric security system, scanning your fingerprint for access rather than using a traditional password. This is very useful indeed, because if a room full of monkeys can reproduce the complete works of Shakespeare, how long do you think your password will last?

And just in case, the X41 also features a rescue and recovery application that can re-boot the system if there's a problem. With a 12.1-inch screen and, weighing in at just over a kilogram, this might just be the laptop for paranoid weaklings. And as long as it only recognises human prints, no-one will be making a monkey out of you.

The IBM ThinkPad X41 costs from €2,370 excluding VAT and is available from computer stores nationwide.



Called to the mini-bar

The Duke of Wellington's younger brother Edmund finally came a cropper when he was a participant in one of Zanzibar's somewhat rare flagrantly gay marriages. Like a stalwart from the TV show *Dad's Army*, Edmund was of the opinion that the denizens of the Dark Continent didn't like it up them. How right he was.

Edmund was eventually laid end to end in a shallow grave. Kipling wrote a poem. A nation mourned. Stick to baking cakes, you bastard. Things might have turned out altogether differently had Edmund purchased an Asahi DVD beer fridge (or 'refreshment centre', as they're now apparently known). This thirst-quenching beauty isn't actually on the market. You can't buy it, as it was only available as a prize in an Asahi beer company competition. But it makes you think. What would Edmund have done? Kipling perhaps said it best: 'Stop calling me at home. I'll have the police on you'. There you have it.

Badger or PDA: which would you choose?

Cumbersome things briefcases, aren't they? Many of those in daily use are approaching the size of young badgers and are just as unwieldy. You'll know what I mean if you've ever tried to man-handle a badger into the office. Makes you think about whatever happened to that paperless office the sociologists used to harp on about? Well, the new PalmOne *LifeDrive* 'mobile manager' (they used to be just personal digital assistants, don't you know) might be a step closer to living that particular dream.

The *LifeDrive* is billed as a hand-held device that can carry all the data that users need. You hear that? *All* the data. Not only that, but according to the website, it's 'the perfect companion for your digital lifestyle', whatever that means.

Ok, here's the science bit, because you're worth it. It's got a four-gig hard drive, high-resolution colour display and built-in wi-fi and bluetooth support, along with e-mail support, MP3 player and photo viewer. Apparently, it can store 300 songs, 1,000 photos, 2½ hours of video, 1,200 Microsoft *Office* documents, 10,000 contacts, 10,000 appointments, 20,000 e-mails and 50 voice memos – all at the same time.

If you actually know that many people, you've really got to ask yourself: what the hell are you doing hanging out with young badgers?

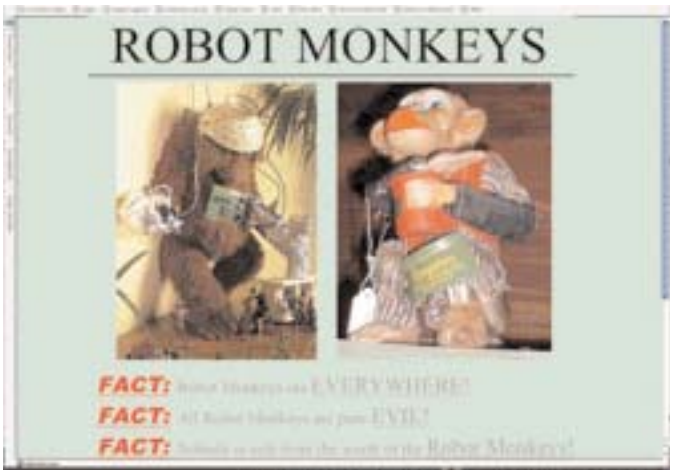
For more information, see www.palmone.com. *The LifeDrive costs around stg£329.*

Fly, my pretties fly!

No paperless office. No café society. When will science fiction stop cruelly raising our expectations? At least we can emulate the monkey minions of the wicked witch of the west with our new anti-gravity jumping boots. Although I suppose a disclaimer might be in order here: they're not really 'anti-gravity'; they don't contradict the laws of physics in any way. On the other hand, they do allow you to 'jump into the air or bound across the yard like a gazelle' and 'make every step seem like you're walking on the moon'. Without the asphyxia and hypothermia, we sincerely hope. Now, let's all get that wee girl with the ruby shoes.

Air Kicks Anti-Gravity Jumping Boots are available from www.play.com *for about stg£100.*

Sites to see



Run for your lives! (*www.geocities.com/bob_chob1/monkeys*). It seems the *Gazette* was right, for once. In November 2003, we predicted the chaos that can ensue from the marriage of technology and ape. Now our worst fears have been confirmed. This site proves it. There's 'confirmation' from the 'CIA': 'all the robot monkeys have turned evil. If they aren't destroyed, the world as we know it will end'. We hate to say it, but we told you so.

Working with weasels (*www.weaselnomore.com*). Golf courses have gophers, offices have weasels. What to do? Well, help is at hand at *weaselnomore*. Learn to recognise the weasel ('shifty, beady eyes; large heads, representing their overwhelming egos; and paranoid reactions to any questions about their actions') and study weasel economics (the customer is always wrong, a true weasel can't get fired, and a management weasel 'shouldn't have to do shit').

Is somebody following me? (*www.morristribunal.ie*). You feel you should read it, but it runs to nearly 700 pages and weighs more than a small piglet. You'd download it to your PDA and read it on the train, if only that particular technology was up to speed. So digest the Morris tribunal report at your desk in comfort. It's all there, but you'll never pass through a checkpoint without sweating again. Piglets are tricky.

Kildare's finest *(www.kildare-nationalist.ie)*.While the remaining *Gazette* staff will struggle bravely on, those seeking the original, and some might say the best, source of up-to-date information on badgers, battles and fictitious younger brothers can follow our 'esteemed' editor to the *Kildare Nationalist*, that county's most nationalistic newspaper. Tickle your own fancies by trying to guess his suggestions for a novel use of the Curragh.

Intellectual Property Law in Ireland, Second Edition

Written by: Robert Clark and Shane Smyth

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Book reviews

A practitioner's guide to the *European convention on human rights* (second edition)

Karen Reid. Sweet & Maxwell (2004), 100 Avenue Road, London NW3 3PF.
ISBN: 0421-875-909. Price: stg£99.

The limited number of Irish cases decided by the European court (just over a dozen) might lead practitioners to view Karen Reid's guide to the ECHR as of largely academic interest. That would be a mistake. The *European Convention on Human Rights Act, 2003* incorporated the ECHR into Irish law, and knowledge of its provisions and supporting case law are an increasing requirement for lawyers who will be expected to plead convention issues in Irish courts.

Karen Reid is an insider. She has worked at the European Commission and at the Court of Human Rights for 19 years. She is currently head of an applications unit in the registry of the court. Her book is a practical one, which outlines, in a straightforward way, the range of situations and legal problems that fall within the scope of the ECHR. It is particularly good on procedure, stressing the tension that exists between the minimum of formalities and fees involved in bringing a case before the court and the very strict time limits that can represent traps for the unwary. She does not shy away from highlighting the system's drawbacks. The admissibility threshold is high – at most, one in ten cases succeeds in crossing it – delays can be great, and compensation and costs are limited.

In dealing with substantive guarantees under the ECHR, the book usefully divides topics into 'problem areas'. Issues rather than convention

protections are highlighted. The book is not wedded to the provisions of the ECHR. This is an advantage. Each area covered usefully outlines the key provisions of the convention and relevant case law, but does so in an accessible fashion. For practitioners, the book is a useful starting point rather than a detailed exploration of issues. Stress is laid upon fair trial guarantees such as access to court, adequate time and facilities, equality of arms, and the right to silence. However, topics not always associated with human rights protection are also covered: pensions, planning and use of property, and tax and welfare benefits, to name a few.

In the six years since the first edition, the jurisprudence of the ECHR has evolved. These changes are comprehensively dealt with in Ms Reid's book. As this process continues, one hopes that Ms Reid will be around to record it. G

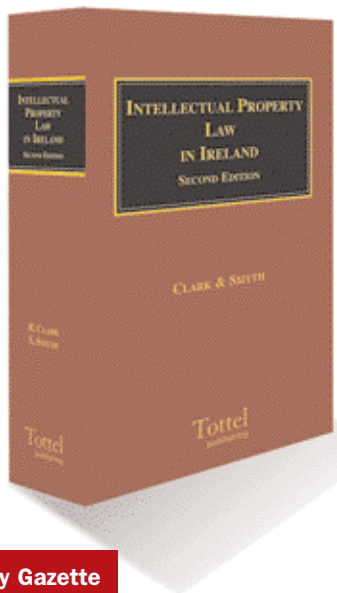
Michael Kealey is a solicitor with the Dublin law firm William Fry.

Intellectual property law in Ireland (second edition)

Robert Clark and Shane Smyth. Tottel Publishing (2004), Fitzwilliam Business Centre, 26 Upper Pembroke St, Dublin 2.
ISBN: 1845-920-201. Price: €150.

Mr Justice Brian McCracken, in his foreword to the 1997 first edition of this work, posited that there might be a *prima facie* case for professional negligence against any solicitor, barrister, patent or trademark agent who did not have this book in their library. High praise indeed, and it neatly illustrates the place this book has among specialists in this growing area of law.

The law in this area (and the number of practitioners in it in this jurisdiction) has greatly expanded since the first edition. The main copyright legislation in Ireland in 1997 was the *Copyright Act, 1963*, but this has now been replaced by the gargantuan *Copyright and Related Rights Act, 2000*, which runs to over 370 sections. The *Industrial Designs Act, 2001* also came into force since the last edition, and this is an increasingly commonly used form of protection for clients whose intellectual property



does not easily fit into the more traditional categories under Irish law. Ireland has also joined the *Madrid protocol*, adding to the methods of trademark registration available to Irish clients. All of these new developments are treated in the second edition.

Domain names and the issues that arise with their registration are dealt with in an introductory chapter to trademark law. The dispute resolution procedure

introduced by the not-for-profit organisation ICANN for dealing with them is comprehensively examined. It has been successfully (and relatively inexpensively) used by many Irish companies to evict so-called 'cyber squatters' from web addresses that are either similar or confusingly similar to their trademarked or used name.

Another topical area this edition gives more space to is the *droit de suite* that will shortly form part of Irish law. This law, a concept originally taken from French law, will ensure that an artist (or his estate) will have the right to a percentage of re-sale profits from his paintings as his or her reputation (and the price of his or her work) increases. The right would remain for as long as the work was in copyright. Many Irish auction houses and galleries have opposed the introduction of this law on the basis that, as sales outside the EU are not captured by it, it may mean a great deal of Irish art will be sold out of New York to avoid it. Interestingly, a similar right exists in Californian law under its *Resale Royalties Act 1977*. It was widely hoped (by artists, if not by galleries) that a US-wide federal law would follow, but this has not happened.

Clarke and Smyth's deft treatment of the EU directive on this topic (which must be implemented by next year), along with Australian and German cases in the field should be required reading, not only for intellectual property lawyers but for gallery owners and art dealers generally. Clarke and Smyth balance the opposing rights here between the cliché of the impoverished artist's heirs living a frugal life while the price of their loved one's works escalate exponentially with the passing of every year after his or her death and the rights of galleries, who often support artists who do not achieve high prices even after death, to make a living. Indeed, the origins of the French law introducing the *droit de suite* in 1920 were said to be from a public revulsion at the impoverished circumstances of the widow and children of the realist painter Jean-François Millet while his paintings fetched record sums in auction rooms and galleries.

Robert Clark, a professor at UCD, and Shane Smyth, a partner at FR Kelly & Co, are rightly regarded as powerhouses in their field. The breadth and depth of the topics covered in this work, from the patentability of software to the emergence of database rights and beyond, are impressive. The decisions of the European Court of Justice from November 2004 in the *BHB* and *William Hill* cases are also dealt with, despite the proximity of those cases' publication to the publication of the book itself.

Space does not permit me to list in full the topics covered, but this book should be purchased by anyone, whether practitioner, in-house lawyer, academic or student, interested in this increasingly complex field of law. The authors' enthusiasm for their chosen field, combined with a comprehensive index, makes this an excellent second edition of a by-now seminal legal text. G

Jeanne Kelly is a senior associate in Dublin law firm Mason Hayes and Curran.

Practice notes

EU *SAVINGS DIRECTIVE*: RELEVANCE FOR IRISH SOLICITORS

The EU *Savings directive* has been implemented into Irish law and requires that details of certain cross-border interest payments made on or after **1 July 2005** are disclosed to the Revenue Commissioners. The legislation potentially impacts on the business of solicitors. This practice note highlights some areas of potential impact, but it is not a comprehensive summary of the legislation. Practitioners should review the legislation and the Revenue guidelines to determine whether they are affected by it.

Council directive 2003/48/EC on taxation on savings income in the form of interest payments was adopted on 3 June 2003. The aim of the directive is to provide for effective taxation of savings income throughout each member state by the exchange of information between member states on interest paid from one member state to individuals resident in other member states. Austria, Belgium and Luxembourg chose to apply a gradually increasing rate of withholding tax instead of exchanging information with other member states.

Each EU member state must implement the directive with effect from **1 July 2005**. Ireland implemented the directive into national law as part of the *Finance Act, 2004* and the provisions of the directive can now be found in chapter 3A of part 38 of the *Taxes Consolidation Act, 1997*.

How could the *Savings directive* impact on Irish solicitors?

If an Irish solicitor has client funds in an account with an Irish bank and interest is accruing on such funds, any payments of such interest by the Irish solicitor to an individual resident in (a) another EU member state, or (b) a dependent/associated territory of a member state (for example, the Channel Islands or the Isle of Man) together defined as a relevant territory will be reportable under the legislation.

The solicitor will be deemed to be a 'paying agent' (within the meaning of the legislation) and will therefore be required to report the payment of such interest to the Revenue Commissioners in addition to reporting the details of the recipient client. The Revenue Commissioners will in turn exchange this information with the tax authorities of the relevant territory in which the recipient client is resident.

Type of information to be exchanged

The legislation requires that paying agents need to report details to the Revenue Commissioners about (i) themselves, (ii) the interest payments they make, including the account number associated with the interest payment or information identifying the asset giving rise to the interest payment (if there is no account number), and (iii) the persons to whom they make those interest payments.

In relation to the information to be reported on the clients receiving the interest payment, there are different obligations imposed on paying agents depending on when contractual relations have been entered into:

a) For contractual relations entered into before 1 January 2004, the name, address and country of residence of the beneficial owner should be reported in accordance with the information already at the disposal of the paying agent. This should correspond to the information already on record under the 'know your customer' rules in accordance with the money-laundering provisions
b) For contractual relations entered into on or after 1 January 2004 or as regards a transaction entered into in the absence of contractual relations on or after that date, the name, address, country of residence and tax or other identification number (TIN) should be reported. (If there is no TIN or if the TIN is not available, the date and place of birth of the beneficial owner should be reported.)

The directive also has potential implications for an Irish partnership of solicitors and an Irish sole practitioner holding client funds in a foreign bank account on behalf of an individual resident in a relevant territory.

There may be an obligation in such circumstances for the solicitor or firm receiving an interest payment from the foreign bank to report details of the receipt and for whom it is held to the Revenue Commissioners.

The Revenue Commissioners' *Guidance notes for paying agents on the Irish legislation implementing the* Savings directive, which is available on the Revenue website, contains more information on the directive and the Irish implementing legislation.

Probate, Administration and Taxation Committee

ELECTRONIC SEARCHES IN LAND REGISTRY

Practitioners are warned to be very careful if carrying out Land Registry searches electronically over the internet.

It is not sufficient to think that you are in the clear by simply clicking on the information dealing with the folio only. Bespeaking a copy of the folio from the Land Registry electronically will not show dealings pending, and it is important that you click on that section marked under that heading in order to ascertain the dealings pending.

Enquiries should also be made from law searchers as to whether they are doing a full search or not.

Practitioners should also note that, when searching and bespeaking up-to-date folios, at the moment the Land Registry will, in many instances, only show the registration of the last registered owner, and consequently the history of the folio will not be available unless you ask for the folio from its inception.

Although you can get a copy of the file plan over the internet, the Conveyancing Committee recommends that a purchaser at all times is entitled to a Land Registry certified copy folio and file plan. It is not sufficient to bespeak a copy of the folio and then add on an old or previously obtained original file plan, because the file plan could have been subject to a change since originally printed.

Conveyancing Committee

GARDA STATION (LEGAL ADVICE) SCHEME

Fees for consultations under the Garda Station (Legal Advice) Scheme have been increased. The fees are as follows:

- Visit between 9am and 7pm (Monday to Friday): **€113.91 plus VAT, with effect from 1 June 2005**
- Visit between 7pm and 9am (Monday to Friday and on weekends and bank holidays): **€154.90 plus VAT, with effect from 1 June 2005**
- Telephone consultation: **€46.38 plus VAT, with effect from 1 June 2005**

Criminal Law Committee

LEGISLATION UPDATE: 21 MAY – 17 JUNE 2005

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

ACTS PASSED

Dormant Accounts (Amendment) Act, 2005
Number: 8/2005
Contents note: Amends the 2001 and 2003 *Dormant Accounts Acts* to provide for the establishment of the Dormant Accounts Board, to reform the processes by which decisions are made about disbursements from the dormant accounts fund, and to provide for the dissolution of the Dormant Accounts Fund Disbursements Board and for related matters
Date enacted: 25/5/2005
Commencement date: Commencement order(s) to be made (per s17 of the act)

Landlord and Tenant (Ground Rents) Act, 2005
Number: 7/2005
Contents note: Amends section 4 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* in order to protect the interest that the state holds in property that has been acquired for industrial development purposes by certain bodies by including these bodies among the 'state authorities' that are not bound by the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*
Date enacted: 19/5/2005
Commencement date: 19/5/2005

Sea Pollution (Hazardous Substances) (Compensation) Act, 2005
Number: 9/2005
Contents note: Gives effect to the *International convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea 1996*, and also gives effect to the 1996 protocol to the *International convention on limitation of liability for maritime claims 1976*; amends the *Merchant Shipping (Liability of Ship Owners and Others) Act, 1996* and the *Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988*, and provides for related matters
Date enacted: 30/5/2005
Commencement date: Commencement order(s) to be made (per s1(4) of the act)

SELECTED STATUTORY INSTRUMENTS

District Court (funds in court) rules 2005
Number: SI 258/2005
Contents note: Amend orders 7, 12 and 41 of the *District Court rules 1997* (SI 93/1997) to facilitate the centralised management of certain categories of District Court funds
Commencement date: 3/6/2005

District Court (intoxicating liquor) rules 2005
Number: SI 259/2005
Contents note: Amend orders 71, 80 and 83 of the *District Court rules 1997* (SI 93/1997)
Commencement date: 3/6/2005

District Court (personal injuries) rules 2005
Number: SI 257/2005
Contents note: Amend the *District Court rules 1997* (SI 93/1997) to regulate the procedure and prescribe the forms to be used in personal injury actions to which part 2 of the *Civil Liability and Courts Act, 2004* apply. Insert a new order 39A ('personal injuries proceedings'), and amend orders 10, 12, 39, 41, 45 and 62
Commencement date: 3/6/2005

District Court (section 40, Civil Liability and Courts Act, 2004) rules 2005
Number: SI 256/2005
Contents note: Amend the *District Court rules 1997* (SI 93/1997) by the insertion of a new order 61A ('section 40 *Civil Liability and Courts Act, 2004* requirements'). Section 40 of the act deals with proceedings held otherwise than in public. The new order 61A prescribes the procedure to be followed in respect of (i) the attendance at any proceedings for the purpose of the preparation and publication of reports of such proceedings in accordance with section 40(3) of the act, (ii) applications by a party to be accompanied in court by another person in accordance with section 40(5) of the act, and (iii) applications by a party for an order for the disclosure to any third party of documents, information or evidence connected with or arising in the course of proceedings referred to in section 40(8) of the act
Commencement date: 3/6/2005

European Communities (compensation and assistance to air passengers) (denied boarding, cancellation or long delay of flights) regulations 2005
Number: SI 274/2005
Contents note: Give full effect to regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. Designate the Commission for Aviation Regulation for the purposes of article 16 of the regulation for its enforcement as regards flights from airports situated in the state and flights from a third country to such airports
Commencement date: 31/5/2005

Rules of the superior courts (personal injuries) 2005
Number: SI 248/2005
Contents note: Amend the *Rules of the superior courts 1986* (SI 15/1986) to regulate the procedure and prescribe the forms to be used in personal injuries actions to which part 2 of the *Civil Liability and Courts Act, 2004* apply. Insert a new order 1A ('procedure by personal injuries summons') in the rules and amend orders 1, 4, 13, 13A, 19, 58, 121 and 122
Commencement date: 2/6/2005

Rules of the Superior Courts (section 40, Civil Liability and Courts Act, 2004) 2005
Number: SI 247/2005
Contents note: Amend order 70A of the *Rules of the superior courts 1986* (SI 15/1986) by the insertion of new rules 29 ('admission to proceedings for the purposes of section 40 of the *Civil Liability and Courts Act, 2004*') and 30 ('disclosure of documents, information or evidence for the purposes of section 40 of the *Civil Liability and Courts Act, 2004*'). Section 40 of the act deals with proceedings held otherwise than in public. These new rules set out the procedure to be followed in respect of (i) the attendance at any proceedings for the purpose of the preparation and publication of reports of such proceedings in accordance with section 40(3) of the act; (ii) applications by a party to be accompanied in court by another person in accordance with section 40(5) of the act; and (iii) applications by a party for an order for the disclosure to any third party of documents, information or evidence connected with or arising in the course of proceedings referred to in section 40(8) of the act
Commencement date: 2/6/2005

Rules of the superior courts (tenders between defendants) 2005
Number: SI 249/2005
Contents note: Insert a new rule 15 in order 22 of the *Rules of the superior courts 1986* (SI 15/1986) to permit, as between defendants, the facility of making a tender of a specified amount of the total damages to which the defendants may be liable to the plaintiff
Commencement date: 2/6/2005

Social Welfare and Pensions Act, 2005 *(section 7(1)) (commencement) order 2005*
Number: SI 230/2005
Contents note: Appoints 3/5/2005 as the commencement date for section 7(1) of the *Social Welfare and Pensions Act, 2005*. Section 7(1) provides for increased availability of the annual respite care grant scheme and an increase in its amount

Social Welfare and Pensions Act, 2005 *(sections 16, 24, 25 and 26) (commencement) order 2005*
Number: SI 182/2005
Contents note: Appoints the following commencement dates: 1/6/2005 for section 16 (bereavement grant); 7/4/2005 for sections 24 and 25 insofar as they relate to carer's allowance; 1/6/2005 for sections 24 and 25 insofar as they relate to unemployment assistance, disability allowance, pre-retirement allowance and farm assist; 2/6/2005 for sections 24 and 25 insofar as they relate to old age (non-contributory) pension, blind pension, widow's or widower's (non-contributory) pension, one-parent family payment, orphan's (non-contributory) pension and a relevant payment by virtue of section 18(1)(b) or (c) of the *Social Welfare Act, 1996*; 6/6/2005 for sections 24 and 25 insofar as they relate to supplementary welfare allowance; 11/4/2005 for section 26 (technical amendments to the *Social Welfare (Consolidation) Act, 1993*) G

Prepared by the Law Society Library

First Law Update

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Selected news from Ireland's on-line legal awareness service
Compiled by Flore Bouhey for FirstLaw

COMPETITION

Regulatory law

Entitlement to sell ready-made spectacles – whether minister ought to have brought in amending legislation – whether legislation anti-competitive – Opticians Act, 1956, *s49*

The case concerned the entitlement of the first plaintiff company to sell ready-made spectacles. The second defendant set up the company with a view to selling spectacles, but the *Opticians Act, 1956* restricted the persons permitted to supply. The second plaintiff knew of the statutory restrictions but was also aware that the state was moving towards a freer regime. The plaintiffs contended that the minister ought to have bought in amending legislation and also that s49 was anti-competitive.

Smyth J refused the plaintiffs' claim, holding that, at the material time, the provisions of s49 were a proportional response to the perceived public health argument.

***Easy Readers Limited v Bord na Radharcmhastori*, High Court, Mr Justice Smyth, 15/10/2003** [FL10578]

CRIMINAL

Appeal, evidence

Belief of garda corroborated by further testimony – source of belief – whether obligation to reveal source of belief – whether non-disclosure of source of belief renders conviction unsafe as being unfair – Offences Against the State (Amendment) Act, 1972, *section 3(2) – witness – credibility – whether evidence reliable – whether assessment of evidence by trial court should be upset – principles to be applied by appellate court in relation to decisions of fact by trial judge*

The applicant was convicted by the Special Criminal Court of membership of an unlawful organisation contrary to section 21 of the *Offences Against the State Act, 1939*, as amended. A garda gave evidence, in accordance with section 3(2) of the *Offences Against the State (Amendment) Act, 1972*, of his opinion that the accused had been a member of the IRA on the relevant date. He was cross-examined as to that belief but pleaded privilege on the basis that disclosing the source would endanger the informant, and this plea was upheld by the trial court. A David Mooney also gave evidence against the accused. The applicant applied for leave to appeal the conviction on the grounds, among other things, that David Mooney's evidence was so unreliable that no reasonable court could hold a belief beyond all reasonable doubt based on his evidence and that he had not been given a trial in due course of law insofar as there was no investigation by the court as to whether the claim of privilege was reasonable.

The Court of Criminal Appeal refused leave to appeal, holding that:

1) The principles to be applied by an appellate court in relation to decisions of fact by the Special Criminal Court were that an appellate court did not enjoy the opportunity of seeing and hearing the witnesses as did the trial court and that if findings of fact made by the trial court were supported by credible evidence, the appellate court was bound by those findings; an appellate court should be slow to substitute its own inference of fact, where such depended on oral evidence or recollection of fact and a different inference had been drawn by the trial court
2) The balancing of conflicting rights and interests, such as the accused's right to a fair trial with the public interest in ensuring that informers give evidence, could only be determined by the court of trial. The purpose of section 3(2) of the 1972 act was to make the statement of opinion or belief of a garda admissible as evidence and, while it could be persuasive, it was not conclusive.

Quaere: whether a conviction based on the belief of a garda pursuant to section 3(2) of the 1972 act should be upset if there were no other evidence corroborating the belief of the garda.

***People (DPP) v Kelly*, Court of Criminal Appeal, 29/4/2005** [FL10671]

Delay, extradition

Delay in endorsement and execution of warrants – respondent re-arrested when released from prison – Extradition Act, 1965, *s47*

The applicant sought an order pursuant to s47 of the *Extradition Act, 1965*, as amended, for the rendition of the respondent to the Metropolitan Police in London on foot of three warrants. The respondent submitted, among other things, that the extradition proceedings had not been implemented expeditiously and that the delay in endorsing and executing the warrants was unconscionable and intolerable. The respondent had been serving a term of imprisonment and, in accordance with the established policy of the attorney general, he was not arrested until the termination of his prison sentence.

Peart J granted an order under s47 for the rendition of the respondent, holding that all the statutory requirements of s47 had been complied with. The respondent had not been prejudiced by the delay. The respondent was aware that upon his release the authorities would seek his re-arrest.

Per curiam: there could be no prejudice to the state by informing the prisoner in good time that he was to be arrested upon his release to allow the prisoner to mentally prepare for the re-arrest.

***Attorney General v K*, High Court, Mr Justice Michael Peart, 11/12/2003** [FL10604]

EMPLOYMENT

Damages, injunction

Practice and procedure – application for order prohibiting publication of report – whether serious issue to be tried – adequacy of damages – balance of convenience – whether behaviour of applicants disentitled them to equitable relief

The minister directed the labour inspectorate to investigate allegations that had been made against the applicant construction companies relating to their treatment of employees. The two companies were given leave to apply for judicial review seeking prohibition against publication of the report. They sought interlocutory injunctions.

Kelly J granted a limited form of injunction, holding that no obstruction or obstacle should be placed in the way of five state authorities being appraised of the contents of the report. However, the publication of the report to the public at large should be restrained until the

trial of the action. Although there were disquieting elements concerning the behaviour of the applicants, they had not been guilty of such wrongdoing or non-disclosure as to disentitle them to relief.

***Gama Endustri Tesisleri Imalat Montaj AS v Minister for Enterprise, Trade and Employment*, High Court, Mr Justice Kelly, 22/4/2005** [FL10745]

FREEDOM OF INFORMATION

Education

Access to documents – Education Act, 1998 – Freedom of Information Act, 1997 – *whether the commissioner and trial judge erred in their interpretation of s53 of the 1998 act – whether s32 of the 1997 act could or should inform the interpretation of s53 of the 1998 act*

The appellant appealed against a decision of the High Court refusing to overturn a decision of the respondent granting access to the second-named notice party (*The Irish Times*) to redacted versions of reports, including a report prepared following an inspection of the primary school where the appellant was principal. The department initially refused to grant such access on the basis that the disclosure of the reports would enable school league tables to be produced in contravention of s53 of the 1998 act. The appeal was based on the grounds that the trial judge misdirected himself in law and in fact in his interpretation of and/or his application of s53 of the 1998 act and erred in law and in fact in his interpretation of and/or his application of ss32(1)(a), 21 and 26 of the 1997 act.

The Supreme Court (Kearns, Denham JJ, Fennelly J dissenting) allowed the appeal, holding that:

1) Because of the use of the word 'notwithstanding' at the beginning of s53, it was not possible to construe the acts of 1997 and 1998 together, or as forming part of a continuum. The respondent and trial judge erred in determining that the information contained in the reports could give rise to highly subjective comparisons being drawn between different schools, which would not breach s53 of the 1998 act, and in finding on that ground that access to the reports was not exempt under s32(1)(a) of the 1997 act. Accordingly, the appeal under s53 was allowed
2) The appellant failed to adduce evidence of prejudice or that a significant adverse effect could result from the granting of access to the reports and, further, the reports did not contain very confidential information. Accordingly, the grounds of appeal relating to ss21 and 26 of the 1997 act should be dismissed.

***Sheedy v The Information Commissioner*, Supreme Court, 30/5/2005** [FL10697]

PLANNING AND DEVELOPMENT

Planning permission

Unauthorised use – whether there was a material change in the permitted use of the premises as a public entertainment area – Development Act, 2000

The applicant applied pursuant to s160 of the act of 2000 for an order restraining the respondent from the unauthorised use as a nightclub of premises known as 'Spirit', an order requiring the respondent to cease the allegedly unauthorised use of the basement level of Spirit as a bar, and an order requiring that it be restored to the use permitted by the planning permission as a museum. The respondent was permitted to use both the ground floor and the first floors as a public entertainment area (music) with emphasis on seated entertainment where food was served, without any restriction in time. The applicant submitted that, at specific times, the premises was used as a nightclub and that was in breach of condition no 4 of the planning permission.

Quirke J held that:

1) The applicant established on the balance of probabilities that the use by the respondent of the basement area of the premises was an unauthorised use within the meaning of s2 of the act of 2000
2) The applicant failed to establish on the evidence that there was an unauthorised use of any part of the premises other than the basement. The applicant failed to define the word 'nightclub' and did not adduce any evidence to enable the court decide what use 'as a nightclub or similar function type of premises' comprised.

***Dublin City Council v Liffey Beat Limited*, High Court, Mr Justice Quirke, 10/2/2005** [FL10639]

PRIVACY

Defamation, trespass

Interlocutory relief – interim relief – test for grant of interlocutory injunction – balancing competing rights – whether real, significant and weighty public interest issues involved – Broadcasting Authority (Amendment) Act, 1976, *s3*

The plaintiff in the first proceedings was a director of nursing at the Leas Cross Nursing Home. The plaintiffs in the second proceedings were the owners and occupiers of Leas Cross Nursing Home. RTÉ intended to broadcast a programme on the subject of the standard of nursing home care generally and the management and operation of the Leas Cross Nursing Home in particular. Both plaintiffs sought interlocutory orders to restrain the broadcast of the programme and the applications were heard together. The plaintiff in first proceedings based her claim squarely on defamation. The plaintiffs in the second proceedings contended, among other things, that a significant amount of the material had been obtained by the use of hidden cameras, in breach of their right to privacy, and was also unlawful as having been obtained by trespass.

Clarke J refused the applications for interlocutory injunctions restraining the broadcast but granted an order restraining RTÉ from engaging in any further trespass and held that it was not clear that the plaintiff in the first proceedings would ultimately succeed in her defamation action. It was not clear that a reasonable viewing of the programme would cause a viewer to conclude that the plaintiff in the first proceedings was at fault. While the plaintiffs in the second proceedings had a right to privacy, this right had to balanced against competing rights. RTÉ had shown that there were real, significant and weighty public interest issues involved.

***Cogley v RTÉ*, *Aherne v RTÉ*, High Court, Mr Justice Clarke, 8/6/2005** [FL10672]

REFUGEE AND ASYLUM

Certiorari, human rights

Immigration – human rights – marriage of Irish national and Romanian national after deportation – application sought to revoke minister's deportation order – D-reside visa

A Romanian national was deported from Ireland and three months later married an Irish girl in Romania. He then sought an order of *certiorari* to revoke the deportation order. Quirke J refused the application. The applicant had sought and had been refused asylum in other jurisdictions before coming to Ireland. His application in Ireland had been processed in the normal way and was denied. Having been duly informed of this decision, he was required to present himself at a garda station but did not show up and subsequently he was arrested and then deported. Subsequent to his marriage to the Irish

national, he sought a visa to return to Ireland. It was suspected by the authorities that it was a marriage of convenience.

The Supreme Court (Fennell J, Hardiman, Geoghegan, McCracken and Kearns JJ concurring) dismissed the appeal and affirmed the order of Quirke J, holding that:

1) The minister gave due weight to all relevant information before him
2) It had not been shown that the minister had acted in pursuit of a fixed or inflexible policy and that his decision was unreasonable or disproportionate
3) Given the particular facts of this case, the minister's decision fell well within the margin of appreciation allowed to member states by the European convention
4) This case does not merit reconsideration of the standard of unreasonableness normally required by the well-established jurisprudence of the court.

***Cirpaci v Minister for Justice, Equality and Law Reform*, Supreme Court, 20/6/2005** [FL10738]

Deportation, judicial review

Leave application – whether the decision of the respondent refusing to revoke a deportation order should be subject to review on the basis of the applicant's family status

The applicants sought leave to apply by way of judicial review for an order of *certiorari* quashing the decision of the respondent refusing to revoke a deportation order made in respect of the first-named applicant. The applicants submitted that the decision of the respondent to refuse to revoke the deportation order once he was notified of the first-named applicant's marriage to the second-named applicant, who had lawfully resided and worked in the state for a number of years, breached their rights as provided for in the constitution and the *European convention on human rights* to reside in this state as a family unit. Furthermore, the applicants submitted that the first-named applicant had a legitimate expectation that she would not be deported pending further medical review.

Peart J granted leave to seek judicial review, holding that:

1) It was at least arguable that the decision of the respondent infringed a right or rights protected by the constitution and/or convention relating to the family, and the respondent failed to carry out the exercise of considering and balancing the competing interests and factors in order to satisfy that the measure was necessary in a democratic society and therefore proportionate to the objective to be achieved
2) It was at least arguable that the course of dealing that had taken place between the first named applicant and the Garda National Immigration Bureau was such as to give rise to a legitimate expectation that she would not suddenly and without warning be arrested and deported.

***Spartariu and Spartariu v The Minister for Justice, Equality and Law Reform* High Court, Mr Justice Peart, 7/4/2005** [FL10601]

TORT

Damages

Misfeasance in public office – subjective recklessness – whether Law Society acted in bad faith – findings of fact in High Court

This appeal had a long history that included two substantive judgments of the Supreme Court. The court had held that the Law Society had appointed an accountant for two purposes, one of which was *ultra vires* and the other *intra vires*. The court reserved to the High Court any question of damages flowing from the invalidity in the appointing decision. The High Court (Kearns J) held that the applicant had fallen short on the balance of probabilities of establishing a case of misfeasance in public office.

The Supreme Court (Denham, McGuinness, Hardiman, Geoghegan and Fennelly JJ) dismissed the appeal, holding that the High Court had held that there was no evidence of bad faith on the part of the Law Society that would support an allegation of deliberate or reckless behaviour. These primary findings of fact could not be interfered with. Insofar as the High Court had drawn inferences, it would seem that they were legitimate inferences.

***Kennedy v Law Society of Ireland*, Supreme Court, 21/4/2005** [FL10569] G

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Eurlegal

News from the EU and International Affairs Committee

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

The Europeanisation of Irish family law

Irish family law is not an area readily associated with the European Community. Consequently, council regulation 1347/2000 (known as *Brussels II*) came as something of a shock. It was an attempt to legislate for the fact that six million EU citizens live in another member state.

According to article 65 of the *EC treaty*, the European Community possesses legal competence for international civil procedure, including family matters. The European Commission is bound by the limits of article 65 and can only take measures to harmonise procedural family law. It cannot take measures to harmonise substantive family law. That said, this distinction is not easy to either make or apply. The now repealed *Brussels II* regulation on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses was the first attempt by the European Community to enter the family law area.

The increasing free movement of persons has resulted in an almost identical increase of cross-border family relations. The accepted instrument to address legal issues arising from such relations is the use of private international law. Private international law, however, is but an interim solution. While private international law enables a certain degree of uniformity to be achieved, the differences between the substantive laws of the member states are still maintained.

The absence of harmonised family law creates a barrier to the free movement of persons and the realisation of a truly

European identity and an integrated European legal space. That said, there is increasing tension between the desire to retain family law under the internal affairs of the member states (justified by the EU principle of subsidiarity) and the on-going need for more uniform rules and regulations.

The European Court of Human Rights has expanded on European family law in a number of its decisions. At a European Union level, the *EC treaty* guarantees freedom of movement for all workers. The European Court of Justice has given major impetus to a European family law by attributing implications of a family nature to the freedom of movement. One has yet to notice that, essentially, the European Union has no competence for the unification of family law. That said, the union seems to have abandoned its restraint. It expressly acknowledged the importance of the family with the adoption of the *Charter of fundamental rights* of 7 December 2000. Significantly, at the Laeken European Council meeting of 14-15 December 2001, the harmonisation of family law was specifically mentioned in the recommendation to use all efforts to overcome the problems arising from differences between legal systems.

The *Treaty of Amsterdam*, as interpreted by the institutions of the European Community, has facilitated the communitarisation of family law. In the 1997 treaty, the EU member states held that economic and political integration required, among other things, the harmonisation of both the law of property and procedural law. Family law is identified in the action plan for the implementation of the *Treaty of Amsterdam*.

Recent EU legislation has been drafted and adopted in the field of divorce and parental responsibility. Steps for the progressive abolition of the *exequatur* (meaning an intermediate measure whereby a court decree is given enforceable quality) in civil and commercial matters adopted by the Justice and Home Affairs Council in November 2000 are to be found in *Brussels I* and *Brussels II*.

What has been achieved? The repealed *Brussels II* regulation on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses came into force on 1 March 2001. It sought to harmonise the private international law with regard to jurisdiction, recognition and enforcement of judgments on divorce, separation and marriage annulment and on parental responsibility if issued in the context of matrimonial proceedings. It did not deal with applicable law. The High Court recently ruled on the implications of this regulation in the case of *YNR v MN* (unreported, 3 June 2005, High Court, O'Higgins J). The case concerned a French couple who married in France in 1978 and moved to Ireland in 1988. The marriage broke down in 2002. Shortly thereafter, in November 2002, the husband initiated divorce proceedings. By this time the wife had returned to France while the husband remained in Ireland. In December 2002, the wife instituted proceedings in Ireland. Further proceedings were brought in October 2003 and January 2004. The wife challenged, among other things, the constitutionality of the *Brussels II* regulation and contended that only the Irish court could reorder assets within the state.

O'Higgins J declined the wife's application that the case

should be heard in Ireland. He held that the *Brussels II* regulation was part of Irish law and expressed the view that the regulation was constitutional as it arose out of the 'yes' vote in the *Amsterdam treaty* referendum. O'Higgins J concluded that the High Court had no jurisdiction in the matter. The judge noted that, under the regulation, the court to which the application is first brought must hear the case. As the French court was the court to which this case was first brought, it had the right to hear the case and determine the issues: *'It would be unwarranted and irresponsible of this court to act on the assumption that the French courts will act other than in any way permitted by the relevant legislation, and it is clear that the Irish courts have no role in the supervision of the French courts in doing their legitimate business. It is clear that the French courts have jurisdiction in this case and that it is appropriate for this court to declare … that it has no jurisdiction in this matter'*.

The *Brussels I* regulation on jurisdiction, recognition and enforcement of judgments in civil and commercial matters came into force on 1 March 2002. As with the *Brussels convention*, the *Brussels I* regulation also applies to maintenance issues. The *Brussels II bis* regulation repeals the *Brussels II* regulation and entered into force on 1 March 2005. It extends the scope to all judgments on parental responsibility. It takes over the rules on recognition and enforcement from *Brussels II* and abolishes *exequatur* for two limited categories of judgments (judgments on cross-border access rights and judgments requiring the return of a child after an abduction). It is arguable that *Brussels II bis* implies a certain harmonisation of substantive family law and is not strictly limited to private international law.

The harmonisation of family law in Europe has begun and is seen as the ultimate step in the realisation of free movement for all Europeans. The argument recently advanced in this jurisdiction that there is no need for harmonisation is flawed. Family ties increasingly stretch across one or more jurisdictions. Millions of migrants, including workers and their families, moving within the EU are confronted with different family laws. A different family law may affect free movement within the EU. In this regard, France Frattini, the EU commissioner for justice, freedom and security recently stated: *'The right of freedom of movement for individuals … is a basic right that must be guaranteed irrespective of the fact that some member states have or do not have legal rules regarding same-sex couples. That is an obvious principle'*.

Given the fact that the *Brussels II bis* regulation has made it necessary to consider the harmonisation of national divorce law, further European legislation will render harmonisation efforts in other areas of family law unavoidable.

Maintenance

In April 2004, the European Commission published a green paper on the questions arising in the recovery of maintenance claims. The green paper was part of a public consultation on this difficult issue. A 'legislative package' will soon emerge that will reflect the results of the consultation process. One of the key recommendations is likely to be the removal of the *exequatur* procedure. The package is likely to include proposals permitting 'precise identification of a debtor's assets in the territory of the member states', so that mutual recognition can occur in an environment that enhances co-operation between member states' courts. Measures for the harmonisation of conflict-of-law rules are also likely to be included in the legislative package.

Divorce

The European Commission launched a green paper on applicable law and jurisdiction in divorce matters on 14 March 2005. The green paper outlines the practical difficulties for the increasing number of 'international couples' who divorce each year within the European Union. It addresses many of the difficulties caused by the implementation of the repealed *Brussels II* regulation and the revised *Brussels II*. In particular, it deals with the question of applicable law, for which there are no community rules at present. The revised *Brussels II* does not cover conflict-of-law rules.

The green paper criticises the current 'lack of legal certainty and flexibility' and states that 'the current situation may also lead to results that do not correspond to the legitimate expectations of citizens'. It deals with the problems created by the alternative grounds for the jurisdictional rules relating to divorce. The paper provides a number of examples, such as a

Finnish-Swedish couple living in Ireland or an Italian couple living in Germany, to illustrate the need for adopting European rules on selecting the competent law for settling divorce cases. It acknowledges that the rule on *lis pendens* (the 'first come, first served' principle) may induce the parties to a transnational marital breakdown into a race to see who can get to court first. This makes speed of the essence in 'international' divorces. The green paper states that 'a possible remedy could be to introduce a possibility to transfer a divorce case, in exceptional circumstances, to a court of another member state'.

Application of the *forum non conveniens* doctrine has, however, recently been subject to criticism in a *Brussels convention* personal injury action. In case C-281/02, *Andrew Owusu v NB Jackson, trading as 'Villa Holidays Bal-Inn Villas' and Others*, the ECJ stated: *'The* forum non conveniens *doctrine, which allows the court seised a wide discretion as regards the question whether a foreign court would be a more appropriate forum for the trial of an action, is liable to undermine the predictability of the rules of jurisdiction laid down by the* Brussels convention *… and consequently [is liable] to undermine the principle of legal certainty, which is the basis of the convention.*

'Allowing forum non conveniens *in the context of the* Brussels convention *would be likely to affect the uniform application of the rules of jurisdiction contained therein, insofar as that doctrine is recognised only in a limited number of contracting states, whereas the objective of the* Brussels convention *is precisely to lay down common rules to the exclusion of derogating national rules.*

'The Brussels convention *precludes a court of a contracting state from declining the jurisdiction conferred on it … on the ground that a court of a non-contracting state would be a more appropriate forum for the trial of the action, even if the jurisdiction of no other contracting state is in issue or the proceedings have no connecting factors to any other contracting state'.*

Unfortunately, in the instant case, the ECJ refused to consider whether the application of *forum non conveniens* was ruled out in all circumstances.

The green paper invites interested parties to indicate whether they support harmonisation of the conflict-of-law rules 'based on a set of uniform connecting factors'. It also invites submissions on whether spouses should be allowed to a limited extent to choose the law applicable to their divorce, legal separation or marriage annulment.

Family law in Ireland is still in a state of rapid change. International relationships do not know frontiers. This can be seen from the growing number of international instruments governing cross-border issues in family law. Recent and impending EU legislation in the private international law area can only therefore be regarded as a first step, a step that brings the harmonisation of substantive family law closer. G

Geoffrey Shannon is the Law Society's deputy director of education.

Recent developments in European law

FREE MOVEMENT OF PERSONS

Case C-145/03, *Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingesa), formerly Instituto Nacional de Salud (Insalud)*, 12 April 2005. Ms Keller was a German national, resident in Spain. She asked the relevant Spanish institution (Insalud) for a form E111 for a period of one month in order to travel to Germany. This form gives an insured person whose health necessitates immediate treatment during a stay in another member state the right to benefits in kind in that member state. During her stay in Germany, she was diagnosed as having a malignant tumour liable to cause death at any time. She asked Insalud to issue her a form E112 to enable her to continue receiving treatment in Germany. This form gives an insured person authorisation to go to another member state to receive appropriate medical treatment. German doctors transferred her to a clinic in Zurich. This was the only clinic in which the operation she needed could be performed with a real chance of success. She paid the costs of the treatment in Zurich herself and then requested Insalud to reimburse those costs. Her request was refused and she then commenced court proceedings. The national court made a reference to the ECJ on the interpretation of regulation 1408/71 on the application of social security schemes to migrant workers. The ECJ indicated that one of the objectives of the 1971 regulation is to facilitate the free movement of persons covered by social insurance who need medical treatment during a stay in another member state, or who have been authorised to receive treatment in another member state. Forms E111 and E112 are intended to assure the institution of the member state of stay and the doctors authorised by it that the patients is entitled to receive in that member state treatment whose costs will be borne by the member state of affiliation. The doctors in the member state of stay are best placed to assess the treatment needed by the patient. The institution of the member state of affiliation places its confidence in the institution of the host member state and the doctors authorised by it during the period of validity of the form. Consequently, the institution of the member state of affiliation is bound by the findings relating to the need for urgent vital treatment made by the doctors authorised by the institution of the member state of stay. It is also bound by the decision of those doctors to transfer the patient to another state to be given the urgent treatment that the doctors of the member state of stay are unable to provide. It is of no importance that the state to which the doctors have decided to transfer the patient is not a member of the European Union. The institution of the member state of affiliation cannot require the person concerned to return to the member state of residence to undergo a medical examination there, nor can it have him examined in the member state of stay, nor subject the medical findings and decisions to its approval. The cost of treatment is borne by the institution of the member state of stay and the institution of the member state of affiliation is subsequently to reimburse the institution of the member state of stay. In this case, it is for the Spanish social security institution to reimburse the cost of treatment directly to the heirs of Ms Keller.

Case C-209/03, *The Queen (on the application of Dany Bidar) v London Borough of Ealing and Secretary of State for Education and Skills*, 15 March 2005. In England and Wales, assistance with maintenance costs for students is provided by means of student loans from the state. Students begin to repay the loans once they begin earning more than stg£10,000. The interest rates are linked to inflation. Nationals of other member states are entitled to receive this loan if they are 'settled' in the United Kingdom and have been resident there for the three years prior to commencing their course. Under

English legislation, it is not possible to become 'settled' if one resides in the United Kingdom solely to study. Bidar is a French national who moved to the UK in 1998 with his mother, who was to undergo medical treatment there. He lived in the UK with his grandmother and completed his last thee years of secondary education there. In 2001, he enrolled with University College London and applied to the London Borough of Ealing for financial assistance. He was granted assistance with tuition fees but he was refused a maintenance loan on the basis that he was not 'settled' in the United Kingdom. Bidar challenged the decision, claiming that the requirement to be settled was discrimination on grounds of nationality, prohibited by the *EC treaty*. The English High Court asked the ECJ whether assistance with maintenance costs remained outside the scope of the treaty. The ECJ held that a citizen of the EU lawfully resident in another member state can rely on the prohibition of discrimination on grounds of nationality in all situations that fall within the scope of EC law. There is nothing in the treaty to suggest that students who are citizens of the EU lose the rights that the treaty confers on citizens when they move to another member state to study there. A national who goes to another member state and pursues secondary education there exercises the freedom to move, guaranteed by article 18. Where the national of a member state lives in another member state where he pursues and completes his secondary education, without it being objected that he does not have sufficient resources or sickness insurance, enjoys a right of residence on the basis of article 18 and directive 90/364 on rights of residence. In the past, the ECJ had held that assistance given to students for maintenance fell outside the scope of the treaty. However, the *Treaty on European Union* has introduced citizenship of the union and added a chapter devoted to education and vocational training. In view of these developments, the ECJ held that assistance given to students who are lawfully resident in a member state, whether in the form of a subsidised loan or grant, intended to cover their maintenance costs, falls within the scope of application of the treaty. The English legislative requirements place at a disadvantage nationals of other member states. Such a difference in treatment can only be justified if it is based on objective considerations independent of nationality and is proportionate to the aim that is pursued. It is permissible for a member state to ensure that the grant of assistance to cover maintenance for students from other member states does not become an unreasonable burden. It is thus legitimate for a host state to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that state. The English requirements of residence for a certain numbers of years could be used to establish the existence of a certain degree of integration. However, the English legislation precludes any possibility of a national of another member state obtaining settled status as a student. It is therefore incompatible with EC law.

INTELLECTUAL PROPERTY

Case C-228/03, *The Gillette Company and Gillette Group Finland Oy v LA-Laboratories Ltd Oy*, 17 March 2005. Gillette registered its trademarks 'Gillette' and 'Sensor' in Finland. It markets various razors, including those composed of a handle and replaceable blades. The respondent, LA-Laboratories, also markets razors composed of a handle and replaceable blade in Finland. It marketed blades under the trademark 'Parason Flexor', attaching to their labels a sticker with the words, 'All Parason Flexor and Gillette Sensor handles are compatible with this blade'. Gillette argued that the conduct of LA-Laboratories infringed its registered trademarks, *Gillette* and *Sensor*. It argued that a connection had been created in the minds of consumers between its products and those of LA-Laboratories or the impression had been given that LA-Laboratories was authorised to use the *Gillette* and *Sensor* marks. The Finnish Supreme Court made a reference to the ECJ. The ECJ pointed out that the essential function of a trademark is to guarantee the identity of origin of the marked goods or services to the consumer. The trademark enables the consumer to distinguish the goods or services from others with another origin. A trademark owner may not prohibit a third party from using the mark in trade where it is necessary to indicate the intended purpose of a product or service, such as accessories or spare parts, provided that such use is made in accordance with honest practices in industrial or commercial matters. The court examined this condition of 'honest use'. It held this to be the expression of a duty to act fairly in relation to the legitimate interests of the trademark owner. This condition is not fulfilled where the trademark is used in such a manner as to give the impression that there is a commercial connection between the third party and the trademark owner. Likewise, it is not fulfilled where use of the mark affects its value by taking unfair advantage of its distinctive character or repute, or use of the mark entails its discrediting or denigration, or where the third party presents its product as an imitation or replica of the product bearing the trademark of which it is not the owner. The fact that a third party uses a trademark of which it is not the owner in order to indicate the intended purpose of its product does not necessarily mean that it is presenting that product as being of the same quality as, or having equivalent properties to, those of the product bearing the trademark. The national court must verify whether the presentation is in accordance with honest practices in industrial and commercial matters. G

Not running on empty

This year's Calcutta Run took place on 28 May and up to 1,500 people ran or walked the 10km route around the Phoenix Park. It was followed by a monster barbecue in Blackhall Place (no monsters were harmed) in brilliant sunshine, with raffles, the Guinness Jazz Band, a DJ, and more. The event is on target to beat last year's fund-raising record of 230k, which will be shared between Goal's orphanage in Calcutta and Fr Peter McVerry's projects for homeless boys in Dublin. Put it in your diary for May 2006

Euro star

Law Society webmaster Petrina Lonergan *(left)*, pictured with deputy director general Mary Keane, was recently conferred with a diploma in applied European law

Sachs in the city

Renowned South African Constitutional Court judge, Mr Justice Albie Sachs, delivered the Law Society's inaugural human rights lecture, entitled *The justiciability of socio-economic rights*, at Blackhall Place on 23 June. Pictured *(from left)* are Law Society Human Rights Committee vice-chairman Michael Farrell, committee secretary Alma Clissmann, president Owen Binchy, Mr Justice Sachs, Vanessa September and South African ambassador Melanie Verwoerd

Euro millions

Pictured with the recent recipients of the diploma in applied EU law are Law Society Education Committee chairman Stuart Gilhooly and Peter Doyle, head of the EU Commission's representation in Ireland

Ars gratia artis

Law Society president Owen Binchy and Southern Law Association president Jerome O'Sullivan with Claire Hurley and Sandra Brookes, winners of the *Southern Law Association Cork 2005 student art competition*

The next generation?

Pictured at the presentation of Ballymun Community Law Centre's annual *Kathleen Maher/Sean O'Cionnaith memorial legal essay competition* are prize winners Denise Emerson, James Walsh and Mary Mockler, alongside attorney general Rory Brady, the law centre's Frank Murphy and Claire O'Regan of Ferrys

Skibereen (legal) eagles

It wasn't a bridge too far when Law Society president Owen Binchy and director general Ken Murphy paid a visit to the West Cork Bar Association in May. Pictured by the now disused railway bridge over the river Ilen at Skibereen are *(seated, from left)* Ger Corcoran, association secretary Colette McCarthy, Owen Binchy, association president Helen Hoare, Ken Murphy, Roni Collins and Fergus Applebe; *(standing, from left)* Richard Barrett, Maura O'Donovan, Virgil Horgan, Susan Fleming, Padraig Sheehan, John McCarthy, Tony Greenway, Maeve O'Driscoll, Ellen O'Mahony, Jim Brooks, Paul O'Sullivan, Anthony Coomey, Eamonn Fleming, Kay Lynch, Dan Sheehan, Kevin O'Donovan, Patrick O'Donoghue, Conor Murray, Therese Thornton, Mary Jo Crowley, Conrad Murphy, Cindy McCarthy and Plunkett Taaffe

Home decorating

Former Law Society junior vice-president John Fish received a high honour from the Austrian government in January. John was decorated for services to Austria in his capacity as former president of the Council of Bars and Law Societies of Europe

Until the wee small hours

Bravely struggling on, following the departure of the hardest task-master in journalism, are deputy director general Mary Keane, *Gazette* secretary Catherine Kearney, deputy editor Garrett O'Boyle and designer Nuala Redmond. Though for 'task', we mean 'beer', and for 'master' we mean 'lets us drink beer'. As to what we mean by 'journalism', we can only say 'superb'. Let's not mention 'hardest'

Shirt sleeves for the SYS

It was jackets off on a warm June evening when the society hosted a dinner for recent former chairs of the Society of Young Solicitors. The SYS has been organising two conferences a year for young and newly-qualified solicitors, with a unique blend of educational and social activities, for almost 40 years. Pictured are *(front, from left)* Richard Willis (2004/05), Nora Lillis (2003/04), president Owen Binchy, Ken Murphy (director general and SYS chair for 1986/87), Judge Katherine Delahunt (1989/90), Fidelma McManus (1999/00), Paul Murray (2002/03); *(rear, from left)* Owen O'Sullivan (1992/93), senior vice-president Michael Irvine, William Aylmer (2000/01), Declan O'Sullivan (1997/98) and Gavin Buckley (1994/95)

Meeting of the Law Society Council, Cork Courthouse, 27 May 2005

Sermon on the mount
President Owen Binchy addresses the Cork faithful

Knock on wood
Deputy director general Mary Keane, director general Ken Murphy, president Owen Binchy, and newly-appointed District Court judge Brian Sheridan in the newly-refurbished Washington Street courthouse

Stairway to heaven
Council members Sinéad Behan, Michelle Ní Longain and Michele O'Boyle

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 8 July 2005)

Regd owner: Arthur Kennedy (deceased); folio: 10488F; lands: Hacketstown Upper and barony of Rathvilly; **Co Carlow**

Regd owner: Sean Quinn Group Limited; folio: 12702F; lands: Mucklagh and Aughrim; area: 29.168 hectares; **Co Cavan**

Regd owner: Alan Kershaw and Kathleen Kershaw; folio: 24518F; lands: townland of Dough and barony of Moyarta; area: 0.023 hectares; **Co Clare**

Regd owner: Michael Hillery, Sean Treacy, Seamus Cleary and Gerry O'Loughlin; folio: 10161F; lands: townland of Dough and barony of Ibrickan; area: 0.405 hectares; **Co Clare**

Regd owner: Patrick O'Rourke; folio: 6192F; lands: townland of Mountshannon and barony of Leitrim; area: 0.436 acres; **Co Clare**

Regd owner: James Cregan; folio: 31556F; lands: plots of ground known as 11 Birch Place in the parish of St Finbar's and in the county borough of Cork; **Co Cork**

Regd owner: John-Francis Crowley; folio: 10489F; lands: plots of ground being part of the townland of Greenfield in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Thomas Mulcahy; folio: 14053; lands: plots of ground being part of the townland of Lyrenamom in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: Cornelius Healy and Margaret Riordan; folio: 9118; lands: plots of ground being part of the townland of Ballyrichard More in the barony of Barrymore and county of Cork; **Co Cork**

Regd owner: Richard McAuliffe; folio: 127L; lands: plots of ground situate in Sidney Park in the parish of St Anne's Shandon and county borough of Cork and county of Cork; **Co Cork**

Regd owner: Anthony J McCarthy; folio: 99477F; lands: plots of ground being part of the townland of Grange in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Catherine Nagle; folio: 2030F; lands: plots of ground being part of the townland of Cullomane West in the barony of Carbery West (west division) and county of Cork; **Co Cork**

Regd owner: John O'Mahony; folio: 50951; lands: plots of ground being part of the townland of Kilnacranagh West in the barony of Carbery East (west division) and county of Cork; **Co Cork**

Regd owner: Thomas Burke, Mullanbuoys, Inver, Co Donegal; folio: 23740; lands: Cranny Lower; area: 0.6576; **Co Donegal**

Regd owner: Connell Molloy, 22 Seaview Avenue, Clontarf, Dublin; folio: 18720; lands: Gortnamucklagh; area: 1.5580 hectares; **Co Donegal**

Regd owner: Eamon Desmond Logue and Mary Frances Logue, Urbalshinney, Milford, Co Donegal; folio: 29043F; lands: Urbanshinny; area: 0.2230 hectares; **Co Donegal**

Regd owner: Kriswick Limited; folio: DN85026F; lands: property situate in the townland of Friarsland and barony of Rathdown; **Co Dublin**

Regd owner: Smurfit Ireland Limited; folio: DN16234L; lands: property situate in the townland of Robinhood and barony of Uppercross; **Co Dublin**

Regd owner: Patrick McDonnell, Patricia McDonnell, Denise McDonnell; folio: DN2526F; lands: property situate in the townland of Corduff and barony of Castleknock; **Co Dublin**

Regd owner: Mercury Engineering Company Limited (limited liability company); folio: DN73046L; lands: (1) the leasehold interest in the property being part of the townland of Blackthorn and barony of Rathdown, (2) the leasehold interest in the property being part of the townland of Carmanhall and barony of Rathdown; **Co Dublin**

Regd owner: Margaret Moloney; folio: DN61682F; lands: property known as 19 Griffith Avenue, situate in the parish of Clontarf and district of Clontarf; **Co Dublin**

Regd owner: Mark Feldman and Gail Feldman; folio: 96314F; lands: townland of Murphystown and barony of Rathdown; **Co Dublin**

Regd owner: Noelle Ryan and Paul Blanker; folio: DN97966F; lands: property situate in the townland of Murphystown and barony of Rathdown; **Co Dublin**

Regd owner: William Collins and Anne Collins; folio: 2582F; lands: townland of Caltragh (ED Killower) and barony of Clare; area: 0.1340 hectares; **Co Galway**

Regd owner: John Diviney; folio: 8697F; lands: situate in the townland of Gurraun Lower and barony of Dunkellin and county of Galway; area: 0.375 acres; **Co Galway**

Regd owner: Finnoe Company Limited; folio: 37722F; lands: townland of Carnmore East and barony of Lisheenavalla; area: 1.275 hectares; **Co Galway**

Regd owner: Kathleen Lee; folio: 23758; lands: townland of Rosroe (part) and barony of Ballynahinch; area: 63 acres, 1 rood, 36 perches; **Co Galway**

Regd owner: Kevin Murphy; folio: 29895; lands: townland of Rinmore and barony of Galway; area: 0.0080 hectares; **Co Galway**

Regd owner: Farnes Construction Ltd; folio: 42878F; lands: townland of Ballynabooly and barony of Corkaguiny; **Co Kerry**

Regd owner: Michael Kane; folio: 2182; lands: townland of Timolin and barony of Naragh and Reban East; **Co Kildare**

Regd owner: Michael Mahon and Ella Mahon; folio: 22027F; lands: townland of Naas West and barony of Naas North; **Co Kildare**

Regd owner: Sheila Broadmoor and Graham Hughes; folio: 31726F; lands: townland of Oakleypark and barony of North Salt; **Co Kildare**

Regd owner: Delia Reddy; folio: 22015F; lands: townland of Glebe North and barony of Kilcullen; **Co Kildare**

Regd owner: Anastasia Doyle (deceased); folio: 1449; lands: Earlsquarter and barony of Gowran; **Co Kilkenny**

Regd owner: Robert Norwood and Bridget Norwood; folio: 16982; lands: Purcellsinch and barony of Gowran; **Co Kilkenny**

Regd owner: Vincent McMorrow, Carrowcrin, Dromahaire, Co Leitrim; folio: 13918; lands: Carrowcrin; area: 2.7134 hectares and 0.2023 hectares; **Co Leitrim**

Regd owner: Nora O'Regan; folio: 5573; lands: townland of Gortgarralt and barony of Smallcounty; **Co Limerick**

Regd owner: Jeremiah O'Shea; folio: 4347; lands: townland of Kilbreedy West and barony of Coshlea; **Co Limerick**

Regd owner: Dympna Ward, Ballinalee, Co Longford; folio: 11724; lands: Ballinalee or Saintjohnstown; area: 1.1458; **Co Longford**

Regd owner: James Conroy, Philomena Conroy and Mary Moran, 5 Saint Mary's Terrace, Longford; folio: 9677; lands: Deanscurragh; area: 0.1593 hectares; **Co Longford**

Regd owner: Rose Christina Leahy, Ballyclare, Kilashee, Co Longford; folio: 995; lands: Ballyclare; area: 5.6934; **Co Longford**

Regd owner: Charles Curtis, Lurgankeel, Kilcurry, Dundalk, Co Louth; folio: 1389F; lands: Lurgankeel, Dundalk Upper; area: 0.2428; **Co Louth**

Regd owner: Frances Griffin, Balrath Road, Kells, Co Meath and Ann Crilly, Drumgooter, Grangebellew, Drogheda, Co Louth; folio: 3730, 3342; lands: Kilcroney; area: 7.6233 hectares, 5.1269 hectares; **Co Louth**

Regd owner: Eugene Larkin, Donaghmore, Kilkerley, Co Louth; folio: 5364; lands: Donaghmore; area: 5.245, 1.459 hectares; **Co Louth**

Regd owner: James McDermott, Ballymakellett, Ravensdale, Dundalk, Co Louth; folio: 3973; lands: Ballymakellett; area: 3.6725 hectares; **Co Louth**

Regd owner: Marion McRory, 237 Greenacres, Dundalk, County Louth; folio: 1572L; lands: Marshes Lower; area: 0.0253 hectares; **Co Louth**

Regd owner: Joseph Woods Limited, Irish Street, Ardee, Co Louth; folio: 18650F; lands: Townparks; area: 0.121 hectares and 0.461 hectares; **Co Louth**

Regd owner: John Fitzgerald and Kathleen Fitzgerald; folio: 17359; lands: townland of (1) Ballymacgibbon North and (2) Knock South and barony of (1) and (2) Kilmaine; area: (1) 21 acres, 2 roods, 22 perches; (2) 7 acres, 3 perches; **Co Mayo**

Regd owner: Eamon Flynn; folio: 19261; lands: townland of Lanmore and barony of Murrisk; area: 16.8197 hectares; **Co Mayo**

Regd owner: Michael Geraghty; folio: 8996F; lands: townland of Newantrim and barony of Carra; area: 4.8710 hectares; **Co Mayo**

Regd owner: Seamus O'Hagan and Deborah O'Hagan; folio: 22353; lands: townland of Swineford and barony of Gallen; area: 1 rood, 2 perches; **Co Mayo**

Regd owner: Padraic Ruttledge; folio: 23977; lands: townland of (1) and (2) Cloonacauna and barony of (1) and (2) Tirawley; area: (1) 5 acres, 1 rood, 29 perches; (2) 4 acres, 3 roods, 13 perches; **Co Mayo**

Regd owner: Maria Tuohy; folio: 14213F; lands: townland of Drumminroe East and barony of Carra; area: 0.3590 hectares; **Co Mayo**

Regd owner: Declan Dufficy and Anne Dufficy; folio: 30184F; lands: townland of Kilkelly and barony of Costello; area: 0.04 hectares; **Co Mayo**

Regd owner: Nicholas Dolan, 102 Elmmount Avenue, Beaumount, Dublin 9; folio: 6027F; lands: Ballintlieve; area: 1.1736 hectares; **Co Meath**

Regd owner: Margaret McDermott, 7 Athlumney, Navan, Co Meath; folio: 1241L; lands: Athlumney; **Co Meath**

Regd owner: Joseph Brennan, Drumnanaliv, Inniskeen, Co Monaghan; folio: 1311; lands: Shancoduff; area: 9.5657 hectares; **Co Monaghan**

Regd owner: John Patrick Brennan, Kilnamaddy, Braddox, Co Monaghan; folio: 3723; lands: Kilnamaddy; area: 6.6191 hectares; **Co Monaghan**

Regd owner: John Finnerty and Mary Finnerty; folio: 23885; lands: townland of Mount Talbot and barony of Athlone North; area: 1 rood, 32 perches; **Co Roscommon**

Regd owner: Maurice Buckley and Mary Buckley; folio: 15650F; lands: townland of Carrowmore and barony of Ballintober; area: 1.482 hectares; **Co Roscommon**

Regd owner: Thomas Gilgan; folio: 6013; lands: townland of Masreagh and barony of Tireragh; area: 7.2843 hectares; **Co Sligo**

Regd owner: Mary Sheerin (deceased); folio: 11867; lands: townland of Ballymote and barony of Corran; area: 0.0050 hectares; **Co Sligo**

Regd owner: Vincent Woods; folio: 19682; lands: townland of Tawnymucklagh and barony of Coolavin; area: 2 acres, 8 perches; **Co Sligo**

Regd owner: Kevin Dwan; folio: 15911F; lands; Graiguenoe and Galbertstown and barony of Middlethird and Eliogarty; **Co Tipperary**

Regd owner: Trevor Melbourne and Sarah Melbourne; folio: 13725F; lands: townland of Giantsgrave and barony of Iffa and Offa East; **Co Tipperary**

Regd owner: Denis Reid and Bridget Kennedy; folio: 25728F; lands: townland of Clonismullen and barony of Eliogarty; **Co Tipperary**

Regd owner: Patrick Murray; folio: 2830L; lands: plots of ground being part of the townland of Mweelahorna in the barony of Decies within Drum; **Co Waterford**

Regd owner: Hugh Milling and Frances Rebecca Wilson Milling, 12 Whitebeam Avenue, Athlone, Co Westmeath; folio: 3036F; lands: Clonbrusk; **Co Westmeath**

Regd owner: Thomas Cowman (deceased); folio: 9485; lands: Yoletown, Ballycullane and barony of Shelburne; **Co Wexford**

Regd owner: Patrick Dempsey; folio: 9564F; lands: Oulart and barony of Ballaghkeen North; **Co Wexford**

Regd owner: John Roche and Brendan Roche; folio: 339L; lands: Townparks and barony of Forth; **Co Wexford**

Regd owner: Beton Limited; folio: 4269F; lands: townland of Tinode and baronies of Talbotstown Lower; **Co Wicklow**

Regd owner: John F O'Sullivan and Margaret O'Sullivan; folio: 12192; lands: townland of Humphrystown and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Carolyn Wilson; folio: 9321; lands: townland of Slievemweel and barony of Ballinacor South; **Co Wicklow**

Regd owner: William and Doreen Cobbe; folio: 5308; lands: townland of Tober Upper and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Garrett King; folio: 932F; lands: townland of Carrigoona and barony of Rathdown; **Co Wicklow**

Regd owner: John J Byrne; folio: 181 and 12560F; lands: townlands of Killeagh and Crone Beg and baronies of Ballinacor South; **Co Wicklow**

WILLS

Beattie, Charlotte Louise (deceased), late of Covert Cottage, Loughtown, Brownstown, Newcastle, Co Dublin. Would any person with any knowledge of a will executed by the above named deceased, who died on 5 May 2005, please contact Wilkinson & Price, Solicitors, Main Street, Naas, Co Kildare

Blood, David (deceased), late of 25 Shanglass Road, Santry, Dublin 9 and formerly of 221 Stanhope Green, Stanhope Street, Dublin 7. Died 16 February 2005. Would any person having knowledge of a will of the deceased please contact Maguire McErlean, Solicitors, 78-80 Upper Drumcondra Road, Dublin 9; tel: 01 836 0621; (ref CB)

Early, James (deceased), late of Osberstown, Sallins, Naas, Co Kildare, who died on 3 July 2004. Would any person having knowledge of a will of the above named deceased, who died on 3 July 2004, please contact Sarah De Groot, Cashelnagor, Gortahork, Co Donegal; tel: 074 916 5474, e-mail: sarahdegroot@eircom.net

Glynn, William (deceased), late of Glynn's Bar, Dublin Road, Oranmore, Co Galway. Would any person with any knowledge of a will executed by the above named deceased, who died on 4 April 2005, please contact William F Semple & Company, Solicitors, Lough Corrib House, Waterside, Galway; tel: 091 567371/2/3, fax: 091 567374, e-mail: wfsemplesolrs@eircom.net

Graham, Mark (deceased), late of Ballycoogue, Arklow in the county of Wicklow. Would any person having knowledge of the whereabouts of the will of the above named deceased, who died on 4 April 1996, contact Richard Cooke & Co, Solicitors, Wexford Road, Arklow, Co Wicklow. The said will was stolen from the safe of Richard Cooke & Co, Solicitors, on or about 5 December 1997

Holland, Patrick (deceased), late of Drumgur, Louth, PO Dundalk, Co Louth, who died at Dundalk Hospital on 1 June 2005. Would any person having knowledge of the whereabouts of a will by the above named deceased please contact Pierce O'Sullivan & Associates, Solicitors, 20 O'Neill Street, Carrickmacross, Co Monaghan; tel: 042 969 0850, fax: 042 969 0862

Joyce, Michael John (deceased), late of Maghermore, Oughterard, Co Galway. Would any person having knowledge of a will made by the above named deceased, who died on 22 May 2005, please contact L O'Connor & Co, Solicitors, 196 Upper Salthill, Galway; tel: 091 525 346

McAuley, Richard (deceased), late of 37 Ardilea Downs, Clonshaugh/Goatstown, Dublin 14, otherwise 41 Fosters Avenue, Donnybrook, Dublin 4 and 27 Church Road, East Wall, Dublin 3. Would any person having knowledge of a will made by the above named deceased, who died on or about 25 February 2005, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3; tel: 01 833 3097, fax: 01 833 2515; ref: MOD/5102

O'Connor, Kathleen (deceased), late of Ballypreacus, Bunclody, Co Wexford. Would any person with any knowledge of a will executed by the above named deceased, dated 15 May 1979, who died on 15 June 1979, please contact Peter G Crean & Co, Solicitors, Estate House, Castle Hill, Enniscorthy, Co Wexford; tel: 054 34500, fax: 054 34257

O'Donnell, John (deceased), late of MacBride Nursing Home, Westport, Co Mayo (formerly of Barley Hill Nursing Home), Westport, Co Mayo, formerly of 23 Lower Charles Street, Castlebar, Co Mayo and formerly of The Quay Village, Westport, Co Mayo. Would any person having knowledge of an original will made by the above named deceased, who died on 7 February 2005, please contact Patrick J Durcan & Co, Solicitors, James Street, Westport, Co Mayo in writing or telephone 098 25100

O'Sullivan, Mary (deceased), retired bank official, late of 55 Rothe Abbey,

Kilmainham, Dublin 8 and 28 Church Street, Listowel, Co Kerry. Would any person having knowledge of a will made by the above named deceased, who died on 10 June 2005, please contact Maurice O'Sullivan & Co, Solicitors, 3 Church Street, Listowel, Co Kerry; tel: 068 21760, fax: 068 21960, e-mail: kerrylaw@eircom.net; DX 85 002 Listowel

Phelan, Mary (deceased), late of 48 Ard na Greine, Waterford. Would any person having knowledge of the whereabouts of a will dated 15 March 1993, executed by the above named deceased who died on 11 August 1995, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford; tel: 051 874 366, fax: 051 870 390

Sheedy, Joan (otherwise Hannah) (otherwise Siobhan) (deceased), late of 12 Dargle View, Churchtown, Dublin 16. Would any person with any knowledge of a will executed by the above named deceased on 26 July 1983, please contact Messrs Arthur P McLean & Company, Solicitors, 31 Parliament Street, Dublin 2; tel: 01 677 2519, fax: 01 677 2325

Smith, Kieran (deceased), late of 4 Jubilee Terrace, Cavan, Co Cavan and Coragh Glebe, Kinawley, Co Fermanagh. Would any person having knowledge of a will made by the above named deceased, who died on 10 July 2004, please contact Messrs Garrett J Fortune & Co, Solicitors, Connolly Street, Cavan, Co Cavan; tel: 049 436 1233, fax: 049 436 1154, e-mail: infor@gjfortune.ie

Tierney, Ann, (deceased), late of 29 Clarks Road, Ballyphehane, Cork. Would any person having knowledge of a will made by the above named deceased, who died on 18 October 2003

at the South Infirmary/Victoria Hospital, Cork, please contact Guilfoyles, Solicitors, Tuckey House, 8 Tuckey Street, Cork; tel: 021 427 2229 or fax: 021 427 5823

Toibin, Niall (deceased), late of 4 St Kevin's Parade, South Circular Road, Dublin 8. Would any person having knowledge of a will executed by the above named deceased, who died on 9 May 2004, please contact Ferry, Solicitors, Inn Chambers, 15 Upper Ormond Quay, Dublin 7; tel: 01 677 9408, fax: 01 873 2976, e-mail: info@ferrysolicitors.com

Walsh, Marie Teresa (deceased) (nurse), late of 'Cascia', San Antonia Park, Salthill, Galway. Would any per-

son having knowledge of a will made by the above named deceased, who died on 13 January 1999, please contact L O'Connor & Co, Solicitors, 196 Upper Salthill, Galway; tel: 091 525 346

MISCELLANEOUS

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 048 3026 1616, fax: 048 3026 7712, e-mail: norville@danefisher.com

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 818 311, fax: 0044 2073 816 723, e-mail: arobbins@parfitts.co.uk

Offices to let (27 Bridge Street Lower, City Gate, Dublin 8); 1,200 sq ft net. Own door, mid-terrace office property arranged over ground first and second floor with two car parking spaces to the rear, available for immediate letting. Enquiries to F Doyle, 086 257 9628

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Seven-day ordinary licence for sale – price region: €180,000. Any details, please contact Declan Duggan, Denis Linehan & Co, Solicitors, Charleville, Co Cork; tel: 063 89667

Seven-day publican's on-licence for sale. Contact: Neil M Blaney & Co; Solicitors, Unit 3, Strand Road Shopping Centre, Portmarnock, Co Dublin; tel: 01 846 4188, e-mail: nblaney@iol.ie

Ordinary seven-day publican's licence for sale in Co Cork. Contact: Gerard Corcoran, JH Powell & Son, Solicitors, East Green, Dunmanway, Co Cork; tel: 023 45117, fax: 023 45932

Solicitor's practice for sale. Dublin south. Successful small principal-run practice. Vendor may agree to remain as consultant. All replies confidential, **box 65/05**

Courtney, Spring & Co is pleased to announce that new associate Ms Réiltín Courtney, who arrived on 6 May, is expected to enliven the firm considerably. Her primary areas of practice include sleeping, feeding and being utterly adorable.

TITLE DEEDS

Would any person having knowledge of the whereabouts of the title documents to the premises at 83 Botanic Road (formerly 15 Nora Terrace, Botanic Road), Glasnevin, Dublin 11, being the property comprised in an indenture of lease dated 30 September 1901 between Henry Gore Lindsay of the one part and George Clifton of the other part, please contact A Keegan & Co, Solicitors, 42 Brookwood Park, Killester, Dublin, 5

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the premises situate at 42 Gardiner Lane, Dublin 1: an application by Rosskerrig Ltd

Take notice any person having any interest in the freehold estate or of any superior interest in the following: all that and those 'that piece or plot of ground situate at the rear of the dwellinghouse and premises known as 42 Mountjoy Square South in the parish of St George and in the city of Dublin' and known as 42 Gardiner Lane, Dublin 1, held under indenture of lease dated 16 December 1912 made between Mary Margaret Gilsenan of the one part and Benjamin William White of the other part for a term of 100 years from 1 December 1912, subject to a yearly rent of £2.75 (old currency) and the covenants on the part of the lessee and conditions therein contained.

Take notice that the applicant, Rosskerrig Ltd, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of it is called upon to furnish evidence of title to the aforementioned premises to the below named with 21 days from the date of this notice.

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

Date: 8 July 2005

Signed: Paul W Tracey (solicitors for the applicant), 24 Marlborough Street, Dublin 1

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967 and 1994* and in the matter of an application by Denis Shannon and Helen Shannon

Take notice that any person having an interest in the freehold estate of the premises described in the schedule hereto and which are held under indenture of sub-lease dated 13 February 1939, made between James Joseph Dillon of the one part and Robert J Crawford of the other part for a term of 140 years (except the last three days thereof) from 25 March 1937 and head lease dated 21 June 1927, made between Edward Kingston Vernon of the one part and James Joseph Dillon of the other part for a term of 150 years from 25 March 1927, should give notice of their interest to the undersigned solicitors.

And take notice that Denis Shannon and Helen Shannon intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interest in the property described in the schedule hereto, and any party asserting that they hold a superior interest in the said premises is called upon to furnish evidence of title to the said premises to the undersigned within 21 days of the date of publication of this notice.

In default of any such notice being received, the said Denis Shannon and the said Helen Shannon intend to proceed with the application before the county registrar at the earliest opportunity 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 to the said property are unknown and or unascertained.

Schedule: 24 and 24A Conquer Hill Road in the parish of Clontarf and the county of the city of Dublin (previously known as number 1 St Michael's Terrace on the east side of Conquer Hill in the parish of Clontarf in the county of the city of Dublin).

Date: 8 July 2005

Signed: Lockhart & Company (solicitors for the applicants), 7 Annesley Bridge Road, Fairview, Dublin 3

In the matter of the *Landlord and Tenant Acts, 1967-1987* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1978*: an application by Peter Mulligan

Take notice that any person having interest in the freehold estate of the following property: all that and those the property formerly known as Savana and Christina's Fashion, now trading as Bookmakers at Main Street, Bundoran in the county of Donegal, otherwise the plot of ground with buildings situate at Main Street, Bundoran in the parish of Innismacsaint, barony of Tirhugh and county of Donegal, originally held by lease dated 21 February 1871, Hamilton Scott to Robert Moffitt and thereafter by Caroline Moffitt and Gerard Feely. Take notice that Peter Mulligan intends to apply to the county registrar for the county of Donegal for the acquisition of freehold interest in the aforesaid property, and any party asserting that they hold superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date hereof.

In default of such notice being received, Peter Mulligan 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 Donegal for directions as may

be appropriate on that basis that the person/persons beneficially entitled to the superior interest including the freehold reversion in the premises are unknown or unascertained.
Date: 8 July 2005
Signed: VP Mullin (solicitors for the applicant), Tirconnail Street, Ballyshannon, Co Donegal

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994*; premises: Cahir Post Office, Cahir, Co Tipperary: an application by An Post
Notice to any person having any interest in the freehold interest and all intermediate interests of the following property: all that parcel of ground on the west side of Cashel Road and extending back to the mall in the town of Cahir and containing in front of Cashel Road aforesaid 36 feet or thereabouts, situate in the town of Cahir, barony of Iffa and Offa West and county of Tipperary, being the property more particularly described in a lease dated 1901 and made between the Right Honourable Margaret Charteris, commonly called the Lady Margaret Charteris, of the one part and His Majesty's Postmaster General of the other part for the term of 99 years.

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

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the county of Tipperary for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the above premises are unknown or unascertained.
Date: 8 July 2005
Signed: Hugh O'Reilly (solicitor for the applicant), GPO, O'Connell Street, Dublin 1

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 Premia Developments Limited
Take notice that any person having a superior interest in the land and premises formerly known as 27 and 28 Lower Buckingham Street in the parish of St Thomas and the city of Dublin, being part of the property comprised in and held under an indenture of lease dated 2 October 1848 and made between George Baker of the one part and John Connell of the other part for the term of 500 years from 2 October 1848, subject to the payment of a yearly rent of IR£10 (since adjusted to IR£9.45) (€12.00).

Take notice that Premia Developments 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 property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Premia Developments 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 leasehold reversion in the aforesaid premises are unknown or unascertained.
Date: 8 July 2005
Signed: McCann FitzGerald (solicitors for the applicant), 2 Harbourmaster Place, IFSC, Dublin 1; ref: CEK

In the matter of the *Landlord and Tenant Acts, 1967-1984* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and the *Landlord and Tenant (Ground Rents) Act, 1967* and in the matter of an application by Alizima Properties Limited of 1st floor, Fitzwilton House, Wilton Place, Dublin 2
Take notice any person having any interest in the freehold estate of the following property, namely: no 59 Moore Street, Dublin 1.

Take notice that the applicant, Alizima Properties Limited, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties, 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 applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county and 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: 8 July 2005
Signed: Michael Sheil & Partners (solicitors for the applicant), Temple Court, Temple Road, Blackrock, Co Dublin

RECRUITMENT

Apprenticeship required: MA, M Lib, information professional seeks legal apprenticeship. Superb interpersonal, IT and project-management skills. All FE1s and first Irish exam passed. I am someone who is highly motivated, organised and able to work on own initiative. All locations considered. Available immediately. Contact Margaret at 085 713 1897 or e-mail: ML125@ireland.com

Apprenticeship required: hard-working and enthusiastic 24-year-old law graduate with 2.1 degree, passed all FE1s on first attempt, also Irish exam, currently working with legal clinic for immigrants, very eager to commence legal training, willing to pay own fees, all areas considered. Contact 087 683 9658 or e-mail: karenberkeley@eircom.net

Apprenticeship required: law graduate with extensive in-office experience of litigation, conveyancing and probate and with PPC1 course completed seeks apprenticeship. Dynamic, hardworking, conscientious and highly motivated with excellent communication and computer skills. Any area considered; tel: 086 892 0228 or e-mail: irelegal@gmail.com

Carrick-on-Suir, Co Tipperary: solicitor required for general practice. The successful candidate will have at least one year's PQE with experience in conveyancing, probate and litigation. Good conditions and salary. Applications will be treated in the strictest confidence – apply with CV to **box no 60/05**

Experienced solicitor, relocating to the east, with extensive experience in general practice and, in particular, conveyancing, family law, probate and court work, seeks position in the Carlow/Kildare area, full time, or part-time initially, may suit. Contact: 087 969 3958

Locum solicitor available, with extensive experience in areas of conveyancing, probate, litigation and family law. Will become available from 1 September 2005. All areas considered. Please reply to **box no 61/05**

Locum solicitor required, Co Cavan; part-time from September 2005 for six months; accommodation available; conveyancing and litigation experience essential. Rely to **box no 62/05**

Commercial property solicitor with minimum two years' PQE. Apply to: JW O'Donovan, Solicitors, 53 South Mall, Cork; e-mail: gkeating@jwod.ie. Ref: GK/10/3

Solicitor – part-time/full time (permanent) required for Mullingar practice. Experience in conveyancing and litigation desirable. Please reply to **box no 63/05**

Apprenticeship required: experienced person in both large and small firms seeks to commence work experience as an apprentice upon completion of PPC1 course in April/May 2006. Own car and full driver's licence. Preferred location in Limerick or Munster area. Please contact me at box no **64/05** or alternatively e-mail: 2u@ireland.com

Law graduate seeks apprenticeship –extensive in-office experience of litigation, conveyancing and probate and with PPC1 course completed. Dynamic, hardworking, conscientious and highly motivated with excellent communication and computer skills. Any area considered; tel: 086 892 0228 or e-mail: irelegal@gmail.com

Traineeship transfer required – no fees payable, as PPC1 completed and Law Society allows firms to have two trainees. Motivated, enthusiastic, hard-working, business graduate (2.1) with employment experience and excellent references seeks transfer of traineeship in Dublin area. Ability to work on own initiative and as part of a team. Ready to transfer immediately. Please tel: 087 685 0534 or e-mail: blackhalltrainee@yahoo.ie

Conveyancing locum solicitor required, Bray, beside Dart, call Clifford Sullivan & Co, 01 276 5226

Law Society of Ireland

DIPLOMA PROGRAMME

Applications are now being accepted for the following courses:

NEW

Diploma in Commercial Conveyancing

5 November 2005
Saturday mornings 11.00am - 3.00pm
Education Centre - Blackhall Place
Fee: €1500

This Diploma is opened to solicitors and trainee solicitors who have completed PPC I only.

The diploma is designed to expose participants to the practical issues arising in the area of Commercial Conveyancing It will benefit those working in this area of law by providing a high level of expertise and lectures will be delivered by senior practitioners working in the field. The course is aimed at practitioners with experience in this area. It will also provide a useful refresher course for those who may have returned to conveyancing practice. It will assume a level of pre-existing knowledge commensurate with that taught on the PPC Courses. The overall emphasis will be on practicality. Principles of law will be analysed by reference to working examples and a range of practice-based issues will be dealt with which will be of direct relevance to conveyancing practitioners.

Diploma in Commercial Law

20 September 2005
Tuesday Nights 6.30pm – 9.30pm
National College of Ireland,
Mayor Street, IFSC, Dublin 1
Fee: €1,600

The diploma is of interest to trainees, solicitors, barristers, and people working in business who wish to expand their knowledge and practical application of commercial law. It is primarily designed to meet the needs of solicitors in private practice. As the economy expands solicitors are finding that clients increasingly want legal advice on business matters. This course is intended to provide participants with up-to-date knowledge of the law and practice in the areas covered. It will provide participants with a high level of expertise in the field of Commercial Law and senior practitioners working in the field will deliver lectures.

Update in Commercial Law

A day long "update" in Commercial Law will be held in the Law Society on Saturday 22 October 2005. Participants can attend one module or the whole day as is appropriate. Day price 250 and price per module (€75). Further details available from the Diploma team.

Diploma in Trust & Estate Planning (in association with STEP)

17 September 2005
Saturday mornings 10.00am – 2.30pm
Education Centre, Blackhall Place
Fee €1,700 (inclusive of STEP student membership fee)

In its second year, this Diploma is offered jointly by the Law Society of Ireland and the Society of Trust and Estate Practitioners. This diploma course is intended for persons who work, or aspire to work in the trust and estate planning area within Ireland. Candidates who successfully complete the Diploma but have less than two years work experience in the areas of wills, trusts and estate planning are eligible for Associate Membership of the Society of Trust and Estate Practitioners Ireland. Successful diploma candidates with two or more years work experience in the areas of estate planning, trusts and administration of estates are eligible to apply for full membership of the Society of Trust and Estate Practitioners (STEP). Any full member is authorised to use the designation TEP and be described as a Registered Trust and Estate Practitioner. All course participants will automatically become student members of STEP, and this included in your course fee.

In addition to the substantive law courses listed above we will also be offering a Certificate in Spanish Law, a Certificate in Legal German (in association with the Goethe Institut) and a Diploma in Legal French (in association with the Alliance Francaise).

Diploma in Legal French

5 October 2005
Fee: €1,000
This diploma is run in conjunction with the Alliance Française. It provides students with a thorough grounding in French law and language and is open to students who have a good standard of French.

Certificate in Legal German

26 September 2005
Fee: €800 for two terms
This course offers a practical introduction to legal German and the German legal system. The course is divided into a number of modules dealing with relevant subjects including the German legal system, Courts and Court Procedures, Company Law, Property Law and Contracts. This course is run in conjunction with the Goethe Institut Inter Nationes.

Certificate in Spanish Law

25 October 2005
Fee: €700
This certificate course, run by the Law Society, provides students with an overview on the Spanish political and legal systems. It is focused on Property law and Probate as main topics, but it also covers other areas of law, including legal Spanish and the legal profession in Spain. It is open to students with a good standard of Spanish. Those interested in attending must complete a pre-course language assessment.

For further information on any of the above courses please access our website www.lawsociety.ie click on Diploma Programme on the home page and simply follow the drop-down menus or e-mail the diplomateam@lawsociety.ie / phone 01 672 4839.

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- *EU/COMPETITION*
- *IT*
- *TAX*
- *LEGAL & COMPLIANCE*
- *LITIGATION*

*For additional information and to discuss these opportunities with a consultant **contact Ellen Kelly (BA, Juris Doctorate) directly on 01 611 4337 or email ellen.kelly@griffinpersonnel.ie***

Support Division

The Griffin Legal Support Division specialises in sourcing staff with experience in many areas of law, particularly: Commercial, Corporate, Conveyancing, Criminal, Employment, Family, Litigation, Personal Injury and Probate.

*For your temporary, contract or permanent Legal Support Staff requirements **contact Emma Jackson directly on 01 611 4333 or email emma.jackson@griffinpersonnel.ie***

Griffin Legal,
11 Ely Place, D2.
www.griffinpersonnel.ie

griffin LEGAL

At The Legal Panel we focus on recruiting experienced solicitors from newly qualified to partner level and pride ourselves on our confidential and personal approach. We listen carefully to your requirements and tailor our search to your skill set and career aspirations. All applications are strictly confidential. We are currently recruiting for a number of opportunities for experienced solicitors both inhouse and in private practice.

the Legal panel

putting you in great company

IN-HOUSE

Regulatory/Compliance
Ref: AW14048 to €45,000

A Regulatory Consultant is sought for a world leading business solutions provider. You will liaise closely with the anti-money laundering team, ensuring compliance of IFSRA legislation and review procedures. The successful candidate must have a strong legal and business background and ideally familiarity with financial regulation.

Compliance/Insurance
Ref: AW14165 to €50,000

Our client is a leading reinsurance firm who are looking for a Compliance Officer.You will review IFSRA legislation, interpret and implement new policy, liaise with internal audit and monitor compliance policies. Ideally you will have legal and accounting experience.

Company Lawyer
Ref: AW13552 to €55,000

An excellent opportunity exists to join a world leading financial institution as a company lawyer. You will review and draft fund documentation as well as liaise closely with regulatory and tax authorities. The successful candidate will ideally have experience in funds or financial services.

Banking
Ref: SR13349 to €100,000

Our client is a high profile banking institution. You will provide legal advice to all aspects of the business, including treasury, derivative products, data protection and regulatory developments. The successful candidate will be a qualified solicitor with at least 5 years' pqe, either from a similar in-house background or from private practice.

Listing
Ref: AW13681 to €50,000

A Listing Advisor is sought for one of the leading global financial institutions. The role includes the review and listing of prospectuses, close liaison with international investment banks and the application of listing rules to products. The successful candidate will have 1-3 years' pqe, ideally in funds, investment or compliance.

Regulatory/Risk
Ref: RC14052 €55,000+

A leading financial institution currently requires a regulatory lawyer to join their expanding compliance department. You will be required to provide legal advice on compliance, risk and anti-money laundering, liaise with external advisors and assist with emerging legal issues. With 2-4 years' pqe you will ideally have previous inhouse experience.

Senior Financial Services
Ref: SR13212 to €115,000

You will cover a variety of areas to include; general corporate, projects, regulatory issues, distribution contracts, codes of best practice, IP & IT contracts and fund prospectuses. This is a senior role, involving managing a team of lawyers.

PRIVATE PRACTICE

Senior Corporate / Commercial
Ref: SR13585 €120,000

Leading law firm are currently seeking a senior associate in corporate and commercial to boost their highly respected department at a prominent level. The successful candidate will be a qualified solicitor with at least 6 years' pqe from a well reputed firm. Strong route to partnership for the right candidate.

Construction/Projects
Ref: RC13903 €45,000+

A leading law firm currently requires a newly qualified or junior lawyer to join their expanding construction and projects team.The successful candidate will ideally have 0-3 years' pqe and experience in construction, commercial or commercial conveyancing matters.

Commercial Property
Ref: RC13592 €45,000+

A top 5 firm with an international client base is looking for ambitious individuals to join their expanding property department. They advise a diverse range of clients including leading Irish and international investors and developers, on tax, financing, environmental and planning aspects of deals. Candidates with 0-3 years' pqe are invited to apply.

EU / Competition
Ref: RC13764 €45,000 +

This successful mid tier firm has extensive experience advising on a broad range of competition and regulatory matters. Their team advise on issues like compliance, legislative interpretation and judicial review. With at least one years' experience in a similar department, ideally you will also have worked on governmental and/or utilities matters.

Overseas
Ref: SR13357 €Neg

Looking for a fresh challenge? We are currently recruiting in locations such as Bermuda, Luxembourg, London, Dubai, Australia and New Zealand. We have opportunities both inhouse and in private practice. Candidates at all levels are invited to talk to us about the benefits of spending a couple of years living and working abroad.

For more information on these roles, please contact Sarah Randall or Rhona Connolly on (01) 637 7012 or email sarah@thepanel.com or rhona@thepanel.com

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