Law Society Gazette

Regulars

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Cover story

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NATIONWIDE
News from around the country

DUBLIN

Hands across the border

Relations between solicitors in Dublin, Belfast and Liverpool receive a boost every year when the solicitors' bar associations in the three cities meet to consider current issues and to renew friendships. Colleagues led by Dublin Solicitors' Bar Association president Orla Coyne, with Brian Gallagher, Kevin O'Higgins and Michael Quinlan, crossed the border to travel to Belfast recently. 'It was an excellent opportunity to foster better understanding between solicitors from somewhat different cultural backgrounds and experiences', Coyne said.

The exchange of information on the night produced at least one bit of local news – that the chain of office of the president of the Belfast Solicitors' Association was presented to them by their Dublin colleagues 50 years ago. They didn't ask for it back.

Circuit Court charter

Representations to the Courts Service by the DSBA and others have yielded a new Circuit Court customer charter for users, which has been widely praised. The new charter promises injunction orders on the day of court, infant orders within ten days and all other orders within four weeks. Replies to correspondence are promised within ten days, and correspondence with the court office can be conducted by e-mail. Details of the charter are available on the Courts Service website.

Solicitors in the Mansion House

DSBA president Orla Coyne last month presented the lord mayor of Dublin, Cllr Michael Conaghan, with a cheque 'for a substantial four-figure sum' for the city's poor. The Lord Mayor's Coal Fund is used to help those in particular need in a city of growing affluence.

The Dublin Solicitors' Bar Association recently held a lunch to honour solicitors who have been 50 years in practice. Pictured are *(from left)* Patrick J Gardiner, Brian J O'Connor, Max William Abrahamson, Orla Coyne, Fintan P Clancy and Gordon Henderson

The association was holding its May council meeting at the Mansion House with the kind permission of the lord mayor, as in previous years. 'This is another way in which Dublin solicitors through our association foster and encourage better understanding with the city leaders', noted DSBA secretary Kevin O'Higgins.

LOUTH

Thespians in our midst

Dundalk solicitor Tim Ahern recently won a national award for best actor at the RTÉ All-Ireland Drama Festival in Athlone. Tim, who practices in Dundalk when not treading the boards, won the award for his part in the drama *I'm Not Rappaport*.

'It's very exciting when a colleague, who has been contributing significantly to local theatre for some time, scoops a national award, and the Louth Bar Association compliments him on his achievement', said the association's secretary Niall Lavery. Fellow Dundalk solicitor Fergus Mullen is director of the Dundalk Theatre Workshop, which itself came close to winning an award at the Athlone Drama Festival.

New Circuit Court president

The appointment last month of Judge Matthew Deery as president of the Circuit Court has been widely welcomed, and nowhere more so than in his native Dundalk. It is seen as a remarkable achievement both because of the absence of a legal background in the new president's family and also because he never became a senior counsel. He became the youngest serving Circuit Court judge when he was appointed in 1968 at 43 years of age. He has also served on the Special Criminal Court and was recently re-appointed as chairman of the Garda Síochána Appeals Board.

'He is a long-time good friend of the Louth Bar Association and an excellent jurist, and we take great pleasure in wishing him years of success as he takes up his new role', said LBA secretary Niall Lavery.

LOUTH

Tall ships

Two visiting High Court judges and the local Circuit and District Court judges will be among the guests of the Waterford Law Society at a function on board one of the tall ships in Waterford next month. The function, whose proceeds will go towards helping in the upkeep of the tall thips, will be part of the festivities in Waterford during the Tall Ships Festival from 6-9 July.

'This is an opportunity not just for practitioners to meet socially with members of the judiciary, but it is also an opportunity for practitioners to meet socially with each other', according to the Waterford Law Society's president Neil Breheny. It will also enhance the profile of the solicitors' profession in the community.

The annual Tall Ships Race, including the stage from Waterford to Cherbourg, is now an important part of the culture and annual social scene of the southeast, and solicitors are delighted to be active participants, he added.

SLIGO

We don't talk anymore

Large numbers of new solicitors are now qualifying and they should be helped to get to know their colleagues, according to Phil Armstrong of the Sligo Bar Association. 'It is very important, particularly as the numbers grow, that we continue to know one another socially', she said. The Sligo Bar Association plans to host a function in the autumn for all solicitors and their spouses and partners, both in life and in practice, as a 'getting to know you' affair. Knowing people, knowing their background and their interests, and knowing colleagues beyond the grey suits, will 'oil the wheels' for all of us and make our work with one another more pleasant, she noted. G

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

New names for committees but song remains the same

'What's in a name?' asked Shakespeare's Juliet, *writes Ken Murphy*. Quite a lot, was the view of the Regulatory Review Task Force chaired by Joe Brosnan. The Council of the Law Society approved and has now implemented the recommendations of the task force that:

- The Registrar's Committee should be re-named the Complaints and Client Relations Committee, and
- The Compensation Fund Committee should be re-named the Regulation of Practice Committee.

The primary responsibilities of the four regulatory committees of the Law Society are as follows:

Regulation of Practice Committee (formerly the Compensation Fund Committee)

- *Solicitors' accounts regulations*
- Compensation fund
- Practising certificates
- All aspects of compliance with the *Solicitors Acts* and regulations not allocated to another committee

Complaints and Client Relations Committee (formerly the Registrar's Committee)

- Complaints
- Advertising
- Professional names and notepaper

Professional Indemnity Insurance Committee

- Professional indemnity insurance

Money Laundering Reporting Committee

- The Law Society's money-laundering reporting obligations

The task force concluded that accessibility of the complaints system to the public was not helped by the fact that the committee of the society that dealt with complaints, the Registrar's Committee, had a title that bore no relation to its function of dealing with complaints. The transparency of the complaints system will be enhanced by giving this committee a more complaints-related name.

The review also found that the title of the Compensation Fund Committee was no longer suitable for present-day circumstances. Matters directly to do with the fund form only part of the committee's business. It now deals much more with issues to do with the *Solicitors' accounts regulations*, compliance with section 68 of the *Solicitors (Amendment) Act, 1994* and practising certificates.

Its title should be altered to better reflect the wider role it plays.

Although the names have changed, the commitment of the committees to top quality regulation in the interest of the public and of the profession remains the same. As Juliet went on to say, 'that which we call a rose by any other word would smell as sweet'.

Practising cert compliance sees big improvement

This year saw a substantial improvement in the level of compliance by solicitors applying for their practising certificates on time, *writes John Elliot*. In 2004, 87% of practising solicitors were on time, but in 2005 the figure rose to 97%.

This very welcome change is attributable to a major effort by the Law Society, initiated by the Regulatory Review Task Force chaired by Joe Brosnan, to emphasise to solicitors the importance of the statutory requirement to renew practising certificates with effect from 1 January each year.

All solicitors who were late have had their practising certificates dated the date of application, rather than 1 January, as required by law and have the option of going to the trouble and expense of making an application to the High Court for their practising certificate to be backdated to 1 January.

Of the solicitors who were late, all but one of those solicitors remedied their default quickly enough to avoid being referred to the Solicitors Disciplinary Tribunal.

SUNSHINE STATE WANTS TO BE YOUR MATE

The international section of the Florida Bar has nominated Irish solicitor Donall O'Carroll as its 'liaison to Ireland'. O'Carroll says he will be able to help Irish colleagues 'with any aspect of their dealings with Florida', such as providing referrals for lawyers or other professionals in different parts of Florida, providing information about the legal process there and arranging for introductions to local bar organisations. He will even provide non-legal information for those taking a holiday in the state. For further information, contact docarroll@richmangreer.com.

ADMINISTRATION OF OATHS BY SOLICITORS

All solicitors are being sent a sample of a leaflet, prepared by the Law Society's Guidance and Ethics Committee, which explains to clients in simple terms what is involved when they swear a document. Solicitors can hand the leaflet to the client prior to the document being sworn. This is part of a campaign to remind solicitors that there must always be strict adherence to the legal requirements when documents are being sworn.

SIX NEW PARTNERS AT MCCANN FITZGERALD

Dublin law firm McCann FitzGerald has appointed six new partners with effect from 1 May. They are Donal O'Raghallaigh (commercial property), Ben Gaffikin (private equity, venture capital, and mergers and acquisitions), Eamon de Valera (banking, acquisition and property financing), Rosaleen Byrne (dispute resolution and litigation), Joe Fay (banking, asset finance and regulation), and Karyn Woods (defamation and media).

RETIREMENT TRUST SCHEME

Unit prices: 1 May 2005
Managed fund: €4.70131
All-equity fund: €1.07020
Cash fund: €2.59714
Long-bond fund: €1.30879

Solicitor bypasses auctioneers with his new property service

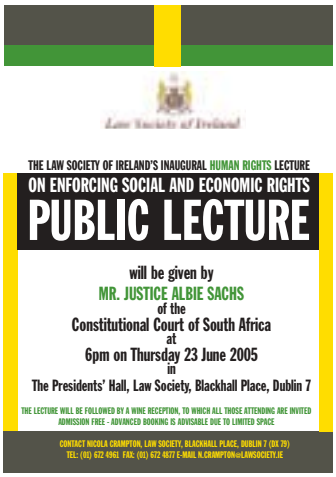
Mayo solicitor and Law Society Council member James Cahill has used the experience of clients' frustrations in buying and selling property to launch a novel business concept under the trademark *4 Sale by Owner*. Cahill believes that it is the first business of its kind in Ireland, *writes Kathy Burke*.

Basically, anyone who wants to buy or sell a property can visit the *4 Sale by Owner* shop or website (*www.4salebyowner .ie*), where they can browse photographs and details of properties being advertised by the home owners who have signed up to the service. *4 Sale by Owner* promises to have a contract and title deed available as soon as a sale has been agreed.

Cahill describes it as a 'managed service for intending sellers' that enables them to safely agree a deal with a buyer, and save money. The service is offered for a standard fee, which is independent of conveyancing charges. The seller can save money on auctioneer's fees, and by taking their own photographs and erecting their own signs. He adds that *4 Sale by Owner* 'does not compete with auctioneers and estate agents, but offers property owners an alternative that is faster, cheaper and gives them more control'.

According to Cahill, the *4 Sale by Owner* trademark has the potential for multiple solicitors' firms to pool technology resources and share costs in a franchise arrangement. The pilot project is shortly to be extended to involve a Dublin-based office.

'I discovered things I didn't expect', says Cahill. 'This is a new interface with the public, who would normally only come to a solicitor's office when they are in trouble of some kind. The shop is now being used by the public to browse in a solicitor's office. They come in and then leave with a different attitude'.



Render unto Caesar?

The Law Reform Committee is planning a report for publication in 2006 on *Debt collection: the case for reform*, which will examine ways to achieve a balance between debtors' and creditors' rights. The committee would like to hear from colleagues interested in becoming involved, including those with experience of acting for financial institutions and other creditors. This area of law is in need of systematic review, as many provisions and procedures are cumbersome and often unjust. Cross-border enforcement and small claims procedures are also relevant to this issue. Please contact Alma Clissmann at the Law Society by e-mail at a.clissmann@lawsociety.ie.

Brian Sheridan appointed to the District Court bench

The Law Society's junior vice-president, Brian Sheridan, has been appointed a judge of the District Court. He will be a judge in the Dublin Metropolitan District. It is the first time that a serving officer of the society has been appointed a member of the judiciary.

Brian Sheridan qualified as a solicitor in 1980. Although originally from Dublin, he has practised for many years in Cork, where he has been in charge of the Legal Aid Board office. Well known for his expertise in various areas of family law, he is a former chair of the society's Family Law and Civil Legal Aid Committee. In fact, it was Sheridan who brought the motion to Council in 1992 that led to the establishment of that committee.

Junior vice-president Brian Sheridan

He has also been, from its inception, one of the chief organisers of the Burren Law School, which meets annually in Ballyvaughan, County Clare. He has been a member of the Council of the Law Society since 1991 and topped the poll in his most recent election.

Sheridan will continue in office as junior vice-president and remain a Council member until next November. This is in accordance with the precedent established by Mr Justice Michael Peart, who remained active on the Council until the end of his elected term following his appointment as a judge of the High Court.

Supreme Court settles ECHR date

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

Dublin City Council sought to evict Mrs Fennell under section 62(1) of the *Housing Act, 1966* for alleged antisocial behaviour in her rented home. In December 2003, the District Court made an order for possession, which she appealed. On 31 December 2003, the *European Convention on Human Rights Act, 2003* came into effect. The appeal came before the Circuit Court in October 2004. It stated a case to the Supreme Court on the issue of whether the *ECHR Act, 2003* applied to proceedings issued prior to the coming into effect of the act.

Section 62 of the *Housing Act, 1966* gives local authorities a simplified procedure for recovering possession of a dwelling. The local authority does not have to show cause; it must only satisfy *in* the District Court that certain conditions have been met, including that the tenancy has been terminated, possession has been demanded but refused, and that the demand stated that application for a warrant would be made if possession was not surrendered. If the conditions are complied with, the court has no discretion to refuse a warrant. The constitutionality and legality of section 62 had been tested and confirmed in a number of cases. Kearns J accepted that the summary method provided in section 62 'may arguably infringe certain articles of the ECHR', and in particular, articles 6 (right to a fair trial), 8 (respect for private and family life) and 13 (right to an effective remedy), and also article 1 of protocol 1 (protection of property).

Main issue

The critical issue to be determined, according to Kearns J, was how section 2(2) of the 2003 act operated, if at all, to affect the proceedings, particularly having regard to an element of the text. This element was the provision that the duty to interpret laws in a manner compatible with the convention applies to any statutory provisions or rule of law in force *before* the act, as well as those laws coming into force thereafter.

Argument against

The main argument by the city council and the AG was that retrospectively applying the *ECHR Act* to events that occurred before it came into force was contrary to basic principles of statutory interpretation and fairness. A number of authorities were cited in support, including the House of Lords decision *re McKerr* (2004), which was applied by Laffoy J in *Lelimo v The Minister for Justice* ([2004] 2 IR 178, summarised on this page in the January/February 2005 issue under the title *MJL v Minister for Justice, Equality and Law Reform*).

Argument for

The respondent's case, supported by the Human Rights Commission as *amicus curiae*, was that the validity of the original District Court decision 'should not inhibit or restrict the scope of the appeal … which is by way of a full re-hearing, and the fact that it is an appeal from a decision arrived at prior to the coming into effect of the act is not a relevant consideration … The thrust of the appellant's case, therefore, is to the effect that the relevant decision and the substance of this case are to be found in the *prospective* decision of the Dublin Circuit Court and the removal of the appellant from her dwelling'.

The constitution and legislative interpretation

Kearns J first considered whether there was a constitutional impediment to retrospective application of the 2003 act. He concluded that the act should be interpreted as has having prospective effect only, to comply with the spirit of article 15.5 of the constitution and in view of the consequences of the act, which can give rise to liability for damages. He also examined legislation and academic commentary on statutory interpretation, which supported the principle of non-retrospectivity unless otherwise provided, or clearly implied. The council's vested interest in the property and the litigation would be affected by a retrospective interpretation. In examining the text of the act, he found nothing to suggest retrospective application. Looking at the UK *Human Rights Act 1998*, one provision is retrospective; by implication, the others are not, which was the view taken by the House of Lords in *Wilson v First County Trust Ltd (no 2)* ([2003] 3 WLR 568). Approving *Lelimo v The Minister for Justice, Equality and Law Reform* (above) and *Hamilton v Hamilton* ([1982] IR466), he held that the *ECHR Act, 2003* had no retrospective effect.

Appeal in the Circuit Court

Mrs Fennell had argued that the appeal was prospective. Kearns J held that the Circuit Court appeal was not a new and stand-alone process, divorced from the District Court proceedings, unrelated to the past events on which the original order had been made. He cited authority to the effect that it would be unjust to the parties' vested interests to take account of a change in the law occurring since the institution of proceedings. 'The requirement to protect the respective positions of the parties … is all the greater in a situation where vested rights are involved and where the changes proposed by the 2003 act are agreed to be substantive rather than procedural'. Finally, the concept of fairness would not be served by having two tenants in identical positions achieve different outcomes, if one succeeded in deferring his appeal until after the act's operative date.

Effect of the *ECHR Act, 2003*

The Supreme Court has now settled the question of when the *ECHR Act, 2003* applies from: 31 December 2003. The court accepted that if the act were to apply to the procedure under section 62 of the *Housing Act, 1966*, its interpretation in accordance with section 2 would raise substantive issues. It now remains to test section 62 against the convention and to see if it can be interpreted to ensure respect for the convention rights or will require a declaration of incompatibility. Mrs Fennell has the option of taking her case to the ECtHR in Strasbourg. G

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

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Letters

Continuing professional development

From: Richard E McDonnell, Ardee, Co Louth

I believe I am reflecting the views of a majority of our profession when I write to protest, if not as much at the requirement to attend courses and seminars, but at the outrageous sums of money this is costing members of the profession in addition to the very substantial fees we are already obliged to pay annually for a practising certificate. This effectively adds thousands of euro to the cost of remaining in practice as a solicitor (a status only achieved after years and years of education, very substantial expenditure and three years' apprenticeship) and ignores entirely the only principle which seems to have the enthusiastic support of politicians both here and in Brussels, namely, competition and the free market. In other words, why cannot the market be allowed to encourage solicitors to keep themselves up to date with the law and the management of their practice? Those who incompetently manage their practices and fail to keep up will not succeed; those who do, will. The notion of solicitors who may have been managing successful practices for years being forced to attend courses on how to manage their practices strikes me as absurd. Furthermore, what is a semi-retired or part-time solicitor who, perhaps, would like to do locum work supposed to do? The huge cost of complying with these CPD requirements will effectively make it uneconomic for such a solicitor to remain in practice. Is this fair? Is it sensible?

Further, the fact that failure to complete 20 hours of group study now constitutes misconduct is grossly unfair. It does not follow that if a solicitor fails to attend 20 hours of costly group study courses, he or she is not updating their knowledge and skills privately both in relation to their own area of expertise and in relation to changes in the legal practice and procedure generally. I believe it is unjust that the Law Society should have a mandate to regulate precisely how its members choose to update themselves (and therefore the services they may be able to offer to their clients) and a concomitant power to sanction a solicitor for not completing 20 hours (which presumably could ultimately lead to a solicitor being struck off the roll).

I am urging the society to reconsider this retrospective and unilateral imposition of draconian conditions to already qualified solicitors' right to practise, a right paid for with many years of study, substantial expenditure and already heavily paid for every year. If abandonment is not to be considered, it should at least be a requirement that the CPD is provided for by the society without any additional charge – in other words, the price of the practising certificate annually should include access to CPD courses without further payment.

The legislature doesn't seem to pay a blind bit of notice to what solicitors have to say about anything, so if the CPD régime was designed to impress them, who cares? (And doesn't the Competition Authority believe that competition will sort out the wheat from the chaff?)

It's all Greek to me

From: Neville Murphy & Co, Bray, Co Wicklow

Your practice note regarding unnecessary special conditions in contract for sale was very timely and long overdue. This is not a reflection on you but on some of our practitioners, who either don't understand how to draft a contract or don't care.

I fear your timely intervention will make little difference. I fear it is a case of *denarius non delapsus est*!

Another brick in the wall

From: Eugene O'Sullivan and Michael Lanigan, Kilkenny

As two colleagues who also had the privilege of attending this unique memorial, we would prefer if the rather large piece of brickwork removed from Auschwitz/Birkenau be returned to its rightful place before considering in any depth last issue's essay by Robert Pierse on *Drama, death, indignity and the lessons from Auschwitz*.

Snowball's chance

From: Catriona Byrne, Patrick V Boland & Son, Newbridge, Co Kildare

I recently lodged a claim with the Personal Injuries Assessment Board in relation to a defendant nightclub. The policy of the Personal Injuries Assessment Board is that they do carry out companies searches but they do not carry out licensing searches, and it should be perhaps pointed out to members of the profession that if the defendant name is incorrect on the authorisation that will eventually issue from the Personal Injuries Assessment Board and the defendant had been incorrectly cited, then the issuing of proceedings against the defendant might be statute barred. Members therefore need to carry out all appropriate searches when lodging a claim with the Personal Injuries Assessment Board to satisfy themselves that they have indeed named the correct defendant. Incidentally, if a person makes an application on their own behalf, they will have to carry out a licensing search, as PIAB will not be held responsible in circumstances where defendants are incorrectly named.

In the instant case, we are going to indicate that we will carry out a search but will require PIAB to provide us with the District Court fee in respect of same, although we can guess the response we will get.

EAT, DRINK

When it's enacted, the *Intoxicating Liquor Bill* will have far-reaching implications for various licence holders in the state. Constance Cassidy gets the round in

MAIN POINTS

- ***Intoxicating Liquor Bill, 2005***
- **Proposed changes to licensing law**
- **Practice and procedure**

The stated purpose of the *Intoxicating Liquor Bill* is to streamline and modernise the liquor licensing laws, and it will repeal the *Licensing Acts, 1833-2004*. Among the proposed reforms are the creation of the much talked-about café bar licence and provisions for a uniform District Court procedure that would apply to all applications for on- and off-licences.

The bill does not propose any significant changes in opening hours. There is no requirement to open a licensed premises during permitted hours and licensees may open and close their premises at any time they wish, as long as it is within permitted hours. However, the licensee must trade during the year or an objection may be made to the licence's renewal on the grounds that licensed business has not been carried on in the premises.

Trading (that is, business other than the sale of intoxicating liquor) can take place at any time in an off-licence, but is prohibited in a public house between closing time (that is, ordinary closing hours or the expiry of a nightclub permit or special exemption order) and 7am the following morning. The holding of a licence by a nominee of the licensee is no longer permitted and the rateable valuation requirement that exists in respect of certain licences is to be discontinued.

With regard to the renewal or granting of a licence, the applicant's knowledge of the licensing laws may be taken into account by the court. The minister is entitled to make regulations determining what fee applies in respect of the issue or renewal of a licence. It is unclear as to whether this fee is to be

AND BE *merry?*

related to turnover, as is presently the case. A tax clearance certificate must be available to the applicant before he makes an application.

New licence applications

All applications for new retail licences must be made in the District Court. The Circuit Court is now a court of appeal only. This applies to pub, restaurant, café bar, hotel, holiday camp, guesthouse, theatre and off-sales licences. The applicant must present a tax clearance certificate to the court at the time of making the application for the certificate and thereafter to the Revenue Commissioners when applying for the licence.

The character and fitness of company directors in the case of an application by a company for a licence may be taken into account by the court. A change in control of a company will result in the company making an application for a new licence (not even a transfer for one). In granting a new licence, permit or exemption order, the court can specify whatever conditions relating to security as it feels are appropriate.

Renewal of a licence

An applicant for renewal of a licence will have to notify the gardaí as well as the fire authority at least one month in advance of the annual licensing sessions.

NEW LICENCES

Café bar licence
This licence is to be granted in respect of a premises that is used or intended to be used as a café bar for the purpose of supplying refreshment, including hot food and non-alcoholic beverages, to customers for consumption on the premises only. The premises cannot exceed 130 square metres in area. It authorises the supply and consumption of intoxicating liquor on the premises when hot food and non-alcoholic beverages are also for sale there. There is no requirement that the intoxicating liquor be consumed in conjunction with a meal or as an ancillary to a substantial meal, which is the requirement in the case of a restaurant licence. A local authority may adopt a resolution restricting the grant of such licences in its area. The declaratory procedure applies. The holder of a café bar licence is *not* entitled to apply for special exemption orders. Unlike pub licences, an applicant for a café bar licence does not need to extinguish a publican's licence.

Guesthouse licence
This licence issues to a premises that is registered in the register of guesthouses maintained by Fáilte Ireland. It entitles the applicant to supply alcohol, for consumption on the premises to people residing on the premises, as an ancillary to a substantial meal. The declaratory jurisdiction applies and the holder can apply for a special exemption order. Unlike a restaurant, holiday camp or hotel, the licensee cannot supply or sell intoxicating liquor to residents other than during permitted hours.

Caterer's licence
A caterer's licence requires a court certificate: it is personal to the applicant and will be applied for by organisations whose principal business is the provision of catering services for reward. A court application is required.

Distance sales licence
This enables the holder to sell alcohol on-line. It requires a court application involving the usual notification and service upon the District Court clerk and Garda Síochána.

Manufacturer's licence
The five separate manufacturer's licences are to be replaced by a single producer's licence and no court certificate will be necessary.

Wholesaler's licence
The four single wholesaler's licences have been replaced by a single wholesale licence and no court application will be necessary (a beer wholesaler's licence currently requires an application to court).

The requirement to notify the fire authority does not apply to an off-licence. It now appears that an application to the Revenue Commissioners to renew a licence can be made within a period of two years from the date of its lapse.

Special exemption orders

In granting a special exemption order or nightclub permit, the District Court must take account of whether or not the appropriate local authority has passed a resolution concerning such exemptions or permits in the locality.

Ad interim transfer

It is not now possible (save in exceptional circumstances) to apply for an *ad interim* transfer of a licence. The proposed purchaser will have to apply for a new licence in advance of purchase and could be refused where there is a successful objection. This may have the effect of countermanding all auctions of licensed premises and perhaps sterilising the licensed premises in the event of a successful objection.

Objections

A court will not entertain an objection to the grant of any of the above licences based on the adequacy or sufficiency of existing licensed premises in the locality. But a new ground of objection to any of the above licences is that its grant will result in an undue risk of either public nuisance or of a threat to public order or safety. The requirement to prove inadequacy no longer applies.

Declaratory jurisdiction

The declaratory jurisdiction applies in respect of public house, restaurant, café bar, hotel, holiday camp, guesthouse, theatre and off-sale licences. In an application for a declaratory order, the applicant must prove that both planning permission and a fire safety certificate have been obtained.

Public house licence

This licence authorises the sale for consumption on and/or off the premises specified in the licence. The retail sale on and/or off the premises is only permitted in the case of a public house licence and a holiday camp licence.

An applicant for a new pub licence must still extinguish another such licence, except where the premises are being extended or revived or either

destroyed by fire or demolished by the local authority (see *Liquor Bill* for exceptions). However, provision does not appear to have been made for the grant of a new licence in respect of reduced licensed premises and premises that have been demolished (other than by the local authority).

The holder of a pub licence may apply for a yearly nightclub permit (which operates to authorise the sale of alcohol no later than 2.30am) where the court is satisfied that the premises are structurally adapted for use as a nightclub and have a public dancing licence. This permit is valid up until the next annual licensing sessions. The holder of a pub licence can also apply for a special exemption order (authorising the sale of alcohol no later than 2.30am) in respect of a special occasion (which includes dancing, once the premises has the benefit of a public dancing licence). So the pub that does not have the benefit of a nightclub permit can also apply for a special exemption order.

Theatre licence

An applicant for a theatre licence must now apply to the District Court for a certificate entitling him to such a licence. Previously, the application was made directly to the Revenue Commissioners and no court application was involved. The applicant only had to be in possession of the District Court music and singing licence.

A theatre licence will only be granted in respect of premises that are structurally adapted and *bona fide* used or intended to be used for the purpose of staging performances of the arts, within the meaning of the *Arts Act, 2003*, to which members of the public are admitted on payment or by invitation. The premises must contain seating for people admitted to the performance and they must be covered by a public liability insurance policy. The licence authorises the supply and consumption of alcohol on the premises for the period starting one hour before the performance (but not before 10.30am) and ending one hour after the performance (but not later than 12 midnight). The supply and consumption of intoxicating liquor during a performance is not permitted.

The holder of a theatre licence can apply for a special exemption order until 2.30am. The old provisions permitting the grant of a licence for a place of public entertainment are to be repealed. There is no saving provision in relation to theatres or places of public entertainment that presently have the benefit of such licences. As in the case of on-licences, the declaratory procedure applies in respect of a theatre licence.

Restaurants

The special restaurant licence and restaurant certificate are to be abolished. Instead, there will be a restaurant licence and a restaurant permit.

Restaurant licence. This authorises the supply and consumption of wine, spirits and beer in the waiting area or the dining area of the premises as an ancillary to a substantial meal. Alcohol may be served while the patron is considering the menu and there is no requirement that the alcohol must be consumed before, during or within 30 minutes of completing a meal. The alcohol does not have to be paid for at the same time as the meal. The premises can operate other businesses, such as accommodation or the provision of services to the tourist market, both before and after permitted hours. The applicant does not have to prove that the premises is up and running as a restaurant prior to making the court application and can apply in advance for a declaratory order. The holder of a restaurant licence can also apply for special exemption orders.

Restaurant permit. A restaurant permit is granted to the holder of a public house licence. As in the case of a hotel and a holiday camp, the licensee with such a permit can supply or sell alcohol to a resident at any time (subject to exceptions). The holder of a restaurant permit can sell alcohol on his licensed premises one hour after normal closing times, but only where it is consumed by the patron as an ancillary to a substantial meal. An application for a restaurant permit does not have to be advertised but must be notified to the gardaí and the fire authority, and the permit is valid until the next annual licensing court. The declaratory procedure applies here.

Hotels

A completely new form of licence, a hotel licence, is to be created. In a country area, the premises must contain at least ten bedrooms set aside and used exclusively for the accommodation of guests. In a county borough, it must contain 15 such bedrooms

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and the premises must be registered in the register of hotels maintained by Fáilte Ireland under the *Tourist Traffic Acts*. The licence authorises the supply of intoxicating liquor for consumption and the consumption of intoxicating liquor on the premises, including in any bar on the premises. The supply of alcohol for consumption off the premises does not appear to be permitted. Drink can be served to residents at any time. Drink can be served to ordinary patrons for up to an hour after the expiry of ordinary permitted hours, in conjunction with the service of a meal.

There is no need to extinguish a licence in order to have public bar facilities in a hotel. Bord Fáilte registration is still necessary in the case of an existing hotel and the declaratory procedure applies. The holder of a hotel licence can also apply for special exemption orders.

Off-licences

In place of the wine, spirit and beer off-licence, there is to be one off-licence, referred to as an 'off-sale licence'. This authorises the sale by retail of intoxicating liquor for consumption off the premises only. A wine off-sale licence is also proposed, and it authorises the sale by retail of wine, intermediate beverages and other fermented beverages (excluding cider) for consumption off the premises only.

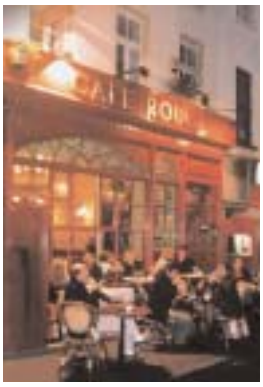
An applicant for both these licences must apply to the District Court for the appropriate court certificate.

Late night premises

A nightclub can only be operated by the holder of a pub licence. An intending applicant for a pub licence or the holder of an existing pub licence can apply for a nightclub permit. He must satisfy both publication and site notice requirements and the court must be satisfied that the premises are structurally adapted for use as a night club and have a public dance hall licence. This permit expires at the annual licensing sessions.

Such premises, once they have the benefit of the permit, do not need to apply for monthly or two-monthly special exemption orders: there are stringent planning or building regulation requirements. It is not possible for the holder of any other licence (such as a hotel, restaurant or theatre) to apply for a nightclub permit. These premises will apply for special exemption orders.

Premises that currently operate as nightclubs with the benefit of a wine licence (which authorises the sale of wine, and beer in certain circumstances) will not be eligible to apply for either a nightclub permit or a special exemption order. This is because there is no reference whatever to 'wine on-licence' in the proposed legislation. This will obviously have major consequences for nightclubs, such as those on the Leeson Street strip, which will probably now have to apply for publicans' licences together with a dance licence and nightclub permit. There are no saving provisions contained in the proposed bill with respect to premises that currently have the benefit of a wine retailer's on-licence. The holder of any licence applying for either a nightclub permit or a special exemption order must prove that his premises have the benefit of a public dancing licence.



'This will present an enormous challenge to our already overworked District Courts, especially in the case of objection'

Practice and procedure

Applications for the grant (and renewal where there is an objection) of certificates for licences are to be made in the District Court. The declaratory procedure applies. A detailed notice – specifying the name and address of the applicant, and, if the applicant is a partnership or a company, the name and address of each of the partners or directors – must be served on the gardaí and the fire authority at least a month before the making of the application in two newspapers circulating in the locality. Other requirements are that the address of the applicant, the type of licence and the date of the hearing should be displayed in a site notice 14 days before the hearing; a tax clearance certificate must be obtained in advance of the hearing; and proof of planning permission and building regulations is needed at both declaratory and certificate stage.

The plans and maps to be presented grounding each application for a court licence, permit or exemption must meet certain specifications and scales as set out in the proposed bill.

Once the court grants a certificate, it must be presented to the Revenue Commissioners within a month of its grant. A month can often lapse between the grant of a certificate and its issue, particularly in busy districts. The court can extend the period during which the certificate may be presented up to six months from the date of its grant.

The details required in the notices for the various applications, in particular where a company makes an application, appear excessive in that the name and address of every director of the company must be advertised.

There are new procedures governing (a) the sale or assignment of a licensed premises during the pendancy of the licensing year, and (b) an application for a new licence upon change of control of a company. Where a licensed premises is purchased, the licence will not now follow the premises. Similarly, where a licensed company is purchased by a third party, the purchaser must apply to the court for a new licence. In each case, necessary details of the applicant must be published in two newspapers circulating in the locality at least 14 days prior to the date of the hearing.

This will present an enormous challenge to our already overworked District Courts, especially in the case of objection. A ground of objection, in addition to the character or fitness of the applicant, is that the grant of the licence would cause an undue risk of either public nuisance or a threat to public order or safety. These onerous provisions may have the effect of stopping public auctions of licensed premises. G

Constance Cassidy is a senior counsel and author of Cassidy on the Licensing Acts *(Thomson Round Hall).*

Shadow of

Recent legislation means that solicitors will be directly involved in combating terrorist financing as well as money laundering. Max Barrett investigates

MAIN POINTS

- ***Criminal Justice Act, 1994***
- ***Criminal Justice (Terrorist Offences) Act, 2005***
- **Amendments to existing régime**

Alleged terrorist links to money laundering have been much in the news since the Northern Bank robbery last December and the discovery in Cork of large numbers of sterling banknotes in February.

No reasonable person would object to the adoption of legislation designed to prevent money laundering or terrorist financing. However, such legislation, though broadly laudable, could perhaps be argued to represent an incursion on the integrity of the solicitor/client relationship.

Practising solicitors were brought within the anti-money laundering régime on 15 September 2003 (through the Criminal Justice Act, 1994 *(section 32) regulations 2003*). Technically, this was done by prescribing them as 'designated bodies' for

FINANCING TERRORISM

Central to the 2005 act is the new offence of financing terrorism.

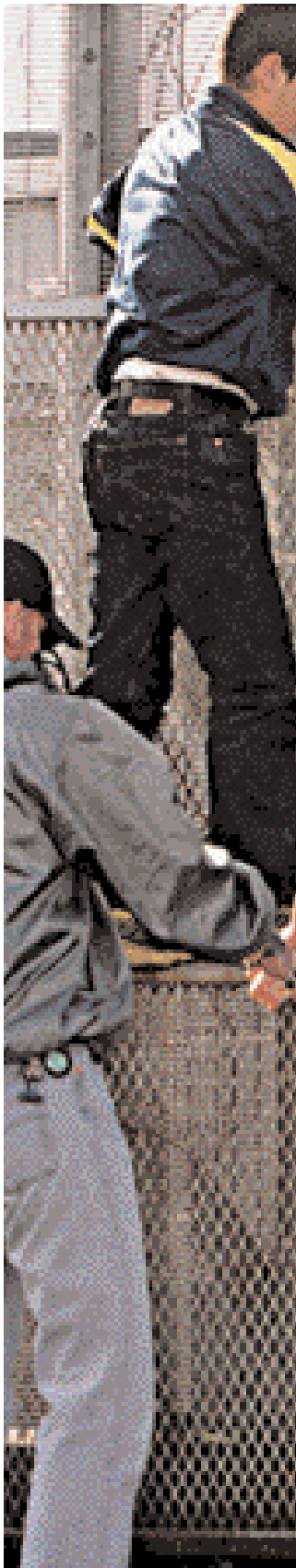
Under section 13 of the act, a person is now guilty of an offence if, in or outside Ireland, that person – by any means, directly or indirectly – unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used in whole or in part to carry out:

a) Certain defined terrorism-related offences, or

b) An act that does not come within (a) and which 'is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and ... the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act'.

Also under section 13, a person is guilty of an offence if that person, by any means, directly or indirectly, unlawfully and willfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part:

- For the benefit or purposes of a 'terrorist group' (a defined term), or
- To carry out an act that does not come within (a) or (b) above but which constitutes an offence under section 6 of the 2005 act (section 6 defines numerous terrorist offences).



a gunman

Those charming men: loyalist thug Johnny Adair, convicted of directing terrorism

the purposes of the *Criminal Justice Act, 1994*, as amended, whenever they engage in any of the activities set out in article 2a(5) of the *First money-laundering directive*, as amended.

The responsibilities of all designated bodies, including solicitors, have recently been added to by the *Criminal Justice (Terrorist Offences) Act, 2005*. This became law on 8 March and created a new offence of financing terrorism. It also provides for the making of confiscation orders where a person is convicted of financing terrorism. However, of the greatest immediate interest to practising solicitors are the amendments that the 2005 act makes to sections 32, 57 and 58 of the 1994 act.

Identity parade

Since 2003, every practising solicitor (being a designated body) has been required, in relation to the carrying on of his or her business, to adopt measures to prevent and detect the commission of an offence under section 31 of the 1994 act (the provision that created the offence of money laundering).

Section 32(a) of the 2005 act amends the 1994 act in this regard, providing that, in the future, each designated body (including solicitors) will be required, again in relation to the carrying on of that designated body's business, to adopt measures to prevent and detect the commission of both an offence under section 31 of the 1994 act **and also** an offence of financing terrorism.

Such measures, by virtue of section 32(b) of the 1994 act, include training employees 'for the purpose of enabling them to identify transactions which may relate to the commission of an offence under section 31 of [the 1994 act] *or an offence of financing terrorism*, and the giving of instructions to them on how [to] proceed once [they have] identified such a transaction' (emphasis added).

Sections 32(a) and (b) of the 2005 act represent a significant addition to the existing obligations of all designated bodies, including solicitors. The offence of financing terrorism is not just a new criminal offence. It is also a very different offence from money laundering. Money laundering involves doing certain acts in relation to the proceeds of criminal conduct (in effect, 'dirty money'). Financing terrorism typically involves

TRIP TO TIP

Section 58 of the 1994 act, the provision that creates the offence of 'tipping off', has also been amended by the 2005 act. A person will now commit the offence of 'tipping off' where, knowing or suspecting that a report has been made under section 57(1) or 57(2) of the 1994 act, such person makes a disclosure likely to prejudice any investigation arising from such a report into whether an offence under section 31 or 32 of the 1994 act or an offence of financing terrorism has been committed.

doing certain acts in relation to what might be described as 'clean money', that is, money that is not the proceeds of criminal conduct. (A 'typical' offence of financing terrorism would involve making a donation, usually a small donation, of 'clean money' to a charity that is a front for a terrorist group.)

Because of the difference in focus between the two offences, the measures taken by solicitors and other designated bodies to prevent and detect the commission of, respectively, a money-laundering offence and the offence of financing terrorism are likely to be quite different.

In recognition of the additional responsibilities that section 32 of the 2005 act creates for all designated bodies, section 2 of the act provides that the amendments made by section 32 to the 1994 act shall not come into operation until four months after the passing of the 2005 act, that is, until 8 July 2005.

Reporting obligations

Section 57(1) of the 1994 act requires each practising solicitor and his or her employees to report to the Garda Síochána and the Revenue Commissioners any suspected breaches of sections 31 or 32 of the 1994 act done in relation to the business of the solicitor. Within many firms of solicitors, reports are likely to be made in the first instance to a money-laundering reporting officer (MLRO) and thereafter, where merited, to the gardaí and the Revenue. Failure to make a report under section 57, where merited, is a criminal offence.

Section 36(a) of the 2005 act amends this reporting obligation for solicitors and other designated bodies. Oddly, it does so with immediate effect, that is, from 8 March 2005, even though the enhanced identification and training obligations for solicitors and other designated bodies only take effect from 8 July 2005.

Under section 36(a), every practising solicitor (and each of his or her employees) must now make a report under section 57 where he or she suspects that an offence under section 31 or 32 of the 1994 act or an offence of financing terrorism has been or is being committed in relation to the business of that solicitor. It remains the case that any such report may be made in the first instance to an in-house MLRO.

It is important to note that solicitors, in common with certain other professionals (accountants, auditors and tax advisors), continue to enjoy modified reporting obligations under section 57 of the 1994 act. Thus, where a reporting obligation would typically arise for another designated body, it will not arise for a practising solicitor (or an accountant, auditor or tax advisor) 'insofar as he or she receives or obtains information from or relating to a client ... (a) in the course of ascertaining the legal position for that client ... (b) when performing the task of defending or representing that client in or concerning judicial proceedings, or (c) when advising that client in relation to instituting or avoiding proceedings'.

Law Society's obligations

Section 36(b) of the 2005 act changes the previously-existing reporting obligations of the Law Society.

Under section 57(2) of the 1994 act, the Law Society, as a supervisory body, was obliged to make a report to the gardaí and the Revenue where it considered a solicitor to be committing or to have committed an offence under section 31 or 32 of the 1994 act.

Section 36(b) of the 2005 act amends this obligation so that the Law Society is now obliged to make such a report where it considers a solicitor to be committing or to have committed either an offence under section 31 or 32 of the 1994 act or an offence of financing terrorism.

Balancing act

Although most people would regard the adoption of legislation designed to prevent money laundering and terrorist financing as legitimate and laudable, the policy objectives of such legislation must be balanced against the competing policy objective that when clients approach their solicitors, they should be able to speak freely and frankly, believing their solicitor to be their agent and not also an agent of the state.

The 1994 act, the 2005 act and related statutory instruments implicitly acknowledge the legitimacy of this latter objective. They carve out a special position for solicitors in the anti-money-laundering/anti-terrorist financing régimes by limiting the instances in which solicitors are deemed to act as designated bodies and limiting also the reporting obligations of solicitors. Even so, it is perhaps open to question whether the right balance has been struck in this regard. G

Max Barrett is a solicitor working as a legal advisor to the Bank of Ireland. The views expressed in this article are entirely personal.

BENEF

Remuneration isn't all about salary. Sometimes the package of benefits can help a candidate to decide whether or not to take up a job. Sara Randall discusses the results of a recent survey of the kind of benefits that solicitors receive

This benefits survey is compiled from the information collected from candidates registered with the Legal Panel and from information on questionnaires distributed to solicitors through the *Law Society Gazette*. We focused on all aspects of the package that solicitors receive other than their base salary.

MAIN POINTS

- Legal Panel benefits survey 2005
- In-house and private practice
- More benefits for in-house lawyers

Not unsurprisingly, those lawyers working in-house, especially in financial services, secured more benefits that added real monetary value to their overall package.

The survey focused only on benefits rather than base salary, as information in this area can be misleading and can vary from solicitor to solicitor depending on the type of work carried out, experience, background and on the average number of hours worked. Lawyers often highly value the benefits offered by a firm, not just in terms of their contribution to the overall worth of the package but also because of the difference these benefits can make to their work-life balance.

The benefits survey covers newly-qualified solicitors to senior associate level for private practice, because at partner level the information received was too broad to comment on. Under the in-house section, we refer to solicitors from newly-qualified to general counsel level working for commercial organisations rather than in the public sector.

We broke the questionnaire down into particular areas, focusing on bonuses, pensions, company cars, share schemes, gym fees, professional subscriptions and holidays.

Solicitors in private practice

Typically, solicitors in private practice receive fewer benefits than those who work in-house. Bonuses paid by private practices vary considerably from firm to firm. Bonuses paid by all the respondent firms depended on the annual revenue generated by each individual. Those solicitors who hit or exceed their fee targets can typically expect to receive a higher percentage. Solicitors surveyed from private practice were less forthcoming about the percentage that they receive than those working in-house.

Typically, those working in the top five firms receive between 15% and 25% of their salary as an annual bonus. This is also true for some of the larger

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firms (those with between 100 and 200 staff). In the majority of firms, solicitors receive between 10-15% of salary as an annual bonus. Some 25% of solicitors surveyed did not receive any bonus.

Pensions. One of the key areas that solicitors consider important to their benefits package is a pension. Since new legislation was introduced obliging employers to give employees access to a pension scheme, there has been an increase in uptake of this benefit by solicitors, even where the employer doesn't contribute.

Most private practice firms do not provide any type of contributory pension. However, in some of the big five firms and several of the larger ones (employing between 100 and 200 staff), solicitors can avail of a defined contribution pension (usually after one or two years' service). Contributions from the employer average 5% of salary. Most solicitors surveyed have personal pension plans paid for by themselves.

Healthcare. Most solicitors do not receive a healthcare plan paid for by their employer, although some of the bigger firms participate in a group scheme whereby their employees can avail of a 10% discount from the insurance company.

Gym membership. The survey found that most

of the bigger firms provide either access to a gym or a subsidy for one. The majority of firms in Ireland do not provide any subsidy towards a gym pass.

Professional subscriptions. Typically, the bigger firms pay for membership of the Law Society and one other professional subscription. Most other firms also pay for Law Society membership but, surprisingly, we found that 25% of solicitors had to pay for their own subscription to the Law Society.

Holidays. The survey found that about 85% of solicitors receive only their statutory amount of 20 days' holidays. Those working in the larger firms typically get between 23 and 25 days' holidays. Around 10% of solicitors receive 22 to 23 days' holidays.

In-house solicitors

Overall, lawyers who work in-house receive more benefits than their counterparts in private practice. These benefits can often add from €10,000 to €15,000 in value to a solicitor's overall package (excluding the bonus). This can come in the form of a car or car allowance, a contributory pension, gym membership, healthcare and share schemes.

Bonuses. The majority of in-house solicitors receive an annual bonus, typically 15-25%. The survey found that lawyers with more than ten years' post-qualification experience in a senior role as general or corporate counsel, who are managing a team, generally receive between 25% and 30% of their salary as a bonus. Usually, the percentage of bonus received depends on both personal and company performance.

Car allowance. About 50% of in-house solicitors receive a car or car allowance. Due to the change in tax laws and cars coming under the benefit-in-kind legislation, most employees choose to take the car allowance. Some 5% of solicitors choose to take the company car rather than the allowance. The more senior the position, the more likely it is to have access to a car or car allowance, as it is seen as a senior management perk. Typically, car allowances range from €5,000 to €12,000.

Pensions. 98% of solicitors working in-house receive a defined contribution or defined benefit pension from their employer. Of the lawyers surveyed, 80% belonged to a defined contribution scheme, where the employer contributes on average 10-15%. This was slightly higher for those working in financial services, where the average was 15-18%.

As expected, defined benefit schemes are becoming rare. Where they do exist, the average employee's contribution is 3% of salary.

Healthcare. All of the in-house solicitors that we surveyed received paid healthcare as a benefit. Most companies pay into a healthcare plan for employees to the level of VHI plan B, although for the more senior lawyers VHI plan C or BUPA's *Healthcare manager* is paid.

Gym membership. 60% of solicitors working in-house receive a subsidy for membership of a gym or the employer has its own on-site facility. Typically, the amount given to this benefit is between €400 and €600 a year.

Professional subscriptions. All of the lawyers we surveyed had at least one professional membership subscription paid for by their employer. A few companies also paid for an additional society membership, such as the New York bar.

Share schemes. We found that 90% of solicitors working for quoted plcs were able to avail of a discounted share scheme, which added to their overall package.

Holidays. All of the lawyers we surveyed working in-house were able to take at least 25 days' holidays. 20% of solicitors received 26 to 27 days. We also found that some of those lawyers working for the bigger multinationals or financial services companies could avail of up to two days' extra holidays under the American system of 'duvet days' or by buying them from a flexible benefits package.

In conclusion, we can see that in private practice the bigger firms provide better benefits than the smaller firms, but this is counteracted by long and unpredictable hours. Many of the leading Dublin firms are currently reviewing the packages that they offer to make sure they are competitive. In the UK, most of the 'magic circle' firms offer benefits such as healthcare and pensions. In order to attract Irish talent back to this country, firms need to offer competitive benefits packages, even if they can't match London salaries.

In-house solicitors definitely receive more benefits that add to their overall package, which can counteract the often-lower salaries. Lawyers working in financial services are often better off than their counterparts in other industries, as they receive better pension deals, mortgage subsidies and other benefits.

Generally, though, there is more of a focus from solicitors on the type of benefits they receive rather then just on base salary, and on how to achieve that elusive work-life balance. G

Sara Randall is an executive consultant with the Legal Panel recruitment agency.

Crèche test DUMMIES

The lack of proper regulation of childcare is clear from a number of recent court cases. Geoffrey Shannon looks at the largely unregulated activity of childminding

Significant social change has altered the nature of the family in Ireland. Factors such as equal opportunities for men and women and growing economic demands have created an environment where both parents pursue careers in paid employment. This has resulted in an increasing demand for childcare services, as more and more young children spend at least part of the day with a childcarer. This may occur in a private pre-school, nursery, crèche or daycare services, whether in the childcarer's or the child's home.

At present, childcare services are delivered by private childcare providers, community crèches and relatives. The lack of childcare places has been the focus of much recent debate. Government estimates indicate a need for 220,000 childcare places, revealing the true extent of the current childcare crisis. Significantly, the growth in childcare services has not been matched by

MAIN POINTS

- ***Child Care Act, 1991***
- **Regulation of childcare services**
- **British cases**

STATUTORY CONTROL

Part VII of the *Child Care Act, 1991* was the first attempt to regulate childcare services in Ireland. The services covered include pre-school, playgroup, day nursery, crèche and daycare services catering for pre-school children. Part VII does not apply where care of pre-school children is undertaken by relatives, or where the person taking care of the pre-school children of one family does so in the caretaker's home, or where a person is taking care of not more than three pre-school children of different families. This exclusion leaves a significant number of children being cared for in environments exempted from regulation and cannot be said to protect the welfare of children.

Section 50 of the *Child Care Act, 1991* facilitated the introduction of the *Child care (pre-school) regulations 1996* and *Child care (pre-school services) (amendment) regulations 1997*. These regulations are concerned mainly with safeguarding safety, health and welfare in the physical environment in which the children are cared for. They prescribe required safety standards. In particular, the regulations address the use of fire retardant materials, the need for a suitably equipped first-aid box, and the arrangements required to summon medical assistance in an emergency. The regulations also require children attending childcare services to have books, toys, games and other materials suitable to their age and development.

sufficient statutory regulation, which was recognised by the Department of Health and Children Review Group, established in February 2002 to make recommendations on reform of the law in the childcare area. The present legal responsibilities of childcarers can be found in the common law and primarily in part VII of the *Child Care Act, 1991* and the regulations implemented under it (see **panels**). The emphasis in the regulations is very much on health and safety issues. They do not, as such, ensure quality of care. Indeed, there is no specific requirement that staff have special professional training.

Registration of carers

Those operating pre-school and childcare services are required to notify the relevant health service executive of their existence in the prescribed manner in accordance with section 51 of the *Child Care Act, 1991*. In giving notice, they must state their qualification, the body awarding that qualification and other relevant experience with children. Significantly, there is no reference in the regulations to the qualifications required by persons supervising pre-school children, save for article 7, which stipulates that there be a sufficient number of competent adults supervising the children at all times. The health service executive is required to supervise childcare services, once notified, by visiting and inspecting the premises where the service is being provided. Section 55 gives inspectors wide-ranging powers of inspection, which are augmented by criminal sanction.

The current legislative framework is limited in its effectiveness, requiring notification rather than a register of approved pre-school services. It needs to be considerably strengthened. A health service executive in Ireland, for example, would not be liable for any harm resulting to a child in a pre-school service that had been notified to the health service executive. This can be contrasted with other jurisdictions, such as England, where the local authorities can be held accountable through the registration process.

In the case of *T (a minor) v Surrey County Council and Others* ([1994] 4 All ER 577), for example, a local authority was held liable for negligent misstatement due to an officer of the authority advising T's mother that there was no reason why a child should not be placed in the particular childminder's care when the local authority knew, or ought to have known, that there was a significant risk in placing a child in the care of that person. The risk derived from the fact that another child had recently suffered a serious and unexplained injury while in the childminder's care. The court concluded that the local authority officer was a professional with specialist knowledge and responsibility who knew, or ought to have appreciated, that what he said related directly to the safety of the child and would be relied upon by T's mother. (See also the English *Care Standards Act 2000*, operative since September 2001, under which the Office for Standards in Education has assumed responsibility from local authorities for the registration, regulation and inspection of childcare providers.)

The House of Lords adopted a general approach in *Sutton London Borough Council v Davis* ([1995] 1 All ER 53) when considering the local authority's refusal to register the applicant because of its policy that childcarers undertake not to use corporal punishment on children in their care. Although it was lawful for the local authority to adopt a policy obliging childcarers to undertake not to smack a child, this did not require the local authority to adopt it as a blanket policy when assessing the suitability of childcarers to be registered. The House of Lords held that the totality of the evidence needed to be considered.

The considerable growth in the area of childcare has not been matched by the development of a framework to monitor the carer and safeguard against neglect of the child. The current powers of health service executive should be extended to allow registering and inspection of all childcare to provide a form of quality control. As Scott Baker J stated in *T (a minor) v Surrey County Council and Others*: 'registration of a childminder by a local authority will necessarily be seen by parents looking for a minder as a hallmark or stamp of approval, something that can be relied on … What we have here is the local authority required by statute to act as a licensing authority'.

Competent carers

There is a lack of guidance in the *Child Care Act, 1991* and its associated regulations as to what is a competent childcarer. The legislative focus has been on the physical environment and not on critical issues such as the competence of a childcarer. What constitutes a competent childcarer ought to be

addressed in legislation so as to protect children and reassure parents that the childcare services provided are to an acceptable standard. Any legislative reform might follow the comprehensive guidelines issued by the Department of Health in England. The following factors should be considered when assessing a childcarer:

- Previous experience
- Qualifications and training in a relevant field
- Physical health
- Mental stability, and
- Known involvement in cases involving the abuse or neglect of children.

COMMON LAW DUTY

The common law has long imposed a duty on those having care of children. Under the general law of criminal or tort liability, a person who has the care of a child may be held liable where a child is assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause unnecessary suffering or injury to health. The person who has care of the child stands *in loco parentis*, albeit temporarily. This provides the carer with the powers of a parent so far as is reasonably necessary for the discharge of his or her duties.

The duty imposed on a carer by the common law may be enlarged where the childcare is both regular and lengthy in duration. In general, a person who has temporary care of a child has no powers relating to the education or medical treatment of the child. However, there may be a duty to avail of medical treatment, such as giving consent to medical treatment where the child does not have the capacity to give consent, when an emergency arises requiring immediate action to save the life of the child.

In determining the competence of a childcarer, the most important issue should be the general overall quality of care rather than reliance on each of the above individual factors.

Cost of care

The cost of childcare in Ireland is exorbitant when seen in the context of childcare costs in other EU member states. It imposes as great a burden as the high taxation rates in the 1980s. In early March, a report by the Forum on the Workplace of the Future indicated that Irish parents spend almost twice the EU average on childcare. This is not surprising, given the fact that public spending on families in Ireland is lower than most other EU member states. A recent report by the OECD puts Ireland's spending at 1.6% of gross domestic product (GDP) as compared with a spend of 3.8% of GDP in Denmark. The cost of childcare must now be addressed. One possible solution is to link tax benefits to the use of childcare. Such an approach would facilitate a proper system of statutory regulation of childcare services.

Growth in childcare services has not been matched by sufficient statutory regulation to ensure that the quality of service provided is adequate. The current law focuses on environmental issues and safety concerns. However, arguably, the more important areas of quality of care and the carer's role in assisting the development of children have not been addressed. An integrated legislative policy is required to promote the interests of the child and reassure parents that a quality service is being provided. G

Geoffrey Shannon is the Law Society's deputy director of education and author of the recently published Child law *(Thomson Round Hall).*

LET'S W TOGE

Many people involved in separation or divorce proceedings want to find a solution that is fair to everyone. Collaborative family law could be just the ticket, says Rosemary Horgan

MAIN POINTS

- Dispute resolution
- Collaborative law process and family law
- Training courses in Ireland

The collaborative law process is a new dispute resolution model in which each spouse retains a solicitor to help them to negotiate an outcome that they consider, following independent advice, to be fair and acceptable. Both the clients and the solicitors must agree to work together respectfully, honestly and in good faith to try to find a solution that both parties feel is fair and reasonable and to which they are prepared to agree.

The approach is a problem-solving one. There must be full and mutual disclosure of all assets. In collaborative law, each party works towards solving their legitimate needs rather than taking up positions that cannot be reconciled. Each party tries to achieve a 'win-win' solution.

No-one may go to court, or even threaten to do so, when they are working within the collaborative law process. Should the process end, both solicitors are disqualified from any further involvement in the case. The solicitors engaged for a collaborative law representation may never, under any circumstances, go to court for the clients who retained them in a contentious capacity or as witnesses to such litigation.

If a client wishes to proceed through the collaborative law process, then both sides must sign a legally-binding agreement to disclose all documents and information that relate to the issues, early, fully and voluntarily. Open and honest disclosure of assets is essential. 'Hide the ball' and 'stonewalling' are not permitted, and if one side perceives that this is happening, then the process breaks down. If it becomes clear that one party is not proceeding in good faith, then their solicitor must withdraw from the process and may not continue to represent the client.

Collaborative law cannot guarantee that there will be full and honest disclosure of all assets and income, any more than the conventional litigation process can guarantee that to a client. If there is any doubt about the honesty and good faith of the party, then it may well be that the collaborative approach will not work. A client generally knows whether their spouse or partner is basically honest.

Many clients say that they want a system of conflict

COLLABORATIVE LAW IN IR

Many family law solicitors have undertaken preliminary or intermediate training in the collaborative law process. The first training course was organised by Muriel Walls in Dublin in April 2004. Pauline Tesler, an American attorney who has helped to pioneer this method in the United States and has trained groups of lawyers in the US and Europe, came to Dublin and ran a two-day training course. The course was overbooked by enthusiastic family law solicitors (60 participants from all over Ireland and some from London) who wished to acquire new skills – even if they were a little bit sceptical at first as to whether this 'utopian' method actually worked. Well, to our amazement, we found that if we upskilled and shed adversarial behaviours learned over the years, it could in fact work!

The US experience is that most clients prefer it. They are less unhappy having ended their marriage using this process. They see the process as being more fair and respectful than the litigation process, even where the litigation ends in settlement. Pauline Tesler pointed out that lawsuits against attorneys practising collaborative family law were non-existent, in sharp contrast to the high level of professional

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resolution that maintains integrity and involves achieving not only their own goals but also finding a way to achieve the reasonable goals of all the parties in the family. It is often expressed by a desire to achieve an outcome that is 'fair'.

In a collaborative law separation or divorce, it is only when all of the issues have been agreed that the case is ruled in court as a consent matter. The method relies upon the parties engaging solicitors who have trained in the collaborative law method. It also depends on the parties engaging joint neutral advisors (accountants, business advisors, child psychologists). Each party may also need a 'coach' or counsellor to help them to deal with the personal dynamic of the breakdown. They must understand the dynamic of family dissolution and the physical and psychological grief process that this inevitably entails.

We often find that clients come to solicitors on days when they feel very let down, seeking immediate drastic action. A lot of interim applications are initiated on such days and can add to the length and ferocity of the dispute. In a collaborative law case, the parties must agree that they will not in fact instruct their solicitor on these 'down days', but that they will try to maintain equilibrium during negotiation sessions.

Negotiation sessions take place during four-way meetings – the solicitors and clients all meet together and work through an agreed agenda. The clients have a major input into what goes on the agenda and the solicitors control the process and the items to be dealt with at each negotiation session. Success is built upon in each session until an overall agreement is reached.

Problem solving is not new to family law solicitors, but this process of achieving consensus is new and special skills must be acquired to operate in this way. It will only be possible to achieve a wave of collaborative law separation or divorce settlements if enough solicitors are trained in the method. G

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RELAND

negligence litigation in traditionally-run family law litigation. Family lawyers themselves are happier operating collaborative family law and Pauline's own practice has changed completely from litigation to collaborative family law.

The second course in Ireland was held in February 2005 at the Glucksman Gallery in University College Cork. Pauline Tesler provided a comprehensive and enlightening two-day training programme. The course was organised by the Cork Collaborative Law Committee and supported by the Southern Law Association and the Cork Family Lawyers' Association. Frank Martin and Ursula Kilkelly of the law department in UCC were very supportive and Pauline gave a lecture to law students in the college.

The training group consisted of solicitors from Cork, Kerry, Waterford, Wexford and Limerick and a group of UK solicitors who missed out on training days in London and Belfast. Unfortunately, many solicitors who heard about the course too late were disappointed, as the course was fully booked very quickly.

A third intermediary course is planned, so watch this space.

Increased Revenue powers:

A WARNING T

While recent *Finance Acts* have dramatically increased the powers of the Revenue Commissioners, there have been no corresponding statutory safeguards introduced for the taxpayer or his advisors. Julie Burke highlights the dangers for practitioners and their clients

MAIN POINTS

- Revenue Powers Group report
- New Revenue powers in *Finance Act*
- Pitfalls for solicitors

The Revenue Powers Group was established by the-then minister for finance in March 2003 to advise the government on the main statutory powers available to the Revenue Commissioners to establish tax liabilities, including investigation with a view to prosecution. One of the main issues considered by the group was 'the appropriate balance between the need to secure the revenue of the state and the rights of the taxpayer'. There is an obvious need for the introduction of appropriate statutory safeguards for the taxpayer and his legal advisor.

The group's report was published in February last year, and the government said that it would consider its 68 recommendations and include proposals in the *Finance Act, 2005*. It should be pointed out that the report identified only two additional prosecution powers for the Revenue and that the new powers introduced by the minister in this year's *Finance Act* were not considered or recommended by the report.

A number of new powers were given to the Revenue in the *Finance Act, 2005*. The first of these

Disk O'Tech: finance minister Brian Cowen presents the 2005 budget

TO ADVISORS

relates to 'aiding and abetting'.

Section 142 of the *Finance Act* amends the legislation that deals with criminal tax offences (section 1078 of the *Taxes Consolidation Act, 1997*). The potential effect of these provisions should be considered seriously by any solicitor who provides tax advice or is involved in transactions for clients where any tax is paid or payable or where an exemption/relief from tax is claimed.

The new section 1078(1A)(c) will make it an offence if a person is *'knowingly concerned in the fraudulent evasion of tax or being knowingly concerned in, or being reckless as to whether or not one is concerned in, facilitating the fraudulent evasion of tax'*.

Prior to this year's *Finance Act* changes, section 1078 of the *TCA, 1997* sets out a number of clearly-defined offences. In each case, it is possible to clearly see what the *actus reus* is and what the *mens rea* is. So a person who knowingly furnishes incorrect information in connection with a tax can be under no illusion that he is committing a criminal offence. The difficulty with the *Finance Act* amendments is that they replace this certainty with a situation where the scope of the offence may be unclear because of a lack of definition.

For example, the concept of *'knowingly concerned'* in the new section is undefined. For criminal law purposes, the concept of knowledge is well known. However, the concept of *'knowingly concerned'* is not. The key will be whether or not an Irish court defines such a term so as to require some sort of active participation by the advisor in the fraudulent evasion or whether mere knowledge will be sufficient. The legislation is intended to be used against any person (being primarily financial or professional advisors) who knowingly facilitates tax or duty evasion, including attempted evasion.

Irish legislation more extensive

The new provision is similar to the offence of fraudulent evasion of income tax that was introduced in the UK some years ago. However, the Irish legislation is more all-embracing and significantly more extensive than its British equivalent.

The scope of the proposed provisions is of particular concern, bearing in mind that the Revenue Powers Group report to the minister for finance in November 2003 did not identify any issues or concerns about the existing legislation. It would have been expected that serious concerns in relation to this area would have been submitted to the group in advance of their report to the minister. On the other hand, the report did express the concern at the granting of wide-ranging relatively unfettered powers to any agency without protecting the rights of individuals or businesses.

In light of the fact that this is new legislation that potentially affects most solicitors in practice, it is probably worthy of a separate article at a later date.

The new section also widens the circumstances in which directors and other officers can be criminally prosecuted (under section 1078(5) of the *TCA, 1997*) to include their 'recklessness'. A new definition of recklessness has been introduced for the purposes of

RECOMMENDATIONS IMPLEMENTED IN THE *FINANCE ACT, 2005*

On 12 March, the minister for finance, Brian Cowen, said: *'I have now considered the various recommendations and, in this year's* Finance Bill*, initiated the first measures in a process of reforms in the area of Revenue powers. The measures contained in the bill represent a balanced package which includes some of the recommendations of the Revenue Powers Group. I intend to return to some of the remaining recommendations, which require further consultation and careful consideration, for future implementation. In this context, the recent report of the Law Reform Commission on a fiscal prosecutor and a Revenue court is also relevant'.*

The following recommendations have been introduced and came into effect with the passing of the *Finance Act* on 25 March.

Publication of a tax defaulter (section 143)

One of the measures introduced in the *Finance Act, 2005* as a result of the Revenue Powers Group report is the increase in the publication limit for settlements with tax defaulters from €12,700 to €30,000. The limit of €12,700 has not been changed since it was first enacted in 1983 and, if indexed according to the consumer price index (CPI), would be of the order of €26,000.

The Revenue Powers Group recommended a limit of €50,000, while the Law Reform Commission recommended a limit of €25,000. The amendment provides that the limit be automatically revised every five years, in line with the CPI, to a rounded figure of the next €1,000.

Interest on overdue tax (section 145)

The interest rate on underpaid tax will be reduced to a daily simple interest rate equivalent to 10% a year for non-fiduciary taxes (for example, income tax and corporation tax) while retaining the 11.75% rate for fiduciary taxes, which are collected and remitted on behalf of others, for example, VAT and PAYE.

The Irish rate of penal interest compares unfavourably with its EU counterparts, most of which have a penal rate of interest of 6.5% a year or lower.

Section 145 also provides for the repeal of the 2% a month interest charge for 'fraud and neglect' and the 200% tax-geared penalty for fraud from a current date as recommended by the Revenue Powers Group. However, both will remain on the statute book for historical 'legacy' cases. This provision is unlikely to have any material effect on the amount of interest collected by the Revenue as the use of the tax-geared penalty of 200% was seldom, if ever, used.

Change to penalties in case of fraud (section 141)

Prior to this *Finance Act* change, the legislation provided that a penalty in the case of negligence would be an amount equal to the amount of the resulting tax undercharge (that is, 100%) and in the case of fraud the penalty was twice the amount of the tax undercharge (200%).

The amendment contained under section 141 provides that where there is negligence or fraud in the case of incorrect returns, the penalty is equal to the amount of the tax undercharge. In other words, the same penalties apply for either negligence or fraud. The abolition of the 200% tax-geared penalty followed the recommendation of the Revenue Powers Group, as the 200% penalty was seldom, if ever, used.

Records of payments to sub-contractors and PAYE records (sections 138 and 139)

The new sections limit the Revenue's entry and search powers in relation to PAYE and relevant contracts tax on payments to sub-contractors by requiring that the Revenue cannot now enter a private dwelling to inspect books or records in connection with these taxes unless they have either the consent of the occupier or a District Court warrant. This is already the position for other taxes and the Revenue Powers Group recommended that this safeguard be extended to PAYE and relevant contracts tax.

Unlike the UK, the Irish Revenue has the right to enter without a warrant any premises (except one wholly used as a dwelling-house) to seize documents. In contrast, the equivalent UK provisions contain a number of safeguards in addition to the obtaining of warrants to search any premises of a taxpayer. For example, certain preconditions must be satisfied before the Revenue's search and seizure powers are exercised, the prior approval of the board of the Inland Revenue must be obtained, and there are time limits for returns of seized documents.

extending the existing tax offence. A person will be considered reckless for the purpose of this section if he or she *'is reckless as to whether or not he or she is concerned in facilitating … disregards a substantial risk that he or she is so concerned, and for those purposes "substantial risk" means a risk of such a nature and degree that, having regard to all the circumstances and the extent of the information available to the first-mentioned person, its disregard by that person involves culpability of a high degree'.*

This definition is similar to the definition used in section 16 of the *Criminal Justice (Theft and Fraud) Offences Act, 2001.*

The power and the glory

A new power has also been granted to the Revenue Commissioners to make it easier for them to glean information about certain types of insurance policies that they believe were used as investment vehicles for untaxed funds. The new section introduced in this year's *Finance Act* empowers an authorised officer of the Revenue Commissioners to sample the information (not including medical records) held by a life assurance company in respect of classes of policies and their policyholders. The use of this power is subject to a Revenue Commissioner being satisfied that there are circumstances suggesting that a certain class of policies has been used as an investment vehicle for untaxed funds. The information obtained can only be used to help make an application to a High Court judge for an order to have wider access to the information held by the life assurance company about that class of policy and their policyholders.

Last November, the chairman of the Revenue Commissioners, Frank Daly, addressed the Dáil Public Accounts Committee about the proposed investigation into insurance policies. In summary, he made the following points:

- Information about policyholders will be initially

requested from ten to 12 domestic insurance companies
- The period of enquiry will date back to the early 1980s
- The main focus will be on single-premium insurance policies but may be extended to include guaranteed growth bonds, single-premium endowment policies and unit-linked savings products, all of which may have been used to avoid declaring large lump sums for tax purposes
- The key information that the Revenue will seek is to verify the source of the funds used to initiate or contribute to such policies. It will be necessary to prove that such amounts were funded from taxed sources
- The investigation is likely to follow the model used in previous special investigations by the Revenue, such as bogus non-resident accounts and offshore accounts
- Full disclosure will afford the policyholder reduced penalties of 10% as opposed to 100% (for tax years from 1991) in respect of any underpaid tax liability
- There are likely to be some people who will be precluded from availing of the benefits associated with making a qualifying disclosure, for example, anyone who has already made a disclosure under a previous special investigation such as the bogus non-resident and offshore accounts.

In April, the Revenue announced a voluntary disclosure scheme specifically aimed at the holders or past holders of life assurance products that were funded with monies that were not previously disclosed for tax purposes. It has asked the insurance companies to notify relevant policyholders by letter of policy details and of the availability of the voluntary disclosure scheme for those who may have invested untaxed sums over €20,000 in individual policies or in aggregate between 1980 and 2004.

Each letter is intended to provide policy details of product type, policy number, commencement date, total amount invested, current status and termination date. So any policyholders who may wish to avail of the voluntary scheme will have the necessary policy information to consult their advisers.

Mature reflection

I envisage that there are likely to be significant difficulties in relation to policies issued in the 1980s that have now matured and where the period of retention of records for such policies has now expired. This is likely to prove a major exercise for all insurance companies involved and will give rise to significant compliance costs. Indeed, at the time of writing, two major insurance companies have indicated that they will not be writing to policyholders. Unfortunately, this does not help the policyholder who wants to avail of the voluntary

Revenue chief Frank Daly

disclosure scheme. The fact that a policyholder or former policyholder does not receive a letter will not alter his tax position.

The benefits received from making the disclosure are that:
- The penalty for underpaid tax may be substantially mitigated (100% reduced to 10% for tax years from 1991)
- The policyholder's name and settlement amount will not be published by the Revenue in the quarterly list of tax defaulters in *Iris Oifigiúil*
- If the disclosure is valid, the Revenue will not seek to initiate an investigation with a view to prosecution provided the tax, interest and reduced penalties are paid by 22 July 2005.

Risk of criminal investigation

Policyholders currently under Revenue investigation are precluded from making a qualifying disclosure. They may still come forward, but the benefits associated with making a qualifying disclosure are not available. Clearly, there is also a risk that an investigation with a view to criminal investigation may begin if an inaccurate declaration has been made in one of the earlier investigations. Any person in this category needs to consult a tax or legal adviser.

The main concern for any policyholder is if the Revenue forms the view that the voluntary disclosure made is inaccurate or incomplete. The net effect of this is the withdrawal of all benefits available to the individual and the risk of the information being used in a subsequent criminal prosecution. In these circumstances, a wider investigation into the taxpayer's affairs may be initiated.

In many cases, individuals may have inherited the

proceeds of such policies on the death of a parent or were named as joint holders of the policy by the parent or other relative. Where a parent funded such policies from untaxed sources, it is likely that the Revenue will seek to recover the underpaid tax from those who inherited the proceeds.

There is no legal requirement for a personal representative to make an unprompted voluntary disclosure to the Revenue. However, insofar as the estate is in the course of administration, the onus is on the personal representative to ensure that all the deceased's proper tax liabilities are discharged and a letter of tax clearance obtained. A personal representative risks being personally liable for the deceased's debts, including tax, if he has failed to discharge all known liabilities.

Where the estate has been fully wound up, the position is more complicated. Professional advice should be obtained to determine whether there is an enforceable liability. If so, it would be prudent to consider making a voluntary disclosure. Having first obtained agreement or indemnity from beneficiaries, an unprompted voluntary disclosure will substantially reduce the risk of criminal prosecution and will normally facilitate the minimisation of penalties.

The minister's commitment to review the recommendations made by the Revenue Powers Group and the Law Reform Commission report in the area of Revenue powers for inclusion in the *Finance Bill, 2006* is to be welcomed. Clearly, the inclusion of four of the 68 recommendations of the Revenue Powers Group report does not afford much greater statutory protection to the taxpayer, particularly in light of the introduction of two new significant Revenue powers in this year's *Finance Act*.

'There is a need to rebalance the rights of taxpayers to ensure that our tax system is on a par with those of our fellow EU member states'

There is an obvious need for the introduction of appropriate statutory safeguards for taxpayers. While the current powers of the Revenue are broadly similar to those of foreign jurisdictions, the safeguards are virtually non-existent. It needs to be recognised that our legislation lacks a basic component of any developed tax system, namely, appropriate restraints on Revenue powers. There is a need to rebalance the rights of taxpayers to ensure that our tax system is on a par with those of our fellow EU member states.

This will become increasingly important in light of the current trend for the introduction of new powers in each *Finance Act*. It should be recognised that the introduction of safeguards will not interfere with the Revenue's on-going investigations into fraud in our tax system. G

Julie Burke is principal of the Dublin law firm JM Burke, Solicitors, and editor of the Irish tax review.

Book review

Irish mental health law

Anne-Marie O'Neill. FirstLaw (2005), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1-904480-20-9. Price: €199.

Lawyers see the ultimate test of any new textbook in its value as a practising tool. On the very morning the review copy arrived on my desk, a thorny problem arose in a substantial *Mental Treatment Act* civil action in the High Court, which the practitioners involved believed was a novel point. Not so: a quick perusal of the relevant chapter of this work revealed an unreported Supreme Court authority, dating from 2001, unknown to the very experienced legal team acting for the plaintiff. On this yardstick, it would seem that Dr O'Neill's volume passes comfortably.

The author brings an unusual, rights-centred approach to a legal text. She correctly makes the point on the opening page that people with 'mental disability' are people first and, secondly, suffer from a disability. Every chapter contains in its conclusions a reminder that legal systems tend, whether for reasons of paternalism or otherwise, to regard such persons as only capable of playing a limited role in the case, rather than emphasising their capacity for participation in the process. There is lavish reference to international human rights law precedent. Given the increasing recognition of human rights, including, of course, incorporation of the European convention into Irish law, this approach is not just refreshing but of value to practitioners.

Much care has been given to the design of the book. The opening chapter is typical. Definitions, the language of both healthcare and health law, and the legislative history in this field in Ireland are set out clearly, as is the administrative structure of mental healthcare provision. The layout will enable even a casual reader easily to absorb the significance of the legal provisions that follow in the remainder of the book.

The author's impressive research provides examples of case law and journal articles, statute and treaty from all over the English-speaking world, presented both in the ordinary course of the text and in specific sections offering 'commentary' from a comparative or international law perspective. Such perspective serves to support the author's view, shared by this reviewer, that Ireland lags way behind international best practice, particularly in the confinement to hospital and treatment of people suffering from mental illness, and who are, for whatever reason, reluctant patients. So the questions of involuntary detention in hospital, duration of stay and

treatment with medication without informed consent are all clearly shown to be of another generation. This is so even allowing for the *Mental Health Act, 2001* only slowly being implemented by stages.

Notwithstanding this piecemeal implementation, the law on involuntary committal is to change drastically over the next 18 months or so, which will see a new system of mental health tribunals set up to rule on the propriety of all new (and existing) forced admissions to mental hospitals. O'Neill has catered for this change with a chapter devoted to the tribunals as envisaged by the new act. As the reader may have guessed by now, she provides a devastating critique of the proposed tribunals, which are in truth a grudging and belated offering to the European Court of Human Rights to avoid defeat in *Croke v Ireland*.

Elsewhere, the book is a mine of useful material, and there is a full chapter on mental disability and the criminal law, including a section on the rights of disabled prisoners. The final third of the book deals with legal capacity in public and private law and in the context of family relationships, including the right to (or to refuse) treatment. Again, the research is impressively thorough, and the reader will be left with the undoubted sense that Ireland is way off the pace on contemporary socio-legal issues.

A member of the library team in Blackhall Place, Dr O'Neill has produced a massively well-researched compendium of Irish and comparative law that operates both as a legal text and a critique of current medical practice and law. Devoid of padding, well-indexed and with a bibliography that stretches to 16 pages of small print, this is set to become the Bible in an area of law that has been neglected, but which is set to expand significantly in the near future. G

Dara Robinson is a partner in the Dublin law firm Garrett Sheehan & Company.

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Report of Law Society Council meeting held on 8 April 2005

FACC and stamp duty in the context of stage payments

Patrick Dorgan briefed the Council on correspondence with the Department of Finance in relation to stamp duty exemptions and the new floor area compliance certificate. The society had sought a statutory amendment to the *Stamp Duties Consolidation Act* to address the difficulties in respect of stamp duty in relation to conveyances of grant-sized new houses to first-type buyers and owner/occupiers arising from a change in practice by the Revenue in July 2004. It was clear from the response from the Department of Finance that no amendment would be made to the legislation. Mr Dorgan noted that the society had issued a practice note to its members advising that purchasers buying subject to stage payments would be unable to obtain exemption from stamp duty for the future. Accordingly, the change in Revenue practice would be a significant disincentive for first-time buyers to purchase by way of stage payments.

District Court Rules Committee

The Council approved the appointment of Fiona Twomey to the District Court Rules Committee, replacing Sean McMullin, who had indicated his intention to retire from practice.

Competition Authority study

The president noted that, in the course of his speech at the society's annual dinner on the previous evening, the Minister for Finance, Brian Cowen, had indicated that the government had an open mind in relation to the Competition Authority's recommendations and had a high regard for what the Law Society does in the interests of the profession and in the public interest. He had concluded that the government would listen carefully to the society's views before reaching conclusions on where the public interest lies. The society's task force was working on a response to the authority's report and would engage constructively with the authority in the conclusion of its study.

Government review of legal costs

The president reported that the society had made an oral presentation to the government working group reviewing legal costs at a meeting held on 5 April 2005. The meeting had been attended by Gerard Griffin, Roddy Bourke and the director general.

The society had been asked to respond to a series of written questions in advance of the meeting, as follows:

1) How would you improve the taxation process?
2) Should the law set out detailed requirements in respect of section 68 letters and provide for appropriate sanctions where solicitors do not comply?
3) Should clients receive regular written bills updates?
4) Should solicitors be obliged by law to seek quotes from barristers before engaging them?
5) Should clients have direct access to barristers in all cases?
6) Can the solicitor's instruction fee be replaced by a more detailed assessment of costs?
7) Why not replace the fees for various services (drafting letters and so on) with the single administrative fee?
8) Should the system allow for a standard level of legal service beyond which costs are not recoverable, for example, restricting number of counsel, setting a rate beyond which costs cannot be recovered?
9) Daily rates for lawyers are being set in respect of tribunals of inquiry. Why not have the same for civil proceedings?
10) Is there any incentive for clients to keep legal costs down?
11) How would the Law Society react to a move towards the New Zealand model, where only two-thirds of costs are recovered? Why shouldn't all legal services be required to be billed on an hourly rate basis (thus giving clients information to 'shop around')?
12) Why not abolish the instruction fee and allow solicitors to charge as they see fit on an hourly basis?
13) Have you any particular proposals in relation to the cost of divorce litigation, which has been the subject of unfavourable judicial comment?

The society had emphasised that there was one fundamental principle that must underpin all reform. Civil litigation represents a vital part of the administration of justice. Access to the courts is the constitutional right of every citizen. The right to legal representation and the lawyer/client relationship exist in the common good to guarantee equality of arms and ensure the maintenance of fairness between the strong and the weak.

In response to a suggestion that there was an incentive towards 'over-lawyering' in litigation and that lawyers had an incentive to do more and to charge more than was necessary, the society had pointed out that there were strong safeguards in the current taxation system that penalised and prevented over-lawyering, as only those costs that were reasonably incurred could be charged for. The society had

agreed that bills of costs for taxation were incomprehensible to most clients and that there was an urgent need to increase transparency and avoid unnecessary complexity in bills of costs.

The director general noted that the New Zealand system, which had been introduced in 1999, involved the calculation of fees on a complicated scale basis and, as a matter of policy, only two-thirds of the costs were recoverable. Apparently, the theory behind the system was that it encouraged early settlement. The society had emphasised that, while any jurisdiction might introduce a scale of costs, it could not simultaneously have equality of arms between the parties. Scales of costs benefited those with the deepest pockets, arbitrary scales of costs were inherently unfair, and scales of costs favoured the strong against the weak. The society had also referred to the scales of costs operated within the District Court, which were rarely revised and had fallen into disrepute. In calculating the appropriate fee for work done, the society had acknowledged that time was an important element in any such calculation, but it could not be the only criterion.

Stuart Gilhooly said that, in relation to personal injury actions, the society needed to explain that the introduction of a scale of costs would merely increase insurance company profits at the expense of access to justice for the consumer. It was already clear that giving money back to the insurance companies did not result in significantly lower premiums, but in higher profits. Therefore, any gain by reducing solicitors' profits would be totally outweighed by a loss of access to the courts for the consumer, with the insurance industry being the only beneficiary.

Mr Gilhooly said that the only cases proceeding to court at this stage were those cases in which liability was in issue or which were of such a serious or complex nature that PIAB had been unable to reach a conclusion. Further early settlement and cost-reduction methods had been introduced by the *Civil Liability and Courts Act, 2004*. These included mediation conferences, pre-trial hearings and an obligation on the plaintiff to make a formal offer before trial, which, if refused, would result in huge cost reductions in the event that the ultimate award was lower. In addition to the tender and lodgment procedures already in place, which had a similar effect, this meant that the chances of cases going to trial were far slimmer and would tend to be only cases that should be litigated either for reasons of high complexity or complete liability denial. These cases clearly were those that could not be processed without the assistance of a solicitor. In those circumstances, a scale of costs would be monumentally unfair to a claimant. Mr Gilhooly urged that the society would press these points with the working group.

The director general said that the society had sought to emphasise that legal costs were not all about litigation and, even in litigation cases, many were focused on a remedy that was not money-based – for example, the action taken by the minister for justice against Roscommon County Council was for the purpose of vindicating rights and not seeking an award of damages. John Glynn noted that many legal difficulties encountered by clients were of low monetary value, for example, boundary disputes. If solicitors were forced to charge on a time basis, the cost of resolving these difficulties would be prohibitive and clients would be unable to afford such legal services. G

Practice notes

ADMINISTRATION OF OATHS BY SOLICITORS

When a client is swearing an oath or making a statutory declaration, there must be strict adherence to all the formalities required by law to be observed, both by the deponent's own solicitor and by the solicitor administering the oath or taking the declaration.

Client leaflet

A client leaflet has been prepared by the Guidance and Ethics Committee for the assistance of solicitors. The leaflet explains in simple terms what is involved. The leaflet can be handed to clients to read before they swear an oath or make a declaration. A sample of this leaflet is being sent to every solicitor. Leaflets will also be on sale from the Law Society.

The oath

Over the centuries and in most cultures, it has been the established wisdom that there are occasions when it is crucial that the truth of a matter be established. On these occasions, an individual should be asked to pause and consider and then to confirm formally that they are telling the truth. This is what is happening when an oath is administered or a declaration taken. This is of crucial importance for the administration of justice, for the transaction of business and for many other aspects of society today.

Solicitors undertake considerable responsibility when they are involved in the process.

Statutory basis

The statutory basis for administering oaths was originally the *Commissioners for Oaths Act 1889*. Statutory declarations are provided for in the *Statutory Declarations Act, 1938*. Until 1994, if it was necessary for an individual to swear an oath or make a declaration, the oath could only be administered by a commissioner for oaths or, if the document being signed was a declaration rather than an affidavit, it could also be signed before a peace commissioner. Commissioners for oaths were, and still are, appointed by the chief justice and supervised by him via the Supreme Court office. Peace commissioners are appointed by the minister for justice. The names of peace commissioners active in a particular district are available from the local superintendent of the Garda Síochána.

When the *Solicitors (Amendment) Act, 1994* was enacted, section 72 provided that solicitors holding current practising certificates would have the same powers as commissioners for oaths to administer oaths and take declarations. This was presumably to ease the workload of the existing commissioners for oaths and to make it more convenient for clients to swear oaths or make declarations. Clients would be more likely to find a solicitor, rather than a commissioner for oaths, geographically close to them.

A practising solicitor who is not also a commissioner for oaths, in exercising his or her powers pursuant to section 72, is subject to all the acts, regulations and rules of practice to which a commissioner for oaths is subject.

Misconduct

Every practising solicitor exercising his or her powers pursuant to section 72 must at all times be fully aware of the importance and solemnity of the proper exercise of such powers and adhere to the duties laid down.

In the *Solicitors Acts*, the definition of misconduct includes any breach of any section of the *Solicitors Acts* themselves. Accordingly, any breaches of duties by solicitors in administering oaths or taking declarations will be investigated by the Law Society as a conduct issue. The matter will come to the notice of the society if a complaint is made or it may be discovered in the course of the investigation of any complaint.

Prohibition on individuals administering oaths in matters in which they have an interest

All the legislation is quite clear that the individual administering the oath or taking a declaration should be independent of the situation in which the oath is required. Rules 17 and 18 of order 40 of the *Rules of the Superior Courts* deal with the prohibition on a solicitor administering an oath for a party for whom he or she, his clerk or partner, is acting. This requirement is restated in section 72(2) of the *Solicitors (Amendment) Act, 1994*. This is to ensure the absolute independence of the deponent when taking the oath or making the declaration and to avoid duress or undue influence.

A solicitor cannot exercise the powers in contravention of any relevant condition on his or her practising certificate.

The definition of 'solicitor' in the *Solicitors (Amendment) Act, 1994* includes 'a firm of solicitors'. Therefore, in exercising his or her powers pursuant to section 72, a practising solicitor must regard himself as having an interest in any proceedings or in any conveyancing, probate, commercial or other matter in which his or her principal, partner, associate, consultant or assistant is engaged as a solicitor or has an interest.

Accordingly, the requirement is that the deponent swears or makes a declaration in the presence of somebody outside the solicitor's firm that is transacting the client's business.

The independent administration of the oath or the taking of the statutory declaration is a safeguard for clients. A solicitor independent of the situation asks whether the contents of the document are understood by the client. This lessens the risk of undue influence for vulnerable clients, for instance, in a family situation.

The independent administration of the oath or the taking of the statutory declaration is equally important as a safeguard for solicitors. The client is the person who is swearing to the truth of the contents. If the client, unknown to the solicitor, is telling lies, but the solicitor involved is distanced from the swearing, no doubt is cast on the solicitor's credibility.

Powers of a commissioner for oaths/practising solicitor

The powers of a commissioner for oaths include the power to administer oaths relating to any affidavit, affirmation, statutory or other declaration for the purpose of any court in this jurisdiction, the registration of any instrument or in compliance with any statutory requirement.

Duties of the deponent's own solicitor

- **The solicitor must check with the client that the contents of the affidavit or declaration are true.** When a client makes a statement to his or her solicitor relating to events that have happened, the solicitor then drafts the affidavit or declaration to record the statement. The solicitor must then ensure that the client reads the document and verifies that the statement has been accurately recorded by the solicitor and also verifies the truth of the statement. Where a document has been prepared by the solicitor without reference to the client, because it relates to a technical matter not within the client's expertise, the solicitor must ensure that the client understands the contents of the document

- **The solicitor must ensure that the form in which an affidavit is made is the appropriate form.** The solicitor should check whether the client will be taking an oath or, if he or she objects to doing so, would prefer to affirm. The solicitor must include an appropriate formula of words and jurat for an oath or affirmation in the affidavit as required
- **The solicitor should explain to the client the nature of the oath or affirmation or of the statutory declaration.** He or she should explain that the client is not simply being asked to sign a document but that the client is being asked to pause and consider whether they are telling the truth and to swear an oath, affirm or solemnly declare that they have done so. The client can be asked to read the Law Society explanatory client leaflet
- **The solicitor must ensure that the client swears in the presence of a commissioner for oaths or practising solicitor.** The solicitor can arrange that he or a member of his staff brings the client to a commissioner for oaths/practising solicitor. If the solicitor is sending the document to the client, the necessity for the oath to be sworn in the presence of a commissioner/practising solicitor should be explained.

Duties of the solicitor administering the oath

It has long been established that the responsibility for, firstly, the form of the affidavit and, secondly, the truth of the contents do not lie with the person administering the oath but rather with the deponent and with his or her solicitor. The duty of the person administering the oath is to do the following:

- Satisfy himself as to the identity of the deponent
- Ascertain that the person has read the affidavit or declaration or has had it read to him
- Ascertain that the individual understands the document
- Ensure that the oath is properly administered and that the necessary formalities are observed.

Solicitors should consult the publication *Handbook for the use of commissioners for oaths* by the late Gerard Frewen for more detailed instructions in relation to administering oaths.

The oath, affirmation or declaration

The formalities observed should follow those observed in court. If a testament is being used, the testament may be raised in either hand. The oath should be said aloud.

The following are suitable formulae for the oath, affirmation and the statutory declaration respectively:

- 'I swear (by almighty God) that this is my name and handwriting, that I have read the affidavit and that the contents of the affidavit are true'
- 'I solemnly and sincerely affirm that this is my name and handwriting, that I have read this affirmation and that the contents of the affirmation are true'
- 'I solemnly and sincerely declare that this is my name and handwriting, that I have read this declaration and that the contents of this declaration are true'.

The jurat

The following is the usual, but adaptable, form of jurat:

Sworn/declared by _____
[NAME OF DEPONENT]
who is/are personally known to me (or who is/are identified to me by _____
who is known to me)
this _____ day of _____ 200 _____
at _____
in the city/county of _____
before me, a commissioner for oaths/practising solicitor.

_____
Commissioner for oaths/practising solicitor

If a deponent is affirming, the above jurat should not be used. Instead it should read:

Affirmed by _____
[NAME OF DEPONENT]
who is/are personally known to me (or who is/are identified to me by _____
who is known to me)
this _____ day of _____ 200 _____
at _____
in the city/county of _____
before me, a commissioner for oaths/practising solicitor.

_____
Commissioner for oaths/practising solicitor

A solicitor who holds a practising certificate that is in force who is also a commissioner for oaths **may** continue to refer to himself in the jurat as a commissioner for oaths. A practising solicitor who is not also a commissioner for oaths **shall** refer to himself in the jurat as a practising solicitor.

Practices that are in breach of the legislation

- Leaving blanks in the document when it is sworn or declared and filling in the blanks after the document has been sworn or declared
- Asking the client to sign the affidavit or declaration in the presence of the solicitor or a member of his or her staff, to be 'sworn' later in the absence of the client
- Sending the affidavit or declaration out to the client, whether in the locality, in the jurisdiction or abroad, and simply asking them to sign the affidavit or declaration 'where marked with a pencil', with no further explanation as to the contents of the document or the significance of a sworn document or of a solemn declaration
- Arranging for all the affidavits and declarations being made by clients of a firm to be signed by a commissioner/practising solicitor at regular intervals in batches, without the deponents being present.

Practical matters

There can undoubtedly be inconvenience for solicitors in arranging the proper administration of oaths and taking of declarations. However, proper swearing can be achieved with a little planning.

In some localities, it may be possible for solicitors' firms to come together to arrange a rota for specific hours or specific days when each firm will be available for the administration of oaths or the taking of declarations by practising solicitors or non-solicitor staff who have been appointed commissioners for oaths. This would ensure the best possible availability of commissioners or solicitors to swear oaths and also minimise interruptions for all the firms.

Firms should ensure that they have a copy of the Bible available for clients who are swearing on the Bible. The Guidance and Ethics Committee has prepared a laminated card on which the different formulae of words are set out, to be available for clients so that they can read out the relevant words when swearing or affirming or making a declaration. One of the cards is being sent to all solicitors with the client pamphlet already mentioned.

Fees

A practising solicitor who is not a commissioner for oaths, in exercising his or her powers pursuant to section 72, is subject to the same

SECTION 72 OF THE *SOLICITORS (AMENDMENT) ACT, 1994*

'Administration of oaths and taking of affidavit

72. (1) Subject to the provisions of this section, every solicitor who holds a practising certificate which is in force shall, subject to any condition to which that practising certificate is subject under the *Solicitors Acts, 1954 to 1994* (in this section referred to as a 'relevant condition'), have all the powers conferred by any enactment or statutory instrument (within the meaning of the *Statutory Instruments Act, 1947*) on a commissioner for oaths (including section 24 of the *Stamp Duties Management Act 1891*) and any reference to such a commissioner in any such enactment or statutory instrument, whether passed or made before or after the commencement of this section, shall include a reference to such a solicitor, unless the context otherwise requires.

(2) A solicitor shall not exercise the powers conferred by this section in any proceedings in which he is solicitor to any of the parties or in which he has an interest, or in contravention of any relevant condition.

(3) A solicitor before whom any oath or affidavit is taken or made shall state in the jurat or attestation at which place and on what date the oath or affidavit is taken or made.

(4) A document containing the statement in the jurat or attestation mentioned in sub-section (3) of this section and purporting to be sealed or signed by a solicitor pursuant to his powers as a commissioner for oaths or pursuant to this section shall be admitted in evidence without proof of the said seal or signature, and without proof that he is a solicitor or that he holds a practising certificate which is in force or that such document has not been so sealed or signed in contravention of a relevant condition.

(5) Nothing in this section shall affect the power to appoint commissioners for oaths under section 73 of the *Supreme Court of Judicature Act (Ireland) 1877'.*

regulations as to fees as is a commissioner for oaths. The fees currently payable to a commissioner for oaths are set out in the Rules of the Superior Courts *(fees payable to commissioners for oaths) 2003* (SI no 616 of 2003) and are as follows:

i) On taking an affidavit, affirmation or declaration: €10
ii) On marking exhibits therein referred to and required to be marked –
for each exhibit: €2
but not exceeding for all exhibits: €30
iii) On attesting the execution of a bond: €10.

The Law Society will seek to ensure that the fees for the administration of oaths/the taking of declarations is reviewed on an on-going basis so that the fee reflects the importance of the task.

ENDORSEMENT OF CHEQUES

The exigencies of current conveyancing practice often require that cheques made out to clients are endorsed and passed on, without being lodged to the solicitor's client account.

Any such endorsement should be made, preferably, with the written authorisation of the client or, in exceptional circumstances, on the client's oral instruction, if the prompt dispatch of the client's business requires it. A copy of the cheque and its endorsement should be given to the client without delay and, in the case of an oral instruction, a letter should be written confirming that the cheque was endorsed in accordance with such instruction.

Practitioners should also note that the provisions of the *Solicitors' accounts regulations* (and money-laundering legislation) require that a copy of such endorsed instrument be kept on the solicitor's file.

Conveyancing Committee

LEGISLATION UPDATE: 16 APRIL – 20 MAY 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.

ACT PASSED

British-Irish Agreement (Amendment) Act, 2005
Number: 6/2005
Contents note: Amends section 53(b) of the *British-Irish Agreement Act, 1999* to remedy a possible technical defect in relation to the protection of North/South implementation bodies as state authorities under *Landlord and Tenant (Ground Rents)* legislation
Date enacted: 6/5/2005
Commencement date: 6/5/2005

SELECTED STATUTORY INSTRUMENTS

Central Bank Act, 1942
(financial services ombudsman) regulations 2005
Number: SI 191/2005
Contents note: Extend the definition of 'regulated financial services provider' in section 2(1) of the *Central Bank Act, 1942* (as amended by section 2 of the *Central Bank and Financial Services Authority of Ireland Act, 2004*) for the purposes of part VIIB of the *Central Bank Act, 1942* (financial services ombudsman)
Commencement date: 1/4/2005

Central Bank Act, 1942
(financial services ombudsman council) regulations 2004
Number: SI 190/2005
Contents note: Expand the definition of 'consumer' for the purposes of section 57BA(b) of the *Central Bank Act, 1942* (as amended by section 16 of the *Central Bank and Financial Services Authority of Ireland Act, 2004*) to include all unincorporated bodies (including partnerships, trusts, charities, clubs, and so on) and to include limited companies with an annual turnover of three million euro or less (SMEs); prescribe the maximum limits on the awards the ombudsman may make in respect of complaints generally and complaints in respect of annuities, for the purposes of section 57CI(4)(d) and section 57CI(5) of the *Central Bank Act, 1942* (as amended by section 16 of the *Central Bank and Financial Services Authority of Ireland Act, 2004*); retain the existing terms of reference of the former voluntary schemes pending the drawing up of comprehensive terms of reference save that where a conflict arises between the act or the regulations and the terms of reference, the act and the regulations will prevail
Commencement date: 1/4/2005

Commission of investigation (Dublin and Monaghan bombings) order 2005
Number: SI 222/2005
Contents note: Establishes a commission of investigation to investigate and report on specific matters relating to the bombings in Dublin and Monaghan on 17/5/1974
Commencement date: 26/4/2005

Companies (fees) order 2005
Number: SI 179/2005

Contents note: Amends the eighth schedule to the *Companies Act, 1963* (substituted by the *Companies (fees) order 2001* (SI 477/2001) and amended by SI 569/2001, SI 557/2002 and SI 187/2003) to provide for the disapplication of filing fees where certain specified documents are filed electronically with the registrar of companies
Commencement date: 7/4/2005

Coroners Act, 1962 *(fees and expenses) regulations 2005*
Number: SI 196/2005
Contents note: Prescribe various fees and expenses for the purposes of the *Coroners Act, 1962*. Replace the *Coroners Act, 1962 (fees and expenses) regulations 2000* (SI 429/2000)

Criminal Evidence Act, 1992 *(section 13) (commencement) order 2005*
Number: SI 221/2005
Contents note: Appoints 2/5/2005 as the commencement date for section 13 of the act for the Circuit Court sitting in the Cork circuit. This provision allows a witness to give evidence through a live television link in cases involving physical or sexual abuse before the Circuit Criminal Court

Employment regulation order (Law Clerks Joint Labour Committee) 2005
Number: SI 214/2005
Contents note: Made by the Labour Court on the recommendation of the Law Clerks Joint Labour Committee; fixes statutory minimum rates of pay and regulates statutory conditions of employment for certain workers employed in solicitors' offices
Commencement date: 1/5/2005

District Court (criminal justice) rules 2005
Number: SI 201/2005
Contents note: Amend the *District Court rules 1997* (SI 93/1997) to provide in rule 7 for service of documents either personally upon the accused or upon his solicitor, if any; substitute a new rule 10, 'Order sending forward for trial'
Commencement date: 6/4/2005

District Court* (Criminal Justice Act, 1994*) rules 2005
Number: SI 200/2005
Contents note: Amend order 11 of the *District Court rules 1997* (SI 93/1997) by the addition of a new sub-paragraph (h) in rule 2 thereof to provide for service outside the jurisdiction, where necessary, in proceedings brought under section 38(3) of the *Criminal Justice Act, 1994* (and in accordance with order 38, rule 6 of the *District Court rules*) for an order authorising the further detention of cash seized
Commencement date: 6/4/2005

District Court (domestic violence) rules 2005
Number: SI 202/2005
Contents note: Amend order 59 of the *District Court rules 1997* (SI 93/1997) to take account of the *Domestic Violence (Amendment) Act, 2002*
Commencement date: 6/4/2005

District Court (registration of clubs) rules 2005
Number: SI 198/2005
Contents note: Amend the *District Court rules 1997* (SI 93/1997) by the deletion from order 83 of rule 9 (new clubs, clubs ceasing to be registered – notice to revenue commissioners)
Commencement date: 6/4/2005

District Court (sex offenders) (amendment) rules 2005
Number: SI 199/2005
Contents note: Amend order 38 of the *District Court rules 1997* (SI 93/1997) and add new forms 38.14 (certificate of conviction and/or sentence) and 38.15 (order for imprisonment and post-release supervision)
Commencement date: 6/4/2005

Finance Act, 2005 *(commencement of sections 100 and 104(1)(b)) order 2005*
Number: SI 225/2005
Contents note: Appoints 1/5/2005 as the commencement date for sections 100(1)(a) and 100(1)(b) of the *Finance Act, 2005* in relation to VAT treatment of certain property transactions and for section 104(1)(b) in relation to a credit of a proportion of the deductibility that a taxpayer was previously entitled to claim where a property is diverted into exempt short-term letting

National Cultural Institutions Act, 1997 *(commencement) order 2005*
Number: SI 218/2005
Contents note: Appoints 3/5/2005 as the commencement date for the following provisions of the act: sections 7, 51, 67, 68(1), 68(2)(b) and 70; sections 48 and 50 (insofar as they are not already in operation); part II (ss8 to 41) (insofar as it is not already in operation); and the first schedule. Part II of the act provides for the establishment of Bord Ard-Mhusaem na hÉireann (the National Museum of Ireland Board) and Bord Leabharlann Náisiunta na hÉireann (the National Library of Ireland Board)

National Minimum Wage Act, 2000 *(national minimum hourly rate of pay) order 2005*
Number: SI 203/2005
Contents note: Sets the national minimum hourly rate of pay on and from 1/5/2005 at €7.65

National Monuments (Amendment) Act, 1930 *(section 14B) regulations 2005*
Number: SI 229/2005
Contents note: Prescribe the forms of notice to be used by a road authority and the bodies or persons to be notified by it under section 14B(7) of the *National Monuments Act, 1930* (as amended by the *National Monuments (Amendment) Act, 2004*)
Commencement date: 29/4/2005

Social Welfare and Pensions Act, 2005 *(sections 38 and 39) (commencement) order 2005*
Number: SI 187/2005
Contents note: Appoints 11/4/2005 as the commencement date for sections 38 and 39 of the *Social Welfare and Pensions Act, 2005*

Youth Work Act, 2001 *(commencement) order 2002*
Number: SI 189/2005
Contents note: Appoints 22/4/2002 as the commencement date for sections 2, 3, 4, 5, 6, 7, 17, 18, 24 of, and the schedule to, the Youth Work Act, 2001

Prepared by the Law Society Library

NOTICE

Record no: 2004 169 SA

In the matter of Niall Patrick Colfer, a solicitor practising as Colfers Solicitors, Unit 46, Donaghmede Shopping Centre, Donaghmede, Dublin 13, and in the matter of the *Solicitors Acts, 1954-2002*
Law Society of Ireland (applicant)
Niall Patrick Colfer (respondent solicitor)

Orders of the High Court

On Monday 20 December 2004, on foot of an application by the applicant, the Law Society of Ireland, pursuant to section 18 of the *Solicitors (Amendment) Act, 2002*, the respondent solicitor by his counsel undertook to the president of the High Court:

a) That he would by Wednesday 22 December 2004 swear an affidavit setting out his assets and setting out any encumbrances affecting those assets
b) That he would not attend at the premises of Colfers Solicitors, Unit 46, Donaghmede Shopping Centre, Donaghmede, Dublin 13, until further order
c) That he would not practise as a solicitor
d) That he would not reduce his assets below a figure of €700,000, save to retain the sum of €1,000 per week on the first day of each week to cover living expenses.

The president of the High Court ordered, pursuant to section 20(1)(a) of the *Solicitors (Amendment) Act, 1960* (as amended by substitution of section 28 by the *Solicitors (Amendment) Act, 1994*) that no bank shall make any payment out of an account of Niall Patrick Colfer or the firm of Colfers Solicitors without the consent in writing of the Law Society of Ireland.

It was further ordered that the applicant be at liberty to notify such banks as the applicant deemed appropriate of the making of the order by telephone and by facsimile transmission.

It was further ordered that the motion stand adjourned to Monday 17 January 2005 and the question of costs be reserved.

Liberty to all parties to apply.

On Wednesday 22 December 2004, the president of the High Court ordered:

1) That the order of 20 December 2004 be varied by substituting for the figure €700,000 set out in paragraph (d) thereof a figure of €1.4 million
2) That the respondent solicitor do forthwith deliver to a person nominated in writing by the applicant
   a) all documents and files relating to a named estate
   b) the title deeds and encumbrances relating to a named property
   c) the accident file of a named client
   d) the applicant to return the said documents and files to a named firm of solicitors on behalf of the named client and notwithstanding the delivery aforesaid entitlement to be without prejudice to any lien to which Colfers Solicitors or another named solicitor should be entitled in respect of the same
3) That the respondent solicitor do attend before a representative of the applicant or any committee thereof and give explanations in relation to his assets, liabilities and all sums in excess of €9,999 expended by him within a period of three years prior to the date of the order.

Liberty to all parties to apply.

Reserving the question of costs.

On Monday 14 March 2005, the president of the High Court made an order awarding the costs of the proceedings to the applicant, to be taxed in default of agreement, giving liberty to the applicant to publish the making of the orders dated 20 December 2004 and 22 December 2004 and ordering that the motion stand adjourned generally with liberty to re-enter and giving liberty to apply.

John Elliot, registrar of solicitors and director of regulation

SOLICITORS DISCIPLINARY TRIBUNAL

These reports of the outcome of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act, 2002*) of the *Solicitors (Amendment) Act, 1994*

In the matter of Patrick J Carney, a solicitor carrying on practice as Patrick Carney & Company, Solicitors, at 29 Whitworth Road, Drumcondra, Dublin 9, and in the matter of the *Solicitors Acts, 1954-2002* [7616/DT430/03]
Law Society of Ireland (applicant)
Patrick Carney (respondent solicitor)

On 3 March 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to file an accountant's report with the society in respect of his financial year ended 31 December 2001 in a timely manner, having only filed same on 29 September 2003, in breach of the provisions of regulation 21(1) of the *Solicitors' accounts regulations no 2 of 1984* as amended by regulation 21(1) of the *Solicitors' accounts regulations 2001*
b) Failed to file an accountant's report with the society in respect of his financial year ended 31 December 2002 in a timely manner or at all, in breach of the provisions of regulation 21(1) of the *Solicitors' accounts regulations 2001*.

The tribunal ordered that the respondent solicitor:

i) Do stand censured
ii) Pay the whole of the costs of the Law Society of Ireland and of any person appearing before them as taxed by a taxing master of the High Court in default of agreement.

In the matter of Anthony M Murphy, a solicitor practising as Anthony M Murphy, Solicitor, 10 Old Quarry, Dalkey, Co Dublin, and in the matter of the *Solicitors Acts, 1954-2002* [4012/DT476/04]
Law Society of Ireland (applicant)
Anthony M Murphy (respondent solicitor)

On 24 February 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had failed to file his accountant's report for the year ended 30 June 2003, in breach of regulation 21(1) of the *Solicitors' accounts regulations 2001* (statutory instrument number 421 of 2001), in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

a) Do stand censured
b) Pay a sum of €1,000 to the compensation fund
c) Pay the whole of the costs of the Law Society of Ireland or any person appearing before them as taxed by a taxing master of the High Court in default of agreement.

First Law Update

www.firstlaw.ie

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

CRIMINAL

Application for release

Whether detention lawful – whether transitional arrangements on coming into force of European Arrest Warrant Act, 2003 *applied – interpretation of 'produced' in section 43(1)(b) of* Extradition Act, 1965 – Bunreacht na hÉireann 1937, *article 40.4.2*

The applicant applied for his release pursuant to article 40.4.2 of the constitution on the grounds that his detention was unlawful. It was contended that the assistant commissioner of An Garda Síochána who endorsed the warrants was not entitled to do so pursuant to section 43 of the *Extradition Act, 1965*, since the section was spent following the coming into force of the *European Arrest Warrant Act, 2003*. The central issues concerned the interpretation of the word 'produced' in section 43(1)(b) of the 1965 act and whether the transitional arrangements on the coming into force of the 2003 act applied.

Peart J refused the application for release, holding that in interpreting a statute the court had to, where necessary, refer to the entire act in order to glean the intention of the legislature. The receipt of warrants in the office of the Commissioner of An Garda Síochána constituted the warrants being 'produced' and therefore the applicant's detention was lawful since it was covered by the transitional arrangements set out in section 50(2) of the 2003 act.

***O'Rourke v Governor of Cloverhill Prison*, High Court, Mr Justice Peart, 26/2/2004** [FL9025]

Arrest

Proof of suspicion – whether the court was entitled to infer the requisite suspicion for the purposes of an arrest pursuant to section 30 of the 1939 act – Courts of Justice Act, 1924, *section 29* – Offences Against the State Act, 1939

The appellant appealed his conviction by the Dublin Circuit Court to the Court of Criminal Appeal (CCA) on the grounds that his arrest pursuant to section 30 of the 1939 act was invalid. The CCA certified that its decision refusing the appellant leave to appeal against his conviction involved a point of law of exceptional public importance, namely, whether the CCA was correct in determining that the arrest of the appellant was a valid arrest pursuant to the provisions of section 30 of the 1939 act in circumstances where no evidence was led as to the suspicion of An Garda Síochána that the appellant had committed a scheduled offence at the time of the arrest. Further, whether the court was entitled to infer the requisite suspicion for the purposes of the section 30 arrest in any circumstances and whether the wording of that section was such as to require formal proof by leading oral evidence in specific terms of the existence of the suspicion of the arresting officer, given that the suspicion is a statutory element of a valid section 30 arrest.

The Supreme Court (Denham, Hardiman, Geoghegan, Fennelly, Kearns JJ) allowed the appeal, holding that the suspicion held by an arresting member of An Garda Síochána could be inferred from the circumstances. Accordingly, the omission of direct evidence of the suspicion of the relevant member of An Garda Síochána would not render the arrest unsatisfactory if the suspicion could be inferred from the circumstances, but evidence must exist from which it could be inferred. However, the circumstances of this case were not such as to enable the court to infer the suspicion. The trial judge was not entitled to conclude that the circumstances were sufficient to compel an inference that the necessary suspicion existed.

***People (DPP) v Tyndall*, Supreme Court, 3/5/2005** [FL10551]

Certiorari

Road traffic offences – judicial review – certiorari – *whether respondent exceeded jurisdiction*

The applicant was granted leave to apply by way of judicial review for an order of *certiorari* setting aside the orders of the respondent dismissing two appeals by the applicant against convictions in the District Court. The applicant complained that the respondent had erred in law and that she had refused to allow the applicant to introduce photographs in his cross-examination of a prosecution witness.

The Supreme Court (Murray CJ, Hardiman and McCracken JJ) dismissed the appeal, holding that there was nothing in the manner in which the case was conducted by the respondent nor in any of her decisions that could possibly be said to be in excess of jurisdiction. The admissibility or relevance of evidence was a matter within the jurisdiction of the trial judge.

***Murray v Her Honour Judge Linnane*, Supreme Court, 27/4/2004** [FL10571]

Evidence

Leave to appeal – unlawful detention – admissibility of evidence – whether the trial judge erred in admitting in evidence admissions made by the accused

The applicant, who was convicted of murder, sought leave to appeal against his conviction on the basis that certain questions and answers allegedly furnished during the course of his detention were wrongfully admitted in evidence at trial. The applicant also argued that evidence at trial in relation to a back complaint suffered by him should not have been admitted, as it was prejudicial rather than probative. The applicant further submitted that there was no evidence of the cause of death of the deceased and the DNA evidence did no more than establish that sexual intercourse between the deceased and the applicant had occurred. Finally, the applicant complained that the trial judge failed to give the jury adequate assistance to describe DNA evidence.

The Court of Criminal Appeal (Kearns, O'Donovan, McKechnie JJ) refused leave to appeal, holding that:

1) The detention of the applicant and the extension of that period of detention were lawful and the admissions made by the applicant were properly admitted in evidence
2) The evidence in relation to the applicant's back complaint was properly admitted in evidence. The question of causation was a factual issue for the jury and in the present case there was sufficient evidence for the jury to conclude that the applicant had murdered the deceased, despite the presence of any evidence as to the cause of death. Furthermore, the trial judge adequately explained the DNA evidence to the jury.

***The People (DPP) v Murphy*, Court of Criminal Appeal, 5/5/2005** [FL10557]

Extradition

Correspondence of offences – relevant Irish law – Extradition Act, 1965, *section 47*

The High Court refused the appellant's application to deliver the respondent to the UK in respect of charges set out in three of seven warrants in respect of which extradition was sought. In each of the three, the respondent was charged with supply *simpliciter* of a controlled drug under the 1971 *Misuse of Drugs Act* (UK). As the corresponding offences in Irish law were subject to ministerial regulations and these regulations were not produced or proved in the High Court, the court refused to make orders in respect of the three warrants.

The Supreme Court (Murray CJ, Denham and McCracken JJ) allowed the applicant's appeal, holding that mere reference to the regulations governing the corresponding offence was insufficient to properly place the corresponding Irish law – as opposed to the offence – before the court, but that the trial judge should have enquired as to the existence of the regulations, as the matter was in the form of an enquiry as opposed to a criminal prosecution. Accordingly, the matter was remitted to the High Court for the proper presentation of all relevant Irish law to the corresponding offence.

***AG v Parke*, Supreme Court, 6/12/2004** [FL10493]

FAMILY

Judicial separation

Ancillary financial orders – valuation of husband's assets – whether businesses would be affected by payments out – taxation implications – whether contribution to costs reasonable

A decree of judicial separation having been granted, the High Court ordered that the husband pay to the wife the sum of €4 million based on a valuation of €10 million being placed on the group of companies he owned. It further ordered him to pay a €100,000 contribution to his wife's costs.

The husband appealed these ancillary financial orders to the Supreme Court.

The Supreme Court (Hardiman J, Denham and Kearns JJ concurring) allowed the appeal and remitted the case back to the High Court, holding that:

1) The tax liability must be taken into account
2) The court should have considered the tax effects on the companies upon extraction of the relevant funds to be paid to the wife
3) The costs order be set aside, being of the view that there was no cogent reason why either party should contribute to the other's costs.

***D(B) v D(J)*, Supreme Court, 8/12/2004** [FL10459]

Separation, marital status

Consultative case stated – question of law – estoppel and marital status – stare decisis – conflicts of law – whether respondent could be estopped from denying that he was married to the applicant – whether doctrine of estoppel could be used to change a person's status

The applicant and the respondent were married at the Registry Office in Dublin in 1983. The relationship broke down and in 2001 the applicant issued a civil bill in the Circuit Court seeking judicial separation. The respondent sought a declaration in his counterclaim that he had been previously married and that a divorce obtained by him in the USA was not entitled to recognition in the state and therefore that the purported ceremony of marriage entered into between himself and the applicant was null and void. The status of the respondent determined whether the court had jurisdiction to entertain the application seeking a decree of judicial separation. This was a consultative case stated from the Circuit Court referring a question of law to the Supreme Court. The opinion of the Supreme Court was sought on whether the Circuit Court was entitled to hold as a matter of law, having regard to the findings of fact made by the Circuit Court, that the respondent was estopped from denying that he was married to the applicant.

The Supreme Court answered the question posed in the negative, holding that the doctrine of estoppel could not be used to change a person's status when that had not occurred. The applicant could not evade the reality of the situation and the respondent could not be estopped from bringing forth evidence as to the status of his divorce in Ohio.

***K v K*, Supreme Court, 31/3/2004** [FL10482]

TORT

Damages, onus of proof

Personal injuries – negligence – damages – liability – onus of proof – issues of fact and credibility

The evidence of the appellant regarding injuries he allegedly sustained as a result of a fall on a boat was rejected by the High Court, which found that on the balance of probability the accident could not have happened in the manner alleged. He appealed this finding.

The Supreme Court (Denham J, Murray and Hardiman JJ) held that the burden of proof falls on the appellant and the trial judge is bound by his findings of fact where supported by credible evidence and is not entitled to separate in the interest of the plaintiff or to make a case for the plaintiff who has failed to do so on his own account. The appeal was dismissed.

***O'Flaherty v O'Mathuna Baid Teoranta*, Supreme Court, 6/5/2004** [FL10469]

Liability

Personal injuries – liability – quantum – *Motor Insurers Bureau of Ireland – whether findings of trial judge supported by evidence – whether damages excessive*

This was an appeal by the MIBI on liability and *quantum* from the decision of the High Court awarding the plaintiff the sum of €347,000 against the MIBI in respect of personal injuries sustained by the plaintiff. The Supreme Court (Denham, Geoghegan and McCracken JJ) dismissed the appeal in its entirety, holding that the trial judge had the opportunity to observe the plaintiff as he gave evidence and the findings of fact were supported by evidence. The general damages were not excessive and the figure for loss of earnings was conservative.

Per curiam: the Supreme Court did not endorse the method of the trial court in breaking down the damages awarded and reaffirmed the long-established system whereby a court makes a determination on pain and suffering to date, and into the future, and special damages, as separate issues.

***Sinnott v Fenlon*, Supreme Court, 13/10/2004** [FL10468]

Medical negligence

Causation – onus of proof – 'but for' test – whether onus of proof should be reversed or transferred to defendant – whether trial judge had evidence to support finding

The plaintiff was born with severe brain damage. The defendants ultimately did not dispute that there had been negligence in that the plaintiff should have been delivered earlier, but contended that the plaintiff's brain damage had been caused by an acute episode and that the outcome

would not have been any different had she been delivered at an earlier time. The High Court (O'Sullivan J) dismissed the plaintiff's claim and awarded costs in favour of the defendants.

The Supreme Court (Denham, Geoghegan and Kearns JJ) dismissed the appeal, holding that the trial judge was entitled to conclude, as he did, that the evidence led on behalf of the defendants was such as to bring about a situation where the plaintiff had not tilted the scales decisively in favour of the case of causation contended for by the plaintiff's experts. The 'but for' approach to causation had to be followed by the court. Any approach that had the effect of reversing the onus of proof would be one of such importance that it would require a full court – or perhaps even legislation – before a change of such magnitude to the existing law could take place.

***Quinn v Mid Western Health Board*, Supreme Court, 8/4/2005** [FL10548]

Negligence, assault

Damages – assault at nightclub – personal injuries – fractured jaw – duty of occupier to patrons to prevent assaults – appropriate sum to be awarded to plaintiff in damages – reference to book of quantum – Civil Liability and Courts Act, 2004, *section 22*

The plaintiff sought damages for a fractured jaw sustained in an assault upon him while outside the defendant's nightclub. Expert evidence was tendered to the effect that the presence of easily identifiable security staff prevented assaults in the vicinity of nightclubs. There was evidence that, while the defendant employed four security guards in conspicuous clothing outside the premises, they were not present at the time of the plaintiff's assault when a large crowd remained outside the premises. The plaintiff alleged that the defendant had been negligent in not employing a sufficient security system that would foreseeably have prevented the assault.

Herbert J awarded the plaintiff €48,379.81 in damages, holding that the owner of a licensed premises owed a duty to a customer to take all reasonable care for his safety while on the premises, which included ensuring that a customer on the premises did not assault him. The defendant had been aware of the danger of assaults by visitors on its premises and had a duty to take reasonable care to protect patrons from such known danger. The defendant was in breach of its duty to provide sufficient protection to patrons by ensuring that at least four security men remained on duty until all patrons had left the premises.

Having regard to the book of *quantum*, as mandated under section 22 of the *Civil Liability and Courts Act, 2004*, and the fact that the plaintiff suffered an on-going injury from the fractured jaw, the court awarded the plaintiff €32,000 for pain and suffering to date of trial and €16,000 for future pain and suffering and €379.51 in special damages.

***Meagher v Shamrock Houses Ltd*, High Court, Mr Justice Herbert, 16/2/2005** [FL10509] 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

Recent developments in European law

COMPETITION LAW

Case C-250/032, *Mauri v Ministero della Giustizia*, 25 February 2005. In Italy, those wishing to be admitted as advocates undergo both a written and oral examination. Committees are appointed by the state to administer the examination in each Court of Appeal district. The committees are composed of five members – two advocates from the district where the examination takes place, nominated by the National Bar Council, two judges and a professor of law. Mr Mauri did the written test for the advocates' examination in Milan but was not admitted to the oral stage as a result of the examination committee's decision. He brought an action before a regional administrative court seeking the annulment of that decision. This court referred the matter to the ECJ, asking whether the Italian rules concerning the composition of the examination committee are in accordance with EC principles of freedom of competition and freedom of establishment. The power of the National Bar Council to nominate two of the five members of the committee might enable it to limit access to the profession. The ECJ gave its decision by reasoned order, as the answer to the question referred may be clearly deduced from its previous case law. The Italian state occupies a significant position on the examination committee by the presence of two judges. The ministry of justice has substantial powers enabling it to supervise each state of the examination committee's proceedings (nomination of members, choice of examination topics and power to annul the tests). A negative decision by the examination committee may be subject to proceedings before the administrative court. Thus, even assuming that advocates may, as members of an examination committee, be treated as undertakings, the state has not given up the exercise of its powers in favour of private economic operators and has not encouraged or required the adoption of anti-competitive agreements, decisions or concerted practices. Even if the participation of advocates in the examination board constitutes a restriction on freedom of establishment, it is justified as it corresponds to an overriding requirement in the public interest to assess as well as possible the aptitude and ability of candidates. The supervision by the state ensures that this participation does not go beyond what is necessary to attain that objective. It follows that the Italian rules on the composition of the committee for the state examination for access to the profession of advocate do not infringe EC law.

CONSUMER LAW

Case C-336/03, *easyCar (UK) Ltd v Office of Fair Trading*, 10 March 2005. Directive 97/7/EC on distance contracts provides that a distance contract may be cancelled within a certain period of time by the consumer. In the event of a cancellation, the sums paid by the consumer must be reimbursed without penalty, except for the cost of returning the goods. However, there is an exemption from that obligation for 'contracts for the provision of transport services'. easyCar hires out self-drive cars in the United Kingdom and several other member states. Cars are booked through the internet. The hire contract provides that if the contract is cancelled, the consumer cannot obtain a refund except if there have been unusual and unforeseeable events beyond his control. The English Office of Fair Trading received a number of complaints from consumers and brought proceedings before the English High Court. The High Court asked whether car hire services are 'transport services' for the purposes of the exemption contained in the directive. The ECJ held that the term 'transport services' refers generally to services in the transport sector. The phrase is deliberately broader than the narrower term of 'contracts of carriage'. 'Transport' refers not only to the action of moving persons or goods, but also to making a means of transport available to the consumer. The court held that the intent of the directive was to protect the interest of consumers but also to protect those of the supplier of certain services, in order that they should not suffer the disproportionate consequences arising from cancellation at no expense and with no explanation of services that have given rise to a booking. Car hire companies carry on such an activity. Therefore, the court concluded that 'transport services' includes contract for the provision of car hire services, and thus such a contract cannot be cancelled by consumers without penalty.

FREEDOM TO PROVIDE SERVICES

Case C-39/04, *Laboratoires Fournier SA v Direction des verifications nationales et internationales*, 10 March 2005. The French tax code provides that industrial and commercial or agricultural undertakings may receive a tax credit for expenditure relating to scientific and technical research activities carried out in France. The applicant manufactures and sells pharmaceutical products. It commissioned research in various member states and took this expenditure into account in calculating its tax credit for 1995 and 1996. After a tax audit, the respondent disallowed this expenditure for the calculation of the tax credit. Proceedings were taken before an administrative court in Dijon. It referred the matter to the ECJ, asking whether the French tax code restricting the benefit of a tax credit to research carried out in France was consistent with EC law. The ECJ held that direct taxation falls within the competence of the member states, but must be exercised consistently with EC law. The French legislation is contrary to the principle of the freedom to provide services. The court then examined whether this difference in treatment can be justified. Restrictions can be justified by the need to safeguard the coherence of the tax system. However, in this case there is no direct link between general corporation tax and a tax credit for part of research expenditure. The promotion of research and development can justify a restriction on the exercise of fundamental freedoms in the public interest. However, this legislation is directly contrary to EC policy on research, which aims to exploit the potential of the internal market to the full by removing legal and fiscal obstacles to co-operation between undertakings. The final ground the court looked at was the effectiveness of fiscal supervision as a possible justification. However, it concluded that this legislation could not be justified on that basis. Thus, the French legislation was contrary to the principle of freedom to provide services. G

Ask the panel

The third annual workshop for members of the panel to assist solicitors in difficulty with the Law Society was recently held in Blackhall Place. The panel's work is facilitated by the Guidance and Ethics Committee, members of which are pictured with the panel: *(back row, from left)* Gerry Lambe, Lucia Fielding, Neil Matthews, Peter Loftus, Gearoid Geraghty, Roger MacGinley, Dominic Dowling, Declan Hegarty, Kevin O'Higgins (Guidance and Ethics Committee), William Alymer (Guidance and Ethics Committee), Maura Derivan, Noeline Blackwell, Mary Cowhey, Linda Kirwan (senior solicitor, Law Society), Sean Sexton, Tom Menton; *(front row, from left)* Anne Horgan, Frank Heffernan, Mary O'Connor, Deirdre O'Connor, Oonagh Sheridan, John Costello (Guidance and Ethics Committee chairman), Brendan O'Donovan, Therese Clarke (Guidance and Ethics Committee secretary), and Tony O'Doherty

Contract killing

In April, the Law School hosted the one-day *Finding your training contract* seminar. The morning session focused on giving participants an opportunity to take part in a mock interview. Six panels interviewed and critiqued 44 participants. Each interview panel was comprised of a practising solicitor and a human resources expert. Representatives from Brightwater Recruitment provided detailed guidance on the best way to present a CV and participants received a detailed CV critique from Law School training executive Fionna Fox.

Director general Ken Murphy

Director general Ken Murphy opened the afternoon session. Next, presentations by solicitors from Arthur Cox, William Fry, Dillon Eustace, O'Donnell Sweeney and BCM Hanby Wallace showed participants the basics of how bigger firms recruit trainees.

Training executive Fionna Fox

Finally, Fionna Fox talked about some of the less-common routes to finding a training contract.

For further information about trainee recruitment, contact Fionna Fox; tel: 01 672 4802, e-mail: f.fox@lawsociety.ie.

Was that a joke?
At a recent meeting hosted by the Law Society for the managing partners of ten firms were *(seated, from left)* David Cantrell (Eugene F Collins), Law Society director general Ken Murphy, Law Society president Owen Binchy, Imelda Reynolds (Beauchamps), Joseph O'Meara (Holmes O'Malley Sexton), Alan Murphy (O'Donnell Sweeney); *(standing, from left)* James O'Sullivan (Ronan Daly Jermyn), Mark Thorne (Dillon Eustace), Gerry Carroll (Whitney Moore & Keller), Law Society senior vice-president Michael Irvine, David O'Donnell (Mason Hayes & Curran), Gary Byrne (BCM Hanby Wallace), and Hugh Garvey (LK Shields)

Not just moodling along

In April, Enovation Solutions, which has been involved with the Law School since 2002, won the award for the best use of open-source software at the ICT Expo Awards, Ireland's leading IT industry awards. Enovation has led the development of the on-line educational tool *Moodle*, as used on current PPC courses. The award was based on the success of the *ppclaw.learnonline* site that was used for the recent PPC1. The judges cited the variety of functions offered to students and ease with which they could use the system.

The website enables students to access information on each core subject on the PPC1 course. Materials, tutorial timetables, changes of lectures and all aspects of administration for the course can be distributed to the site. Each course co-ordinator and their support staff can maintain and update their subject area, and students can submit assignments through the on-line utility.

Law Society director of education TP Kennedy, Enovation's Gary Mahon and David Kerrigan, CPD executive Alison Egan, IT systems administrator Liam Ryan, and Law Society president Owen Binchy

Open all hours

Pictured at the recent PPC2 open day in Blackhall Place are *(from left)* director general Ken Murphy, president Owen Binchy and Education Committee chairman Stuart Gilhooly

Shopping around: students at the PPC2 open day exhibition

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 3 June 2005)

Regd owner: Seamus O'Gorman and Sheila O'Gorman; folio: 11365F; lands: Ballinkillin and barony of Idrone East; **Co Carlow**

Regd owner: James Doyle; folio: 1668 and 3361; lands: Craans, Leany and barony of Forth, St Mullins Upper; **Co Carlow**

Regd owner: David O'Brien; folio: 2062L; lands: townland of Drumgeely and barony of Bunratty Lower; **Co Clare**

Regd owner: John Booth; folio: 18134; lands: plots of ground being part of the townland of Ballylickey in the barony of Bantry and county of Cork; **Co Cork**

Regd owner: Timothy Buckley; folio: 696F; lands: plots of ground being part of the townland of Berrings in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Timothy F Cogan; folio: 11814; lands: plots of ground being part of the townland of Ballyvodane in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Jerry Crowley; folio: 15223; lands: plots of ground being part of the townland of Gilcagh in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Mary Margaret McLure; folio: 2421; lands: known as the townland of Rathpeacon, situate in the barony of Cork and the county of Cork; **Co Cork**

Regd owner: Paul Scannell and Sheila Scannell; folio: 59767F; lands: plots of ground being part of the townland of Ballycannon in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Mary Josephine Thompson; folio: 28580; lands: plots of ground situate on the north side of the road leading from Shanagarry, being part of the townland of Ballylongane in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Donal and Frances Cremin; folio: 22689F; lands: plots of ground being part of the townland of Aghern West in the barony of Kinnatalloon and county of Cork; **Co Cork**

Regd owner: Joseph D Neville; folio: 31322F; lands: townland of Kilmacsimon and barony of Carbery East (east division); area: 0.538 acres; **Co Cork**

Regd owner: Neil Kelleher; folio: 5039, 49949, 478F; lands: plots of ground being parts of the townland of Brinny in the barony of Kinalea and the townland of Shanacloyne in the barony of Kinalmeaky and county of Cork; **Co Cork**

Regd owner: Gillarue Properties Limited, Kinlough, Co Leitrim; folio: 19895 and 19896; lands: Magheracar; area: 7.0997, 2.6937 hectares; **Co Donegal**

Regd owner: Noel McLoughlin, Carrowmena, Lecamey, Co Donegal; folio: 37979; lands: Carrowmenagh; area: 9.9180 hectares; **Co Donegal**

Regd owner: John Heena, Crumlin, Ardara, Co Donegal; folio: 5810F; lands: Newtownburke; area: 0.2329 hectares; **Co Donegal**

Regd owner: Garry Byrne and Cathy Byrne; folio: DN48124F; lands: property known as 22 Casement Villas, situate in the parish of Kill and borough of Dun Laoghaire; **Co Dublin**

Regd owner: Richard Farrington; folio: DN3213 and DN4619; lands: property situate in the townland of Carrickmines Great and barony of Rathdown; **Co Dublin**

Regd owner: Richard Farrington; folio: DN3944; lands: property situate in the townland of Carrickmines Great and barony of Rathdown, part of the land situate on the east side of Glenamuck Road leading from Golden Ball to Carrickmines; **Co Dublin**

Regd owner: William Hoare; folio: DN5573; lands: a plot of ground situate in the townland of Darcystown and barony of Balrothery East; **Co Dublin**

Regd owner: William P Keeling; folio: DN4126; lands: property situate in the townland of Killeek and barony of Nethercross; **Co Dublin**

Regd owner: William P Keeling; folio: DN3726; lands: property situate in the townland of Killeek and barony of Nethercross; **Co Dublin**

Regd owner: William P Keeling; folio: DN18298; lands: (1) property situate in the townland of Forrest Great and barony of Nethercross, (2) property situate in the townland of Knocksedan and barony of Nethercross; **Co Dublin**

Regd owner: William P Keeling; folio: DN5399; lands: property situate in the townland of Forrest Great and barony of Nethercross; **Co Dublin**

Regd owner: William P Keeling; folio: DN802; lands: a plot of ground situate in the townland of Brazil and barony of Nethercross; **Co Dublin**

Regd owner: Alicia Kennedy; folio: DN1646; lands: property situate in the townland of Broghan and barony of Castleknock; **Co Dublin**

Regd owner: Alicia Kennedy; folio: DN1648; lands: property situate in the townland of Broghan and barony of Castleknock; **Co Dublin**

Regd owner: Gregory Hogan and Mary Lynch; folio: DN22653F; lands: property situate in the townland of Haroldsgrange and barony of Rathdown (plan 507X), property situate in the townland of Ballinteer and barony of Rathdown (plan 508X); **Co Dublin**

Regd owner: Brendan McGlynn; folio: DN16334L; lands: property situate in the townland of Esker North and barony of Newcastle; **Co Dublin**

Regd owner: Owen O'Donnell and Sharon O'Donnell; folio: DN79784F; lands: property situate in the townland of Balally and barony of Rathdrum; **Co Dublin**

Regd owner: John Curley and Annette Curley; folio: 17073; lands: townland of Ardnadoman West and barony of Loughrea; area: 20.7960 hectares; **Co Galway**

Regd owner: John Ridge; folio: 21033F; lands: townland of Kylesalia and barony of Ballynahinch; area: 3.2981 hectares; **Co Galway**

Regd owner: John Connelly (John) Jnr; folio: 3775F; lands: townland of Ballinleva and barony of Moycullen; area: 1 acre, 27 perches; **Co Galway**

Regd owner: James Corcoran; folio: 946, 950, 2680; lands: townlands of Barnhill West and Castledermot and baronies of Kilkea and Moone; **Co Kildare**

Regd owner: Seamus Finn; folio: 4063F; lands: townland of Leixlip and barony of North Salt; **Co Kildare**

Regd owner: Peter Stephen McLoughlin; folio: 13958F; lands: townland of Ellistown and barony of Offaly; **Co Kildare**

Regd owner: John Tyrell and Anthony Tyrrell; folio: 1221; lands: townland of Painestown and barony of Ikeathy and Oughterany; **Co Kildare**

Regd owner: Lily Alice Violet Boland (deceased); folio: 11619 Kilkenny; lands: Killinny and Goodwinsgarden and barony of Kells; **Co Kilkenny**

Regd owner: Thomas Cody (Junior); folio: 15715F; lands: Castlecolumb, Earlsgrove, Ballylowra, Derrynahinch and barony of Knocktopher; **Co Kilkenny**

Regd owner: Andrew Townsend; folio: 12327; lands: Ballyclovan and Ballyline and barony of Callan and Shillelogher; **Co Kilkenny**

Regd owner: Francis Aldritt; folio: 18145; lands: Beladd and barony of Maryborough East; **Co Laois**

Regd owner: Gerard Quinlan; folio: 2011; lands: Keeloge South and barony of Upperwoods; **Co Laois**

Regd owner: Gerard Quinlan; folio: 1023F; lands: Keeloge South and barony of Upperwoods; **Co Laois**

Regd owner: James Scully and Carmel Scully; folio: 1919F; lands: Clogrenan and barony of Slievemargy; **Co Laois**

Regd owner: John McDonald; folio: 7673F; lands: Crossneen and barony of Slievemargy; **Co Laois**

Regd owner: Kate B Fowley, Doonkelly, Five Mile, Burne, Co Leitrim; folio: 1792F; lands: Leean (together with commonage); **Co Leitrim**

Regd owner: John Francis Gilraine, Derrinahona, Ballinaglera, Co Leitrim; folio: 824; lands: Greaghnafarna; area: 6.566 hectares; **Co Leitrim**

Regd owner: Mary Anne Reilly, Bohey, Drumlish, Co Longford; folio: 1190; lands: Beihy; Co Leitrim; area: 7.0162 hectares; **Co Leitrim**

Regd owner: Gerald McTernan, Flughanagh, Dromahaire, Co Leitrim; folio: 1962; lands: Flughanagh; area: 9.6896 hectares; **Co Leitrim**

Regd owner: Austin Shinnors; folio: 7080; lands: townland of

Ballynagallagh and barony of Smallcounty; **Co Limerick**

Regd owner: the mayor, aldermen and burgesses of the borough of Drogheda, Drogheda, Co Louth; folio: 2476F; lands: Lagavooren; **Co Louth**

Regd owner: the Right Reverend Monsignor Henry Laverty VG PP, St Peter's Presbytery, Drogheda, Co Louth; Very Reverend John Canon O'Neill, Kilsaran, Castlebellingham, Co Louth; folio: 9728; lands: Kilsaran; area: 0.1391; **Co Louth**

Regd owner: Patrick Gordon (deceased): folio: 43108; lands: townland of (1) and (2) Lisgormin, (3) Rathrowan and barony of (1), (2) and (3) Gallen; area: (1) 1 acre, 3 roods, 30 perches; (2) 7 acres, 4 perches; (3) 5 acres, 3 roods, 10 perches; **Co Mayo**

Regd owner: Thomas Heneghan; folio: 13501F; lands: townland of Barnakillew and barony of Carra; area: 0.1266 hectares; **Co Mayo**

Regd owner: John Valentine Cummins; folio: 13201, 34065 and 48422; lands: townland of Cornaroya and barony of Kilmaine; **Co Mayo**

Regd owner: Mary Murphy; folio: 31836; lands: townland of Levallyroe and barony of Costello; area: 0.1340 hectares; **Co Mayo**

Regd owner: Meath County Council, County Hall, Navan, Co Meath; folio: 4576; lands: Stalleen; **Co Meath**

Regd owner: Alex Smith, c/o Patrick Noonan & Co, Solicitors, Athboy, Co Meath; folio: 17009F; lands: Mullaghstones; **Co Meath**

Regd owner: Francis Brennan; folio: 1511F; lands: townland of (1) Newtown, (2) Ardnaglass Lower and barony of (1) and (2) Carbury; area: (1) 2.262 acres, (2) 13.400 acres; **Co Sligo**

Regd owner: James Finn; folio: 9488; lands: townland of Kilfree and barony of Coolavin; area: 2.8631 hectares; **Co Sligo**

Regd owner: Elizabeth (otherwise Lily) Martin; folio: SL3243 Co Sligo; lands: property known as Achonry, Ballymote, Co Sligo; **Co Sligo**

Regd owner: William Feehily and Ann Feehily; folio: 26554F; lands: townland of Kerane and barony of Upper Ormond; **Co Tipperary**

Regd owner: William J O'Brien; folio: 11127; lands: Tinnakilly and Cornhill and barony of Lower Ormond; **Co Tipperary**

Regd owner: James Foley; folio: 3747; lands: plots of ground being part of the townland of Drumroe in the barony of Decies without Drum and county of Waterford; **Co Waterford**

Regd owner: Peter Patrick Martin Fitzroy Baron Hempil; folio: 8717; lands: plots of ground being part of the townland of Coolahest in the barony of Decies within Drum and county of Waterford; **Co Waterford**

Regd owner: Edward Fleming, Kinnegad, Co Westmeath; folio: 11523; lands: Kinnegad; area: 3.7762 hectares; **Co Westmeath**

Regd owner: John Murphy and Mary Murphy; folio: 20340; lands: Ballyboggan Lower and barony of Shelmaliere East; **Co Wexford**

Regd owner: John Kane; folio: 200F; lands: townland of Shelton and barony of Arklow; **Co Wicklow**

Regd owner: Patrick Kavanagh; folio: 2061; lands: townland of Ballymoney and barony of Arklow; **Co Wicklow**

Regd owner: Patrick Kavanagh; folio: 2060; lands: townland of Ballymoney and barony of Arklow; **Co Wicklow**

Regd owner: Julius Lipschitz; folio: 1590F; lands: townland of Rathdown Lower and barony of Rathdown; **Co Wicklow**

Regd owner: Patrick Greene; folio: 9426; lands: townland of Rathdown Lower and barony of Rathdown; **Co Wicklow**

LOST WILLS

Cotter, John, otherwise John M, otherwise Malachy (deceased), late of 34 Ennafort Park, Raheny, Dublin 5. Would any person with any knowledge of a will executed by the above named deceased, who died on 26 June 2004, please contact Farrell McDonnell Sweeney & Company, Solicitors, Abbey Street, Roscommon; tel: 090 662 6102, fax: 090 662 5394, e-mail: jrs@eircom.net

Fehilly, Nora, late of Carrihue, Kilcully, Whitescross, Co Cork, who died at Powder Mill Nursing Home, Ballincollig, Co Cork on 18 September 2003. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Deirdre O'Callaghan, James Lucey & Sons, Solicitors, Kanturk, Co Cork, tel: 029 50026

Flannery, Patrick (deceased), late of 2 Newcastle Avenue, Galway. Would any person having knowledge of the whereabouts of the original will dated 16 May 1984 of the above named deceased, who died on 3 December 1988, please contact Blake & Kenny, Solicitors, 2 St Francis Street, Galway, tel: 091 564 340, fax: 091 564 915

Flynn, Mary (deceased), late of 35 Nutley Lane, Donnybrook, Dublin 4. Would any person having knowledge of a will made by the above named deceased, who died on 22 April 2005, please contact O'Donoghue Murphy, Solicitors, 35 Heidelberg, Roebuck Road, Dublin 14; tel: 01 288 4593, fax: 01 278 7005

Fox, Brendan (deceased), late of Raheen, Brittas, Co Dublin. Would any person having knowledge of a will made by the above named deceased, who died on 3 January 2005, please contact Seamus Maguire & Company, Solicitors, 10 Main Street, Blanchardstown, Dublin 15; tel: 01 821 1288, fax: 01 821 1442, e-mail: edwinadonoghue@seamusmaguire.ie

Hodge, William Derry, and Winifred Marion Tierney (otherwise known as Marie Hodge) (deceased), late of 38 Grantham Road, Birkdale, Southport, Merseyside, PR 84LS, England. Would any person having knowledge of a will made by William Derry Hodge, born 29 August 1930 and died 4 October 2003, and/or knowledge of a will made by Marion Tierney Hodge, born 28 May 1931 and died 30 October 2003, please reply to **box no 50/06**

Kavanagh, Patrick Raymond (deceased), late of 52 Limewood Road, Raheny, Dublin 5. Would any person having knowledge of a will made by the above named deceased, who died on 29 March 2005, please contact Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2

Ni Cheallachain, Aine (deceased), also known as Ann O'Callaghan (deceased), late of 363 Howth Road, Raheny, Dublin 5. Would any person having knowledge of a will made by the above named deceased, who died on 4 September 2002 at Beaumont Hospital, Beaumont, Dublin 9, please contact Grainne Griffith & Company, Solicitors, Unit 2, Woodfall House, Watermill Road, Raheny, Dublin 5; tel: 01 832 7899, fax: 01 851 2085, e-mail: grainnegriffith@eircom.net

Proudman, Robert (deceased), late of Atlantic View, Tramore, Co Waterford and formerly of 82 Elm Park, Tramore, Co Waterford. Would any person having any knowledge of a will made by the above named deceased, who died on 24 February 2005 at St Vincent's Hospital, Elm Park, Dublin 4, contact Hegarty and Co, Solicitors, 4 St Andrew's Terrace, Newtown, Waterford; tel: 051 841 577

Sheridan, James P (deceased), late of 269 Navan Road, Dublin 7. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 10 April 2005, please contact Andrew Fay, Solicitor, NJ Downes & Co, Solicitors, Dominick Street, Mullingar, Co Westmeath; tel: 044 48646, fax: 044 43447, e-mail: andrew@njdownes.ie

Smyth, Kieran (deceased), late of 10 Kilnavara Crescent, Cavan. Would any person with any knowledge of a will executed by the above named deceased, who died on 10 July 2004, please contact Mary O'Malley, Dermot M Dempsey & Co, Solicitors, O'Growney Street, Athboy, Co Meath; tel: 046 943 2583

Tobin, Mary (deceased), late of Curragh Lawn Nursing Home, Kinneagh, Curragh, Co Kildare, formerly of New Road, Clondalkin, Dublin 22. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 15 February 2005 at Curraghlawn Nursing Home, Kildare, please contact Anglesea Solicitors, 6 Bridge Court, City Gate, St Augustine Street, Dublin 8; tel: 01 679 8444, fax: 01 679 5771, e-mail: info@anglesea-solicitors.ie

Watts, John (deceased), late of 121 New Cabra Road, Dublin 7, who died on 11 March 2004. Would any person having knowledge of the whereabouts of a will made by the above named deceased please reply to **box no 51/06**

Keeney, Bernadette (otherwise Bernie) (deceased), late of 6 Harbour View Terrace, Killybegs, Co Donegal, who died on 5 February 2005. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact O'Donnell & Co, Solicitors, 6 Tirchonaill Street, Donegal Town, Co Donegal; tel: 074 974 0444, fax: 074 974 0455

MISCELLANEOUS

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

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

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

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

Ordinary seven-day publican's licence for sale in county Waterford. Contact: Michael J O'N, Quirk & Co, Solicitors, Main Street, Carrick-on-Suir, Co Tipperary; tel: 051 640 019 or fax: 051 641 376

Ashford Temple & Co, law agents and law researchers; 29 Buckingham Village, Dublin 1; tel: 01 855 4844, mobile: 087 278 0467, e-mail: thomasphelan@eircom.net

South African immigration law: professional advice and assistance provided by Dublin-based South African attorney and consultant to Thomson Wilks Attorneys in Johannesburg. Contact Samantha Ryan at e-mail: samantha@thomsonwilks.co.za or tel: 00353 86 300 4640

For sale – publican's licence (ordinary) – contact Lees Solicitors, 45 Church Street, Listowel, Co Kerry; tel: 068 21279; reference SOD/MC

TITLE DEEDS

McDonnell, John Francis (deceased), late of 13 Muskerry Terrace, Blarney, Co Cork and 20 Muskerry Terrace, Blarney, Co Cork. Would any person having knowledge of the title documentation to 13 Muskerry Terrace, Blarney, Co Cork and 20 Muskerry Terrace, Blarney, Co Cork, please contact JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, fax: 021 427 3704; ref: 1183/2

Toner, Mary, of 22 Bath Avenue Gardens, Sandymount, Dublin 4. Would any person having knowledge of the whereabouts of the title deeds of the above mentioned property (unregistered), please contact Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; tel: 01 676 4067, fax: 01 676 3436, e-mail: info@vealesolicitors.com

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 Terence Holdings Limited

Take notice that any person having an interest in the freehold or intermediate estate of the following property: all that the premises comprising no 45 Bolton Street in the parish of St Mary and city of Dublin held under the following leases: lease dated 24 June 1723 between Luke Gardiner and Samuel Braithwaite for a term of 999 years from 24 June 1723, subject to and indemnified against a yearly rent of IR£12; lease dated 3 August 1875 between Matthew Egan of the one part and Michael Crooke of the other part for the term of 500 years from 3 August 1875, subject to a yearly rent of one shilling.

And take notice that Terence Holdings Limited intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party or parties ascertaining that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title in the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Terence Holdings Limited intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the 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 and unascertained.

Date: 3 June 2005

Signed: Marcus Lynch Solicitors (solicitors for the applicant), 12 Lower Ormond Quay, 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* and in the matter of an application by Henry A Crosbie

Take notice that any person having any interest in the freehold estate of the following property: all that and those no 17 Creighton Street (otherwise known as nos 19, 20 and 21 Creighton Street).

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

In default of any such notice being received, O'Neill & Company, Solicitors, 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 each of the aforesaid premises are unknown or unascertained.

Date: 3 June 2005

Signed: O'Neill & Company (solicitors for the applicant), 382 Clontarf Road, Dublin 3

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1967* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the premises situated at no 2 Henrietta Street, in the city of Waterford: an application by Tek Koy Teng and Alice Teng

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at no 2 Henrietta Street, parish of Trinity Without and city of Waterford, and being a piece or part of the ground with shop premises and premises with residential accommodation overhead, held under an indenture of lease made 19 December 1944 between Wilfrid Edmond Christmas of the one part and George T Herbert of the other part for a term of 35 years from 1 August 1944, should give notice to the undersigned solicitors.

Take notice that the applicants, Tek Koy Teng and Alice Teng, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intend to submit an application to the county registrar for the county and city of Waterford for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party adverting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days of the date of this notice.

In default of such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Waterford for such direction as may be appropriate on the basis that the person or persons beneficially entitled to such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 3 June 2005
Signed: MM Halley & Son (solicitors for the applicant), 5 Georges Street, Waterford

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 an application by Keith Choy of 45 College Park, Dundrum, Dublin 16, in the city of Dublin
Premises: 37 Lower Camden Street, Dublin 2
Take notice any person having interest in the freehold estate of the following property: 37 Lower Camden Street, Dublin 2.
Take notice that Keith Choy of 45 College Park, Dundrum, Dublin 16, intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforementioned properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default any such notice being received, the applicant, Keith Choy, 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 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 in each of the aforesaid premises are unknown or unascertained.
Date: 3 June 2005
Signed: Joynt & Crawford (solicitors for the applicant), 8 Anglesea Street, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of Dermot Glynn and David Mellon: an application by Dermot Glynn and David Mellon
Take notice any person having any interest in the freehold estate of the following property: 3 Crannagh Park, Rathfarnham, Dublin 14.

Take notice that Dermot Glynn and David Mellon of 3 Crannagh Park,

Rathfarnham, Dublin 14, intend to submit an application to the county registrar for the county 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 (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, David Mellon and Dermot Glynn intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of 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 each of the aforesaid premises are unknown or unascertained.

Date: 3 June 2005
Signed: DC Shaw & Co (solicitor for the applicant), 200 Kimmage Road West, Crumlin, Dublin 12

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 John Leogue of 30 Iona Road, Glasnevin, Dublin 9

Take notice any person having an interest in the freehold estate of the property known as 36 Iona Road, Glasnevin, Dublin 9.

Take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the property 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 directions as may be appropriate on the basis that the persons or persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.

Date: 3 June 2005
Signed: MacGeehin Toale Nagle (solicitors for the applicant), 10 Prospect Road, Glasnevin, Dublin 9

In the matter of the *Registration of Titles Act, 1964* and in the matter of an application for first registration by Eben Hamilton, c/o Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4

Take notice that Eben Hamilton, c/o Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4, has lodged an application for first registration with an absolute title of part of the townland of Priest's Island in Lough Ree at Cashel West in the barony of Rathcline in the county of Longford, more particularly shown on the map lodged with the application.

The application and map may be inspected at the Land Registry Office, Chancery Street, Dublin 7.

All persons objecting to such registration are hereby required to file their objection in writing duly verified in this registry within 30 days of the date of this notice.

Date: 3 June 2005
Signed: Orpen Franks (solicitors for the applicant), 28/30 Burlington Road, Dublin 4

RECRUITMENT

Apprenticeship required: master's graduate with extensive employment experience seeks legal apprenticeship. Superb interpersonal, IT and project management skills, FE1 and Irish exam passed. All areas considered. Available immediately. Willing to pay own fees. Contact: 085 713 1897 or e-mail: ML125@ireland.com

Apprenticeship position sought: friendly, engaging, highly-motivated professional seeks an apprenticeship. All areas welcomed. I have successfully completed all FE1 examinations and first Irish exam in nine-month period. Additionally, I hold a BA (Hons). Presently I am serving as a legal executive in a busy medium-sized solicitor's office. I know first hand the value of teamwork and I am someone who is able to work on my own initiative. Please contact Jer, tel: 086 160 2408

Part-time conveyancing/probate solicitor required for legal practice in the midlands. Some experience required. Two/three days per week. Reply to **box no 52/06**

Part-time position – Midlands: we require an experienced solicitor to fill a part-time position on a permanent basis. The position involves mainly conveyancing but with the requirement to deal in other areas of general practice. Candidates should have extensive experience in conveyancing, general practice and in dealing with clients in a busy office. Candidates must be in a position to work on their own initiative and to handle their own caseload independently. Pleasant, flexible working atmosphere with support staff and colleagues. Salary negotiable with experience. Apply in strictest confidence with CV to Hughes Kehoe & Co, Bridge Street, Tullamore; e-mail: hugheskehoe@eircom.net

Locum solicitor required: start 1 September 2005 for six months; Dublin 8 practice. Conveyancing experience essential. Please reply to **box no 53/06**

Galway solicitor required for immediate start in busy city practice, with experience in litigation and conveyancing. More than one year's practice experience required. Please reply to **box no 54/06**

Solicitor traineeship required. BBLS, LLM graduate and working professional seeks solicitor traineeship for entry into Blackhall 2005. Passed all FE1 examinations and first Irish exam. Conscientious and highly-motivated worker. Available immediately. Please contact me on 086 337 8149, e-mail: am1450@gmail.com

Locum solicitor required immediately for South Tipperary region with a well-established practice. Suitable candidates should preferably have extensive conveyancing experience. To apply, please submit resumé to Laura Bourke, Europlan Recruitment, Europlan House, Gurtnafleur Business Park, Clonmel, Co Tipperary or e-mail: jobs@europlanservices.com

Oifig an Ard-Aighne

THE OFFICE OF THE ATTORNEY GENERAL

GOVERNMENT OF IRELAND

THE OFFICE OF THE ATTORNEY GENERAL REQUIRES

SOLICITORS *or* BARRISTERS

FOR POSITIONS AS

Assistant Parliamentary Counsel

(GRADE II)

The Office of the Parliamentary Counsel to the Government, which is a constituent part of the Office of the Attorney General, will shortly be looking for Solicitors or Barristers interested in developing their careers in a challenging and modern legal environment. The position involves legal drafting work of the highest level and importance to the Government and provides an opportunity for developing expertise in new and existing areas of law both here and abroad. The work is interesting, topical and stimulating. The Office provides opportunities for further education and has up to date IT facilities and a well resourced library.

■ OFFICE OF THE PARLIAMENTARY COUNSEL TO THE GOVERNMENT

The Office of the Parliamentary Counsel to the Government is responsible for the drafting of Government Bills and Government Orders and for the drafting or settling of most statutory instruments made by Ministers of the Government. In addition, the Statute Law Revision Unit is a drafting unit within the Office of the Attorney General which is involved with consolidation and revision Bills and statute law restatements. The drafting staff of that Unit includes personnel seconded from the Office of the Parliamentary Counsel to the Government.

■ TRAINING

Each new entrant at Assistant Parliamentary Counsel Grade II level will be trained by working on drafting assignments of increasing complexity. Initially, the Assistant Parliamentary Counsel Grade II will work with senior colleagues on drafts and gradually begin to work on his or her own initiative. Practical training on the job is the key element in the training process for entrants at Grade II level which will be supplemented by seminars on aspects of drafting.

■ LOCATION

The Office is currently located in Government Buildings, Merrion Street, Dublin 2. It has not been listed by the Government as part of its decentralisation programme. The building has undergone refurbishment to facilitate persons with disabilities.

■ FUTURE VACANCIES

A panel may be established from which future vacancies may be filled. All the posts are permanent and pensionable.

■ QUALIFICATIONS

Applicants must, on 1 May 2005, have been called to the Bar or have been admitted and be enrolled as a solicitor in the State, and since qualifying, have practised as a Barrister or Solicitor in the State for at least 4 years. (Periods spent in a wholetime position in the Civil Service, for appointment to which qualification as a Barrister or Solicitor was an essential requirement, will be reckonable for the purpose of practice).

■ SALARY SCALE

The salary scale as at 1 May 2005 is €63,652 – €81,796 per annum (full PRSI). Entry at a point above the minimum may be possible for appointees with suitable experience.

■ CLOSING DATE

The above recruitment competition, including the closing date will be advertised shortly. Full details will be available on the Office website at *www.attorneygeneral.ie* and will also be published in the national newspapers.

If you would like additional information on these vacancies please feel free to visit our website *www.attorneygeneral.ie* or contact the Human Resources Unit, ph. 01 6314058

LAW LECTURERS REQUIRED

(full-time/part/time)

Portobello College Dublin

Portobello College (www.portobello.ie) is one of Ireland's leading independent third level colleges, offering Certificate, Degrees and Diplomas (Irish and UK validated) in Law, Accountancy, Business, Marketing and Computing. The college has cooperation agreements with leading universities in Europe, China and the U.S. Future Law Graduates with L.L.B (Hons.) from Portobello College Law School are now for the first time on a par with Law Graduates from N.U.I and Trinity College.

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Applicants will only be contacted if called for interview. Reply with CV to kearnsu@portobello.ie

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In-House

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Dublin **€130,000 - €140,000**

Global Financial Institution is recruiting for a senior lawyer as head of legal. The successful candidate will develop and implement strategies, procedures, policies and applicable laws. You will review group compliance and control the legal advisory function. The successful candidate will be a qualified solicitor or barrister with at least 10 years PQE in financial services law. Funds experience preferred but not essential. Ref: 17417

Derivatives Lawyer
Dublin **€100,000 - €120,000**

Leading international bank now has a vacancy for an experienced derivatives lawyer. The successful candidate will have a thorough understanding of derivative products, have excellent drafting abilities and be a strong advisor. The right candidate will ideally have 4 years + PQE in derivatives law. Unique opportunity to join a specialist legal team in an expanding organisation. Ref: 13977

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Large global institution is now seeking an employment lawyer with at least 5 years PQE in employment law. You will be currently working in practice and seeking a move to an in-house environment. Alternatively, the successful candidate will have worked in a senior employment law role with a large reputable organisation. Exciting and unique opportunity to join a highly respected team in a dynamic organisation. Knowledge of Irish and European employment law essential. Ref: 18883

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International investment company wishes to recruit a lawyer to assist in advising on all legal and regulatory issues for the funds divisions in the different legal jurisdictions. The successful candidate will be a qualified solicitor with 2-5 years PQE in corporate/commercial law. Funds experience is preferred but not essential. Opportunity to join a friendly, hardworking and dynamic team. Intensive training program offered Ref: 18644

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This well established and respected organisation is now seeking a lawyer with at least 2 years PQE in regulatory and compliance law. You will provide advice to the business in relation to all legal and regulatory obligations and liaise with the relevant regulatory authorities. If you are a regulatory lawyer seeking a move to a more challenging, autonomous environment this may be the ideal role. Ref: 17689

Practice

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Corporate Lawyer
Dublin **€80,000 - €90,000**

Medium sized Dublin city centre firm are seeking corporate lawyers with 2-5 years experience. The quality of clients and work is excellent. Even at a junior level, lawyers get involved in all aspects of transactions and see all dealings from instruction through to completion. You will receive a wide range of work, excellent training and guidance, plus the responsibility of your own caseload. Ref: 17436

Commercial Property Lawyer
Limerick **€55,000 - €65,000**

Prestigious small Limerick firm is urgently seeking a property solicitor, with 2-3 years residential and commercial property experience, to join the growing property department. This opportunity will appeal to a solicitor looking for a clearly defined career path, and someone looking to move from Dublin to the country. You will also be independent, seeking autonomy in your role. Ref: 15494

Head of Competition Unit
Dublin **€85,000 - €90,000**

Highly regarded medium size Dublin law firm are actively recruiting for a strong competition/regulatory lawyer with at least 6 years PQE in competition and regulatory law. The successful candidate will be seeking that next step in their career and be capable of building a business unit and training a team of lawyers. Genuine opportunity to make your mark in the lucrative competition field in Dublin. Ref: 17663

Interested candidates should contact Yvonne Keane or John Macklin on 01 662 1000 for a confidential discussion. Alternatively, email your CV in the strictest confidence to y.keane@brightwater.ie

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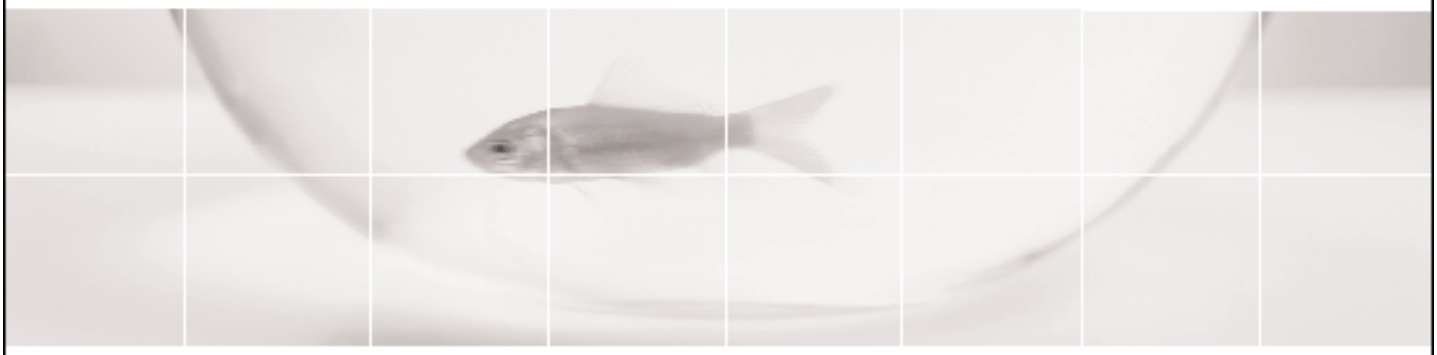

Private Practice Opportunities

Construction Lawyer 3-5 years' PQE — circa €100K
Highly regarded Dublin firm seeks to appoint a Construction Lawyer with experience in drafting and negotiating construction contracts and sub-contracts as well as dispute resolution. Ideally you will have circa 3-5 years' PQE and be looking to develop your career in a progressive Dublin law firm.
Ref: JO 170011

Commercial Property Solicitor 3-5 years' PQE — To €90K
Leading Dublin firm seeks Commercial Property Lawyer. Experience in big ticket deals advising developers and large financial service organisations required. Ideally you will have circa 3-5 years' PQE and be looking to develop your career in a top Dublin firm.
Ref: JO 170011

Investment Funds 3-6 years' PQE — To €100K
Major city law firm seeks a senior associate Funds Lawyer to join its high profile investment funds unit. Ideally you will have strong experience in setting up, listing and operating funds in Ireland and/or internationally. Experience in advising institutional clients and establishing alternative investment funds is preferable. Exceptional opportunity to advance your career in one of Dublin's leading firms.
Ref: JO 170032

Commercial Conveyancing Solicitor — circa €50K
Our client, a progressive and reputable general practice in the Dublin 2 area, wishes to appoint a strong Solicitor with 1-2 years' PQE. This role will primarily involve commercial conveyancing and some probate. Exceptional opportunity.
Ref: JO 15201

Commercial Solicitor 0-2 years' PQE — circa €50K
Top 20 law firm seeks a Commercial Solicitor to join its corporate structuring department. You will have excellent technical skills and knowledge of Irish Companies legislation. You will be newly qualified or have 1-2 years' PQE and be looking to develop your career in a progressive Dublin practice.
Ref: JO 120360

Tax Consultant circa 4 years' PQE — To €80K
Top Dublin law firm seeks a qualified accountant (ACA or equivalent) with circa 4 years' experience, or a qualified Tax Lawyer, to provide innovative tax advice to the firm's corporate and individual clients. This will include tax aspects of corporate structuring and transactions and commercial matters including contracts and employment issues.
Ref: JO 115128

In-House Opportunities

Commercial Lawyer 3-5 years' PQE — circa €60K
Major Telecoms Company wishes to recruit a Commercial Lawyer to join its growing legal services department in Dublin. You will preferably have 3 years' PQE and strong experience dealing with commercial issues arising in complex, multi-jurisdictional bids, drafting and negotiation of commercial bespoke contracts, standard terms and conditions and network infrastructure projects.
Ref: JO 123804

NQ Banking Lawyer — To € 50K
Our client, a leading bank based in Dublin's city centre, requires a Lawyer to join their legal services department. You will be a solicitor or barrister with a sound knowledge of banking and commercial law, have the ability to deal with competing priorities and be comfortable in a target driven environment. You will also be an excellent team player with good interpersonal skills.
Ref: JO 118730

Funds Lawyer — To €90K
Leading financial services institution would like to appoint a strong Funds Lawyer with circa 2-5 years' PQE to join their dynamic legal team. You will have some experience in fund administration and establishment, as well as some general financial services or banking experience. You will also possess exceptional communication and organisational skills.
Ref: JO 118663

Banking Solicitor — circa €70K
Top banking and financial services institution seeks to recruit a Solicitor to join its expanding legal services department. You will have 3-5 years' PQE with strong conveyancing skills; some regulatory and compliance experience from an in-house perspective would also be preferable.
Ref: JO 120650

If you are interested in these or any other legal opportunities please send your Curriculum Vitae to Gemma Allen at gemmaallen@robertwalters.com or John Cleary at john.cleary@robertwalters.com Tel: @ (0) 6384111 Robert Walters, 2nd floor Riverview House, 21-23 City Quay, Dublin 2

www.robertwalters.com

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Aristotle

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■ PRIVATE PRACTICE

TOP TIER PRACTICE

Banking/ Financial Services Lawyer
Opportunity to join this leading team. Incorporating a wide variety of Banking and Financial issues with domestic and international corporations. Minimum of 2 years PQE. Ref: PF 0504 -179

Commercial Property
Top tier practice is looking for a strong commercial property solicitor. You will have experience of high value property deals and be looking to progress your career. 2-5 years PQE.
Ref: PF 0504-182

Product Liability
This large and reputable practice seeks a product liability solicitor to advise a wide range of industries in relation to product liability issues. 1-2years PQE. Ref: PF 0502-74

IT/IP Lawyer
Leading domestic law firm is seeking a IT/IP Lawyer to advise on issues as part of a commercial technology team. Minimum of 3 years PQE preferably gained in a medium to large size firm.
Ref: PF 0504-178

Structured Funds and Securitisation Lawyer
Leading Financial Services department requires a Solicitor with 2-4 years experience in structured funds and securitisation transactions. Experience in bond repackaging and commercial paper programmes desirable.
Ref: PF 0504 -166

Investment Funds
Opportunity to join market leader in their Investment Funds team, expertise with multi jurisdictional experience and wide product knowledge required. Knowledge of Irish Investment fund law essential. 1 - 2 years PQE.
Ref: PF 0504-181

MID SIZE PRACTICE

Commercial
This reputable practice with a strong international reputation seeks a commercial lawyer with experience in M&A’s, MBO’s, IPO’s, PLC’s, with excellent drafting skills for domestic and international clients. 4-5 years PQE.
Ref: PF 0504-184

Commercial Property
A chance to progress your career in this highly respected boutique commercial practice. Experience of all areas of commercial property essential especially commercial conveyancing. 3+ years PQE. Ref: PF0504-147

Private Client
This medium sized general practice seeks a strong private client solicitor with good relevant experience. 5 years PQE. Ref: PF0504-183

SMALL PRACTICE

Residential/Civil Litigation
This small and respected practice seeks a dynamic lawyer to develop the business. This is a rewarding role for the right candidate. 2-3 years PQE.
Ref: PF0503-118

Litigation Solicitor
Respected company requires a Litigation lawyer with experience in PI and Family Law experience. Role would suit a newly qualified looking to concentrate on general litigation.
Ref: 0503 -175

P/T General Practice Solicitor
Small general practice requires a P/T solicitor to support the principal and the senior solicitor. Experience of a wide variety of general practice issues essential. Ref PF 0503-176

■ IN-HOUSE

Funds Lawyer
Opportunity to join an international financial institution in their funds division. A minimum of 2 years PQE and a desire to gain knowledge on a wide variety of fund issues. Ref PF 0503-34

Legal Counsel - Funds
This international fund management company is seeking an experienced funds lawyer to review fund documentation, drafting, due diligence, advise on legal issues and regulatory matters. 3-4 years PQE. Ref: PF 0502-156

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- IT/IP;
- Commercial Litigation.

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