LawSociety Gazette

Regulars

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Cover story

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Time to break the
on judicial appointr

I write to address an issue, one that I thought we would never have to come back to – the appointment of solicitors to the bench. Following an excellent analysis of judicial appointments, carried out by our policy development executive Aidan O'Reilly, it now appears obvious that a glass ceiling still exists on the elevation of solicitor colleagues to the superior court benches.

This is self-evident from data shown in the panels opposite. You can read these for yourself, but let me summarise the position this way: excluding the District Court, since 1995 there have been 43 appointments to the superior courts for which solicitors were eligible. Out of those 43 appointments, a total of eight have been filled by solicitors. In other words, only one in every five vacancies in the Circuit, High and Supreme Courts were filled by solicitors, or 18% of the total.

It is disappointing to learn that barristers are still regarded as more appropriate judicial material than our many excellent solicitor colleagues. Not even the creation of the independent Judicial Appointments Advisory Board appears to have changed this archaic but obviously entrenched attitude.

I am not in any way questioning the high quality of those who have been appointed as judges in the superior courts to date. Indeed, the state has been very well served by the judiciary since we achieved independence in 1922. However, widening the base from which judges might be selected is not a rejection of the qualities and skills traditionally associated with eligibility for judicial appointment, but a recognition of the merits of a broader choice and diversity in the selection pool. The wider the pool, the more likely it is to be representative of society as a whole.

Those people who still believe that barristers, because of their advocacy experience, are best placed to serve on the superior courts bench are profoundly mistaken. Advocates have no monopoly on knowledge of the law. In fact, there are vast areas of the law in which members of the bar rarely participate. The solicitors' profession contains many more experts in such areas as land law, family law,

monopoly
ments

company law, commercial law, tax law, environmental law and intellectual property law than does the barristers' profession.

We also have significant first-hand experience of work in the superior courts; after all, a barrister never appears without an instructing solicitor. And because of our regular dealings with clients, solicitors have the well-developed inter-personal skills that are desirable attributes for members of the judiciary.

It seems to me that the case is unanswerable. Yet those who want to retain a monopoly on judicial appointments appear to be in the ascendant. This will not do.

The Law Society believes that the government has a duty to explain to us the selection criteria used in the appointment of judges of the superior courts. Then we will all be able to judge whether judicial appointments are made on the basis of merit or otherwise.

Owen Binchy,
President

DISTRICT COURT

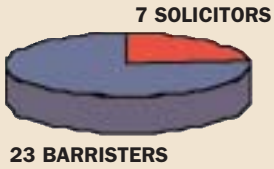
Since 1995, four out of every five vacancies in the District Court have been filled by solicitors:

- Number of District Court appointments since 1995: 30
- Number of solicitor appointments: 24
- Percentage of solicitor appointments: 80%
- Percentage of barrister appointments: 20%
- Ratio of barrister appointments to solicitor appointments to the District Court since 1995: 1:4.

CIRCUIT COURT

Since 1995, three out of every four vacancies in the Circuit Court have been filled by barristers:

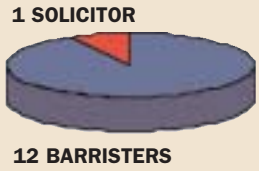
- Number of Circuit Court appointments since 1995: 30
- Number of solicitor appointments: 7
- Percentage of solicitor appointments: 23%
- Percentage of barrister appointments: 77%
- Ratio of barrister appointments to solicitor appointments to the Circuit Court since solicitors became eligible: 3:1.



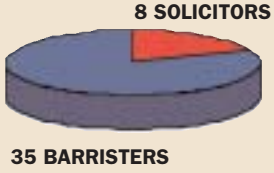
SUPERIOR COURTS

Since 2002, 12 out of 13 vacancies in the superior courts have been filled by barristers:

- Number of Supreme Court appointments since 2002: 2
- Percentage of solicitor appointments: 0%
- Percentage of barrister appointments: 100%
- Number of High Court appointments since 2002: 11
- Percentage of solicitor appointments: 9%
- Percentage of barrister appointments: 91%
- Ratio of barrister appointments to solicitor appointments to the superior courts since solicitors became eligible: 12:1.



Appointments to Circuit, High and Supreme Courts since 1995 for which solicitors were eligible to apply



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NATIONWIDE
News from around the country

DUBLIN

Residential Tenancies Act, 2004

A seminar on the *Residential Tenancies Act, 2004* will be held by the Dublin Solicitors' Bar Association (DSBA) in Dublin on 23 March. It will be chaired by John Farrell SC, an expert in landlord and tenant law. The act has caused considerable unrest among practitioners unsure of the significance – and indeed meaning – of many of its provisions.

More *entente cordiale*

Judges of the Circuit Court and the District Court in the Dublin area will be invited to meet members of the profession and the council of the DSBA in informal settings later this month. It is part of the association's policy of helping the profession and the bench to understand one another better, according to DSBA secretary Kevin O'Higgins.

Hi-tech distance learning

Solicitors, both in Dublin and around the country, who are members of the DSBA, may soon be able to benefit from seminars that they have not been able to attend. A proposal is being considered by the DSBA whereby members anywhere in the country can use their computers and internet access to catch up on their learning by logging on to the DSBA website.

This is an innovative project and is still very much in its early planning stages, according to Kevin O'Higgins. It is hoped that it will benefit those members who cannot attend particular seminars. But O'Higgins emphasised that this initiative will be designed to supplement and not replace actual attendance at a seminar, which is always more beneficial and preferable.

Law Society imediate past-president Gerard Griffin, Mr Justice Joseph Finnegan, DSBA president Orla Kilcoyne, Mr Justice Diarmuid O'Donovan and Law Society president Owen Binchy at the DSBA annual dinner

CAVAN

Court conditions again

Conditions in Bailieborough District Court have reached unacceptable levels and cannot continue to be tolerated, according to Rita Martin of the Cavan Bar Association. The building housing the court is old and is falling well short of what is needed by the court and by practitioners. They do not even have consultation rooms. The association has written to the county council and is awaiting a reply.

Consolidation of courtroom facilities is taking place and the Courts Service is keeping practitioners informed, said Martin. Ballyjamesduff court hearings would now be held in Virginia, while Kingscourt sessions on the third Monday of each month are being discontinued.

Despite the state of the buildings, solicitors are happy to welcome former Donegal practitioner Sean McBride as their new district judge. The district includes Cavan and Monaghan towns and various smaller towns in the counties.

CLARE

Sean Casey, RIP

The death earlier this year of Sean Casey, founder and principal for many years of John Casey & Co in Ennis, has left a major void in the profession in Clare, according to Anne Walsh of the same firm. He qualified during the Second World War and, with 64 years of professional practice, was one of the longest serving and oldest practitioners in Clare and probably in the country.

He was distinguished both in the profession here and beyond, she added. Sean Casey was the quintessential country practitioner, starting a practice from nothing and building a significant and broad-ranging practice that is now a major player in the locality, she said.

Sean Walsh was a founder member of the National Farmers' Association, the former name of the Irish Farmers' Association, in Clare. He was also on the board of the *Farmers journal* and was one of the founders of FBD Insurance. A well-known figure in Clare and the mid-west, he served as president of both the local rugby and soccer clubs.

KERRY

Optimism at last

Solicitors in Kerry are learning to come to terms with the new Personal Injuries Assessment Board and to operate under the new rules, according to the secretary of the Kerry Law Society, Pat Sheehan.

There has even been an air of optimism that the situation under the new regime would come good after all, he said. This was particularly so following the recent decision in the High Court that held that PIAB's refusal to deal with an applicant's solicitor was unlawful. The decision is under appeal. 'Between this and the CPD courses that we are organising, there is a renewed sense of vitality in the profession here that I hope is mirrored around the country', added Sheehan.

MAYO

Go west

The Mayo Bar Association looks forward to welcoming US federal judge Patricia Ann Gaughan of the North District in Cleveland, Ohio, for a visit in June. Judge Gaughan will travel to Mayo to mark the 'twinning' of Achill with Cleveland. Her forebears came from Achill.

'Many members of the judiciary in Cleveland are from Achill and Newport originally', said Mayo Bar Association president Fiona McAllister. 'In the 19th century, while many Irish emigrated to Boston, Chicago or New York, emigrants from Achill and Newport went to Cleveland and there is still a strong Achill presence there'.

Judge Gaughan will be joined by a delegation of local Cleveland dignitaries, including local councillors, to meet with their counterparts in Mayo. G

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

RETENTION OF FILES AND ELECTRONIC STORAGE

The Law Society's Technology Committee and Guidance and Ethics Committee have collaborated to update the old 1996 practice note in relation to the retention and destruction of files. The full text will be published in the *Briefing* section of next month's issue of the *Gazette* and it can also be downloaded from the members' area of the Law Society website at *www.lawsociety.ie*.

RDJ NAMED CORK COMPANY OF THE YEAR

Cork law firm Ronan Daly Jermyn has won the Esat BT/Cork Chamber of Commerce *Cork company of the year* award. Commenting on the award, RDJ managing partner John Dwyer said: 'It caps off a very successful year for the firm. In the past few months, we passed the 100-employee threshold and became one of the first law firms in Ireland to establish a specialist tax practice'.

Increase in minimum cover

The Law Society is preparing to make a regulation increasing the amount of the minimum level of professional indemnity insurance cover/run-off cover from its current level of €1.3 million to €2.5 million for each and every claim.

The Professional Indemnity Insurance Committee reviewed the increase in property and land values, together with the value of estates. These have increased considerably since the current €1.3 million minimum level of cover came into effect

on 1 January 1999. It was considered prudent to increase the minimum level of cover to protect both the insured solicitors and their clients.

The insurers have advised that the market is currently soft and therefore an increase in premiums should not be considerable. In addition, the view is that the increase may result in top-up cover being less expensive, as all solicitors would have a minimum level of cover of €2.5 million.

Legal Panel to carry out benefits survey

Recruitment experts the Legal Panel are carrying out a survey to determine what type of benefits solicitors currently receive. The survey is totally confidential and the results will be published in a future issue of the *Gazette*. You will find the survey questionnaire on the Legal Panel's insert carried in this issue of the magazine.

Legal-Island relaunches website

Information and training company Legal-Island has relaunched its website at *www.legal-island.ie*. The site claims to have the only on-line database of law firms on the island of Ireland with a web presence that may be searched either alphabetically or by region.

ONE TO WATCH: NEW LEGISLATION

Health Act, 2004

Most of the *Health Act* has been in effect since 1 January 2005 (SI 885-887/04). Its main purpose is to effect the change-over from the health boards and other related organisations to the new Health Services Executive, which is now responsible for managing the health service as a single national entity. The intention is that the consolidation of service providers will reduce fragmentation and make services more integrated and of easier access to the public.

The act also puts in place new procedures for governance and accountability in the health service and introduces structures to permit public representation and input from service users. There is also a statutory framework for making and dealing with complaints, which is not yet in effect (part 9).

The new act will have most effect on those working within the health service. However, solicitors may be consulted in relation to complaints and should be aware of the code of practice and standards and guidance to be produced in due course by the executive. They will also have to adapt their terminology to refer to the executive rather than a health board in relation to the numerous acts listed in the schedules. For example, such changes will be necessary in family law and child care, adoption, immigration and education cases.

Parts 2 to 6

Part 2 establishes and sets out the functions of the Health Service Executive. The stated objective of the executive is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public.

Part 3 sets up a board of the executive, with 11 members appointed by the minister. Oireachtas members, MEPs and local authority representatives may not be appointed. Part 4 provides that the chief executive officer is selected by the board and appointed by the minister. The CEO is the accounting officer and may be required to attend before Oireachtas committees, and there are provisions that deal with situations where a matter is likely to be or may already be before the courts. The CEO may not question or comment on government policy when appearing in this way.

Part 5 deals with employees and advisors, their remuneration, other terms of employment and pensions. Part 6 provides that those involved at all levels of the executive must observe certain standards of integrity and conduct. The executive is required to prepare codes of conduct for guidance. Unauthorised disclosure of confidential information is prohibited, and double-jobbing is not permitted in relation to the Oireachtas, the European Parliament or local authorities.

Parts 7 and 8

Part 7 relates to accountability and funding. The executive is required to prepare a three-year plan, to be agreed by the minister. It must be published, and progress reports are required to be given to the minister annually or otherwise as directed. Reports still at draft stage are not subject to the *Freedom of Information Acts, 1997 and 2003*. The executive is also required to prepare a service plan, which indicates the type and volume of health and personal social services to be provided during the year or other period. It must include information on any capital plans proposed and estimates of

Finance minister advised of tax advisors' concerns

Representatives of the Law Society, the Irish Taxation Institute and of the CCAB-I (the representative body for all the major accountancy organisations) have met jointly with finance minister Brian Cowen to express concerns about section 133 of the *Finance Bill, 2005*.

The meeting with the minister was an unprecedented joint action by the representatives of over 50,000 professionals who provide the overwhelming majority of tax compliance and advisory support in Ireland. Section 133 of the bill is designed to strengthen powers to prosecute tax advisors who aid and abet evaders of tax.

The tax advisors represented at the meeting are concerned that the wording of the section as published might

Brian Cowen: urged to change wording

simultaneously be unusable, from the point of view of securing a successful prosecution, and have a chilling effect whereby it could in many circumstances be extremely difficult for them to know whether or not, in giving tax planning advice for example, they might be committing a criminal offence.

The Law Society representatives at the meeting with the minister, director general Ken Murphy and chair of the Probate, Administration and Taxation Committee Caroline Devlin, urged specific changes in the wording of the section to remove the problems identified in it as drafted.

Competition Authority report

The Competition Authority's consultation paper on the legal professions was received just as the *Gazette* went to press. A full analysis and response to the 143-page document will be carried in next month's issue of the magazine.

LADY SOLICITORS' GOLF SOCIETY

The spring outing of the Lady Solicitors' Golf Society will be held at Newlands Golf Club, Clondalkin, Dublin, on 15 April. The captain's outing will be held at Gowran Golf Club, Co Kilkenny, on 9 September. If you are interested in becoming a member or playing in either of the outings, contact Emer Foley at Reidy & Foley Solicitors, Parliament House, Kilkenny (DX 27004 Kilkenny).

ARBITRATION LECTURE

Gabrielle Kaufmann-Kohler, an arbitrator and attorney based in Switzerland, will be the keynote speaker at a lecture on Friday 20 May entitled *Global implications of the* Federal Arbitration Act*: the role of legislation in international arbitration*. The lecture is hosted by the International Centre for Dispute Resolution and will be held at the Conrad Dublin hotel starting at 2.30pm. For further information and registration details, visit *www.adr.org* or call Mark Appel at the ICDR on 01 676 1500.

the numbers of employees, and if the executive cannot agree a plan, the minister may direct the CEO to prepare one. The minister may require amendments, and, in general, the act provides for tight political control of the health service. The executive is required to draw up a code of governance for the minister's approval that must set out the guiding principles applicable to the executive as a public body and practical matters such as roles and responsibilities, methods to be used, processes and guidelines, internal controls and the nature and quality of service that persons being provided with or seeking health and personal social services can expect. Insofar as this code will represent best practice in the administration of the health service, it may be of use to clients of the service and their legal advisors in providing a standard against which service can be measured.

Part 7 also deals with accounts and arrangements with service providers and it enables assistance to bodies that provide similar or ancillary services to those provided by the executive. The executive may accept gifts, provided the terms do not conflict with its objects, functions or statutory obligations.

Part 8 provides for public representation and user participation. It envisages a range of consultative bodies at national, regional and local level, and also special advisory panels as required.

Parts 9 to 12

One of the most relevant sections for solicitors is that dealing with complaints (part 9, the only part not to have been commenced to date). It sets out a list of types of action that do not accord with fair and sound administrative practice and enables complaints about them if they resulted in adverse effects on the complainant. Complaints may also be made on behalf of persons who are unable to complain for themselves on grounds of age, illness, disability or death. The time limit for making complaints is normally 12 months, but it may be extended by the complaints officer if there are special circumstances. Certain matters may not be complained about; for example, if they are the subject of legal proceedings. However, complaints to the ombudsman or ombudsman for children are not so excluded. Procedures are to be developed by the executive to enable it to deal with complaints and for reviewing the recommendations of complaints officers. Bodies to whom service provision is delegated may develop their own procedures, and the executive may assign its review functions to an outside body.

Part 10 provides for the dissolution of the health boards and other related bodies, and the transfer of their functions and employees. Terms of employment are no less favourable than those already enjoyed, unless changed by collective agreement. Functional areas of the health boards remain functional areas of the executive, but the executive may redefine them, subject to any consultation requirements. Part 11 deals with repeals, transitional provisions and amendments, and part 12 contains miscellaneous provisions, including provisions for certificates to be accepted in legal proceedings as proof of delegation of executive functions. Six schedules provide the backup detail. G

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

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HUMAN RIGHTS WATCH

Lords: the detention of foreign suspects incompatible with ECHR

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

On 16 December, the House of Lords gave judgment in a constitutionally important case regarding the respective roles of the executive and the judiciary in relation to Britain's *Human Rights Act 1998*, including the power to derogate. It concerned the detention for indefinite periods of nine suspects, some of whom had been imprisoned for up to three years. Neither they nor their lawyers have been told why or on what evidence they were held.

By an eight-to-one decision, the Lords quashed the *Human Rights Act (Derogation) Order* and made a declaration under s4 of the *Human Rights Act 1998* (HRA) that s23 of the *Anti-terrorism, Crime and Security Act 2001* was incompatible with articles 5 and 14 of the *European convention on human rights* in permitting the detention of suspected international terrorists in a way that discriminated against them on the ground of nationality.

The impugned legislation was enacted in the wake of the 11 September attacks and the UK government derogated from the right to liberty guaranteed in article 5.1 by providing that non-nationals, certified by the home secretary as a risk to national security and suspected of being or supporting international terrorism, and who he could not deport, could be detained indefinitely.

Public emergency

The Lords did not agree on whether there was such a public emergency threatening the life of the nation so as to warrant the derogation under the limited conditions permitted by article 15 of the ECHR (derogation only to the extent strictly required by the exigencies of the situation and not inconsistent with other international public law obligations of the state). Lord Bingham upheld the derogation.

PIC: JIM SELBY/REX FEATURES

Belmarsh prison, where some of the suspects were detained

However, Lord Hoffman distinguished between the risk of terrorist outrages and the threat to institutions of government and existence as a civil community. He held that the real threat to the life of the nation, in the sense of people living in accordance with its traditional laws and political values, came not from terrorism but from laws such as those at issue.

Proportionality

Lord Bingham stated that, in determining whether limitation of a fundamental right was arbitrary or excessive, the court had to ask itself whether the legislative objective was sufficiently important to justify the limitation – whether the measures designed to meet that objective were rationally connected to it and whether the means used were no more than necessary to accomplish the objective. He held that:

- The threat that the 2001 legislation was designed to address did not solely come from foreign nationals, and the legislation did not therefore rationally address the al-Qaeda threat because it applied only to non-nationals
- Further, it also permitted someone detained in this way to leave the country, if another country would accept him. While this made sense in terms of immigration control, it was hard to reconcile with a belief in the suspect's capacity to inflict serious damage on the UK
- It was widely drafted and not limited to members of al-Qaeda, and while the AG undertook that the procedure would not be used except against suspected al-Qaeda members, this was not acceptable
- If the threat presented by UK nationals could be dealt with while respecting their right to personal liberty, it was not clear why similar measures would not adequately address the threats presented by foreign suspects. One had been released on bail, subject to strict conditions, and it was hard to see why conditions of that kind, strictly enforced, would not effectively inhibit terrorist activity
- The right to personal liberty was one of the most fundamental human rights, its prime importance recognised by the *Magna carta* and the ECHR. While any decision made by a representative government commanded respect, the degree of respect would by conditioned by the nature of the decision. The convention required national authorities, including national courts, to give effective protection to human rights. It was now recognised that domestic courts had themselves to form a judgement whether a convention right was breached. The function of independent judges charged to interpret and apply the law was universally recognised as a cardinal feature of the modern democratic state and a cornerstone of the rule of law. The 1998 act gave the courts a specific, wholly democratic, mandate; they were charged by parliament with delineating the boundaries of a rights-based democracy.

He held that the derogation order and section 23 were disproportionate. G

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

The Law Society has made a contribution through the Human Rights Committee towards the Interights Commonwealth Human Rights Law Database. It carried reports of significant human rights cases from around the Commonwealth. It may be accessed at *www.interights.org*.

The *Red Kimono* and the right

The competing rights of privacy and freedom of expression, currently a hot topic, were famously dealt with in a landmark case in the US in 1931, writes TP O'Mahony

In an episode of *The West Wing*, a secret service agent named Simon Donovan is assigned to White House press secretary CJ Cregg after the latter had received a death threat.

Uneasy about the arrangement, CJ asks Donovan how it is going to work. 'I can respect a certain perimeter of privacy', the agent tells her. 'What does that mean?', inquires CJ. 'I don't have to see you naked or anything', replied the agent with a deadpan expression.

In real life things are different, especially in the world of the tabloids. They would not only want to see CJ Cregg 'naked or anything', they would be prepared to pay big bucks for photographic proof of that nakedness so that their readers could share it as well.

That's certainly true of the English tabloids, and some in continental Europe as well. And since the English tabloids now have 'Irish editions', the (almost) 'anything goes' philosophy is now part of our media landscape, so long as it drives up sales. Let's not fool ourselves about that.

Not only has there been a breakdown in respect for a 'certain perimeter of privacy', there is now uncertainty about whether any such perimeter exists at all. This is certainly true of celebrities, and while we may have little or no sympathy for some celebrities (especially those who exploit the media when it suits their purposes), we still have to recognise that fame in and of itself doesn't deny to the famous those rights and protections that we ordinary mortals take for granted.

That said, we also have to recognise a changed media landscape where, on the one hand, intense competition is in danger of dragging standards down, while, on the other hand, media ownership is being concentrated in fewer and fewer hands. The recognition that sex, scandal and showbiz gossip sell, and that the ups and downs of celebrities have become a great spectator sport, has made us unsure about the value of privacy and what to do about it, as well as where to draw its perimeters and even more so how to safeguard them.

Allison Janney, *The West Wing's* CJ Cregg

Obloquy and contempt

Not that the uncertainty is new. Back in 1931, in a famous court case that has passed into legal folklore as the *Red Kimono* case, the Court of Appeal of California had to grapple with the competing rights of privacy and freedom of expression.

The facts of the case, *Melvin v Reid*, which went on appeal from the Superior Court of Los Angeles County, are easily summarised. A woman named Gabrielle Darley had worked for a number of years as a prostitute and had been tried for and acquitted of murder in 1918. Thereafter, she abandoned her 'life of shame' and became entirely rehabilitated. In 1919, she married Bernard Melvin and 'commenced the duties of caring for their home, and thereafter at all times lived an exemplary, virtuous, honourable and righteous life'.

The Court of Appeal was told that Mrs Melvin assumed a place in respectable society and made many friends who were not aware of the incidents of her earlier life. Then, in July 1925, the defendant, without Mrs Melvin's permission, knowledge or consent, made and released a film entitled *The Red Kimono* and exhibited it in cinemas in California, Arizona and several other states.

The film was based on the true story of Mrs Melvin's past life, and her maiden name, Gabrielle Darley, was used in it. As a result, her friends learned for the first time of the unsavoury incidents of her past life. 'This caused them to scorn and abandon her and exposed her to obloquy, contempt, and ridicule, causing her grievous mental and physical suffering', the court was told. Damage in the sum of $50,000 was sought.

In a decision handed down on 28 February 1931, Judge John Marks said that, change having occurred in the life of Mrs Melvin, 'she should have been permitted to continue its course without having her reputation and social standing destroyed by the publication of the story of her former depravity with no other excuse than the expectation of private gain by the publishers'.

Mrs Melvin emerged vindicated, victorious and somewhat richer. What is of lasting interest is Judge Marks' treatment of privacy. He pointed out that the law of privacy was of recent origin and had not gained prominence until an article entitled 'The right to privacy' appeared in the *Harvard law review* in 1890, written by Louis D Brandeis in collaboration with Samuel D Warren. Judge Marks then went on: *'The right of privacy has been defined as the right to live one's life in seclusion, without being subjected to unwarranted and undesired publicity. In short, it is the right to be let alone'.*

If we fast-forward nearly half a century to 1977, we'll find the late Mr Justice Brian Walsh (who was not only a judge of the Supreme Court at the time but also chairman of the Law Reform Commission) echoing Marks' admiration for the Brandeis and Warren article and acknowledging its 'profound influence'.

In an article in the *Dublin University law journal*, Walsh repeated Marks' description of the right to privacy, and added that it is recognised 'as a separate legal right which is entitled to a substantial

to privacy debate

measure of protection'.

He also reminded readers of Justice Brandeis's famous dissenting judgment in *Olmstead v United States* (1928), where he said that privacy was 'the right to be let alone, the most comprehensive right and the right most valued by civilised men'.

I want to be alone

During the period between one Hollywood creation (*The Red Kimono*) and another (*The West Wing*), a lot of jurisprudential water has passed under legal bridges. And the world has become a more complex place. For one thing, back in 1931 there was no internet, though you did have what was known at the time as 'yellow journalism'.

The latter is still with us, albeit in more virulent form. On 18 December (when I happened to be in Australia), the *Sydney Morning Herald* carried a story under the heading 'Lather of lies drives royals to sue magazine group'. The gist of the story was that the Swedish royal family is suing one of Germany's biggest magazine publishers over 'what it claims are 1,588 made-up stories, including more than 500 front-page "exclusives"'.

The king and queen have hired the lawyer used by Princess Caroline of Monaco in her successful law suits against the German tabloid press. In June 2004, Princess Caroline took her complaints about *paparazzi* to the European Court of Human Rights, which ruled that freedom of the press in Germany was wrongly taking precedence over the private lives of well-known people.

In *Von Hannover v Germany* (Princess Caroline is married to Prince Ernst August von Hannover), the court declared: 'It is time that the pendulum swung back to a different kind of balance between what is private and secluded and what is public and unshielded'.

Perry Como: sounds like Red Kimono

The behaviour of magazines owned by the Klambt Group in Germany, which had published increasingly sensational stories about the Swedish royal family, had prompted the latter to seek a legal remedy. Rudiger Dienst, a Klambt executive, vowed its publications would not print any more inaccurate stories about the king and queen. 'We have learnt our lesson', he said. 'We admit that we may have embellished some reports, but we have done nothing different to other tabloids. This kind of reporting has been going on for 50 years and I don't understand why all of a sudden the Swedish royal family are taking action against us now'.

Unaccountable powers

Where we're going in 2005 in terms of the media, freedom and privacy is by no means clear. Ireland has no stand-alone privacy law (unlike Australia, for instance, which has the *Privacy Act 1988*), though the courts have recognised a right to marital privacy (*McGee v Attorney General* [1974]) and a right to individual privacy (*Kennedy v Ireland* [1987]).

In addition, the *European Convention on Human Rights Act, 2003* acknowledges both a 'right to respect for private and family life' (article 8) and a right to 'freedom of expression' (article 10), though in one sense this merely brings to the fore the tension that exists between these rights and the difficulty the courts face in determining the respective merits of each in specific circumstances.

In an age that has seen a vast expansion of celebrity culture and also the spread of cheque-book journalism, Professor Onora O'Neill, in her 2004 pamphlet *Rethinking freedom of the press* (for the Royal Irish Academy), sounded this timely warning: *'discussion of press freedom is still dominated by nostalgic images of gallant owners, editors and journalists confronting Leviathan. This image is not only obsolete but dangerous in an era in which parts of the media have become powers unaccountable'.*

Freedom of expression is a cherished right, but where it is invoked by unaccountable powers as an excuse for violations of other rights (in the interests of commercial gain), it will bring closer the scenario envisaged by Raymond Wacks, professor of law at the University of Hong Kong, in his book *Privacy and press freedom*: 'A statutory cause of action for the public disclosure of private facts (subject, of course, to the accepted defences) remains the best way forward'.

Even – or perhaps especially – in the changed conditions of the 21st century, the judgment in the *Red Kimono* case, reminding us that we all have 'a right to be let alone', still resonates powerfully. G

TP O'Mahony is a columnist with the Irish Examiner.

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Letter

Just give us the keys, please

From: Mark Finucane, Porter Morris & Co, Dublin 2

I have noticed in the past 18 months or so a growing practice in conveyancing transactions for second-hand properties, whereby keys are not handed over or delivered to a purchaser's solicitor on the day of closing. Instead, the purchaser's solicitor is told that the keys are with the auctioneer.

In my view, this practice is both wrong and discourteous, especially if there is no forewarning. It also causes considerable inconvenience for a purchaser, who has a right to expect to be given the keys to his or her new property at closing. And it causes embarrassment and hassle for the purchaser's solicitor, whose clients are not happy to be told they have to make alternative arrangements to get their keys.

At a rough estimate, I reckon I have experienced this practice in about a quarter of second-hand residential conveyances that I have completed, both by DX and in person, over the last 18 months or so. In no case have I been forewarned that the keys will not be surrendered at closing, so this is not happening through prior arrangement. In fact, in all cases, in replies to requisitions, the vendors' solicitors have agreed to give the keys on closing.

In one recent case, my clients, both from Dublin city, were moving to a remote part of another county, but when the closing documents arrived by courier no keys were included. I was unable to contact my clients to make other arrangements and they arrived in the office at 4 o'clock on a Friday afternoon expecting to collect their keys and head off to their new home. Instead, the keys were with the local auctioneer, who refused to keep his office open after 5 o'clock. There was no way my clients could make it to the local auctioneer's office before it closed. Ultimately, the keys ended up in a local shop and were collected by my clients on the night of the closing. By the time my clients had collected the keys from the local shop, the entire locality knew all of their business. They were less than happy, and understandably so.

In another recent case, the property being purchased was in the city centre while the auctioneer's office was in an outer suburb. The auctioneer again refused to facilitate my clients in any way. Although I was unimpressed with the attitude of the auctioneer, I was even more unimpressed with the fact that the auctioneer had been given the keys in the first place. The keys should have been sent to my office to be held in trust until the vendor's solicitor confirmed he had received the balance of closing monies and the transaction had completed.

This more recent transaction also took place on a Friday evening, when traffic congestion to the outer suburbs made the journey that my clients had to make extremely frustrating.

I would be interested to hear whether any other practitioners feel the same way as I do about this issue. And to all those colleagues who are engaging in this practice, just give us the keys, please. G

TROJAN

N WARS

Not everyone charged with possessing child pornography on their computer is automatically guilty, despite what the general public seems to believe. And the waters have now been muddied further by the discovery of malicious computer programs called Trojans. Paul Lambert explains how Trojans may soon be used as a defence in criminal cases

MAIN POINTS

- **Child pornography on the web**
- **'Trojans' as a legal defence**
- **Recent case law**

A 'Trojan' is a computer program that allows a remote hacker to view what you are doing, take over your keyboard, steal information and even upload files to your computer – all without your knowledge or consent. These files can upload child pornographic images or link your PC to child pornography websites without you knowing about it.

Because of the existence of such programs, there are legitimate reasons for saying that not everyone who comes into contact with child pornography is carrying out a deliberate or culpable act. Trojans have already been used as a viable defence to child pornography charges in the two UK cases of *Green* and *Schofield*. The prosecutor in *Green* accepted, after a defence expert report identified 11 Trojans on the accused's computer (and other evidence), that it could not be shown that he had downloaded the images. In *Schofield*, the prosecution also appears to have accepted that Trojans could have been responsible for downloading and saving the images. (One unfortunate consequence is that since these cases effectively fell, no judicial guidance or decision was given or officially reported.)

In the *Green* case, the defence IT expert showed that the Trojans were most likely to have come from unsolicited e-mails that were opened but deleted. Why did the police not identify these Trojans? It appears that they did not scan or search for such programs or indeed other types of malicious software.

Do the gardaí regularly search for Trojans? We are not entirely sure. A certain amount of transparency would be welcome. So too would more judicial guidance on these and other issues, such as

what weight should be attached to messages and images that have been deleted.

Equally, what if particular images can be shown to have originated in spam or unsolicited e-mails? Should the police have a policy of filtering out cases where it should be clear to them that there was no culpable intention to obtain illegal images? Unfortunately, because of the often-secret nature of police technical investigations, we do not know the answers to these important questions.

Achilles' heels

While so-called 'innocent offenders' may be able to rely on a Trojan defence, there are a number of emerging difficulties. One complicating issue is that different types of Trojans (and other malicious software) exist. It may be possible to technically examine what a particular Trojan program did in some cases but not in others. This can pose problems for both the prosecution and defence.

Another complicating issue is that it may be possible for some Trojans to delete themselves. The accused in one UK case (Aaron Caffrey) successfully argued that a Trojan was present but then deleted itself. This has significant implications, if correct, particularly for innocent offenders (and also for the music and film industries, which are fighting peer-to-peer (P2P) downloading). For example, you could have an individual who to all intents and purposes is innocent but who may be unable to prove that he did not deliberately download an image or indeed that a rogue program on his computer was responsible (or even existed).

We may also have to differentiate between opened, non-opened, deleted and non-deleted e-mails. This additional evidence, as well as evidence from other sources such as internet service providers, credit cards, e-mail correspondence and so on, can throw light on these offences with regard to intention and *mens rea* (guilty mind).

However, yet another complicating factor are decisions from the UK Court of Appeal that seem to downplay the importance of deleting e-mails, deleting attachments and exiting websites (*R v Smith*; *R v Jayson* [2003] 1 Cr App R, part 2, p212 – see **panel** opposite). These cases hold that there can be a viewing-type offence. A *prima facie* offence is committed even if you (accidentally) access a child pornography website or open an e-mail.

Close to Homer

There have been no fully-litigated Trojan cases in Ireland, or indeed litigation of the many other legal/IT arguments. Most cases are dealt with by way of a plea in the District Court. There is certainly an argument that more cases should be fought on the ground that there remain legal/IT technical issues to be raised. But it is also a legal truism that nobody wants to be the first case.

Yet there is increasing pressure to adopt IT and technical arguments (both in these types of cases and others) following on from developments in civil and criminal electronic evidence jurisprudence elsewhere. This jurisprudence should be persuasive in Ireland and may increase the possibility of Irish cases adopting these points as legal arguments to be litigated.

It remains to be seen what procedural and computer forensics standards will apply in this country, since we have not yet had any cases arguing a Trojan defence or indeed any of the other legal/IT arguments that can be made. In particular, we have yet to discover whether the standards, forensics and evidence generally produced are sufficient to stand up in a contested case, and indeed whether they match international best practice.

We have already seen how the UK police failed to scan for evidence of Trojans in the *Green* case. It is unclear to what extent the authorities in this jurisdiction routinely scan for Trojans and other malicious software programs.

Certainly, allowing technical evidence to languish in a police station locker for months, as became evident in one recent Irish case, leaves a lot to be desired, and falls far short of international best practice. In

THE IMPORTANCE OF IT DEFENCES

It is up to the prosecution to prove its case. If the defence side raises a particular defence, such as a Trojan defence, it's the prosecution's job to rebut it. It is also up to the prosecution to disprove the particular findings, reports and opinions of any defence IT expert.

The prosecution has a duty to facilitate defence IT experts. If the police refuse to co-operate, they are effectively hindering, if not preventing, a proper defence. This is a crucial point and should not be underestimated. For example, many people who use computers have no great technical knowledge of the hardware or software. Faced with an accusation of storing particular images, they may be incapable of analysing the evidence or convincing the police of their innocence.

But IT experts can only do their job when provided with sufficient access to the evidence, which the police tend to retain and jealously protect.

The prosecution must also prove that the suspect knowingly downloaded illegal images, which can be quite difficult and complex. Given this complexity, the fact that a prosecution is brought should not automatically lead people to assume that the accused is guilty of the offence charged or that the police evidence, technical procedures and forensics used are failsafe. Police technical evidence in the UK has not always withstood scrutiny (see, for example, the *Verdi* case).

We should not automatically assume that in Ireland we are any better.

addition, having evidence examined by a technical expert months after being seized, as occurred recently, also falls short of what might be expected.

Until recently, the authorities in this country have tended to be overly restrictive in preventing defence experts from examining the evidence gathered from the computer and the IT protocols used. Where access was allowed, it tended to be restricted to a garda station. This makes defence analysis limited, if not impossible, since the expert frequently requires specialist software and tools only available in his own lab. But while this approach was seemingly relaxed in one particular case recently, it remains unclear whether this change is to be generally adopted in all such cases, and also if it is sufficient to allow defence experts to do their job.

In one of the most recent Irish cases, the person involved was found not guilty by way of judicial direction. (There has been another case in Galway, where a person was found not guilty by a similar direction.) There are some indications that if the case had continued, a Trojan defence might have been used. The court held that there was insufficient evidence that the person knew or was in knowing possession of the images, which were stored in a temporary internet folder. The defendant never sought, bought or was aware of the images. The judge is reported to have indicated that there was no evidence that the images were in a mode accessible to the defendant.

This raises a possible new defence or a variation of the Trojan defence, namely, that the images must be available or reasonably accessible to the person accused. This may depend on what the images are, where they are held on the computer, what format they are in, whether there are any technical protections, and even perhaps on the level of technical expertise of the accused. So there are now many significant legal and technical issues that can and probably should be litigated.

Space Odyssey

Both prosecution and defence technical experts use specialist software programs and adhere to particular rules of forensics procedure. It is important in every case that the defence IT expert is permitted to examine critically the results, tools and procedures adopted by the garda expert. Where flaws and errors are discovered, it could well mean that the case should fall.

In Ireland and elsewhere, it is often unclear what procedures apply to police investigations, particularly technical investigations. Police authorities in a number of jurisdictions have been criticised for being overzealous in hindering defence IT experts and even in refusing or restricting access to relevant evidence. The UK has begun to remedy some of these issues with specific procedures for defence access to evidence, procedures, records and technical data (see *the Revised guidance for the control of paedophile images*, May 2004, issued by the UK's Association of Chief Police Officers and the National High Tech Crime Unit).

It is an obvious weakness in the Irish system that our own experts do not have equivalent rights and procedures. And it is conceivable that this weakness could lead to miscarriages of justice because the relevant evidence was not made available to the defence or insufficient access to the computer evidence was permitted.

In any event, criminal lawyers should certainly familiarise themselves with the legal and technical issues surrounding this type of prosecution. And if they should find themselves with clients on the wrong end of such a case, they should find an appropriate IT technical expert to examine the evidence produced (or alleged).

It is also necessary to critically assess and evaluate the garda procedures and forensic investigation methodologies. As we have seen, there have been instances in the UK where police experts have been found wanting. It is critical that defence experts be allowed to examine what the gardaí purport to have found in any given investigation. This includes being able to conduct their own investigation away from garda stations.

Given the serious implications of being accused of this type of crime, it is important that prosecutors should take account of potential innocent parties who may be the victim of Trojans and other malicious software programs. G

Paul Lambert is an IT lawyer with the Dublin law firm Merrion Legal.

BEWARE OF GREEKS BEARING GIFTS

THE *VERDI* CASE

Mr Verdi was a UK police officer accused of creating and sending racist e-mails. While he was charged, the CPS did not prosecute. Instead, he was disciplined after an internal hearing. An employment tribunal, however, found in his favour after discounting the evidence of two police technical experts. Some of the documents appeared to be posted before they were alleged to have been printed. There was no investigation of whether the alleged computer evidence fitted with what actually occurred. The investigation assumed that the computer evidence was beyond challenge. The police experts assumed the documents could have been created only one way. Standard forensic imaging procedures were not adhered to. Critical evidence was therefore not saved. Password abuse apparently also occurred. None of these issues came out in the police evidence; it took independent defence experts to discover these flaws.

R V SMITH/R V JAYSON

These combined Court of Appeal cases involved images contained in e-mail attachments and screen images both saved in a temporary internet file. In the *Smith* case, the images were in an e-mail attachment. In *Jayson,* the images were viewed on screen from the internet. In each case, the image was saved as an automatic computer function, not a deliberate act of the user, onto a temporary internet file.

The court held that viewing amounts to an act of 'making' ('making' being an offence under equivalent UK law). It did not require an intention of the maker to store the images with a view to later retrieval and use. This, as a proposition, may be queried – for example, the extent to which it is technically possible to come into contact with such images without any intention (or sometimes even knowledge) of so doing.

Private INVESTI

The right to privacy is once again making headlines. Pamela Cassidy discusses the current state of the law and the impact of the *European convention on human rights* on press behaviour and privacy

MAIN POINTS

- Charlie Bird's ruffled feathers
- *European Convention on Human Rights Act, 2003*
- Regulation of the print and broadcast media

RTÉ reporter Charlie Bird has called for a debate on privacy intrusion by the press after the unpleasant discovery that he had been stalked for days by photographers avid to find tittle-tattle about his private life. There was no evidence, but the story ran anyway. Expressing his frustration and anger, he said: *'I'm trying to put my finger in a dyke of something that I don't actually understand; I cannot understand how I have ended up in this situation … it's one inaccuracy being repeated all the time ... it continues to be perpetrated. I'm an investigative reporter. I could any day of the week be going off to meet people in relation to all sorts of stories and in one sense they* [the stalkers] *are challenging my livelihood'*.

There are three strands to this *cri de cœur*: press regulation and how it might operate, the present state of privacy law (whether it offers any protection against press intrusion into the private actions of those in the public eye) and, finally, whether there are sanctions for intrusive surveillance.

Charlie's Angels

An essential preliminary to the debate is an attempt at defining activities or information that merit protection from press intrusion. Charlie Bird complains of intrusion in two distinct areas of his life. First, the ordinary actions of a person's private life in meeting friends or having a drink after work. Second, his private/confidential activities in connection with his work. As an investigative journalist, it is vital for him to be in a position to guarantee confidentiality to potential sources of information. Michel Foley, former media correspondent of *The Irish Times*, explains the necessity: *'There are many codes of ethical standards which journalists must adhere to. What they all have in common is a strong belief that any member of the public who may wish to blow the whistle on something they believe to be wrong, or contrary to the public good, will be given the protection of anonymity, so they will not face victimisation or face the courts'*.

Another consideration is whether private actions carried out in places of public resort (the pub, restaurant, beach, street) merit any protection. Yet another is whether the private actions of public figures are 'fair game', and how 'public figure' is to be defined.

Irish law offers little guidance on these issues, beyond a statement of general principle that privacy covers *'a complex of rights, varying in nature, purpose and range, each necessarily a facet of the citizen's core of individuality within the constitutional order. There are many ... aspects of the right of privacy ... they would all appear to fall within a secluded area of activity or non-activity which may be claimed as necessary for the expression of an individual personality, for purposes not always necessarily moral or commendable, but meriting recognition in circumstances which do not endanger considerations such as state security, public order or morality, or other essential components of the common good'*.

The Rockford Files

Although the courts have accepted that 'the right to privacy is not in issue', the extent of the constitutional right to privacy protection is largely unexplored. The legal uncertainties facing a person seeking to frame a privacy case against the press can be identified as follows:

- Does the citizen have an actionable right of privacy against another citizen or non-state organisation? Although the courts have provided remedies for privacy intrusion by the state since 1965 (marital privacy, phone tapping), the position of the citizen versus the non-state infringer is unclear
- How is privacy to be defined?
- What remedies are available? Would the citizen in the position in which Charlie Bird finds himself be entitled to an injunction? A comparison may be drawn with defamation, where injunctive relief is rarely granted, damages being regarded as a sufficient remedy if the publisher fails to come up to proof. A more instructive comparison might be made with breach of confidence cases, where an injunction is more readily available: here, the courts recognise that publication of confidential information may cause irreparable damage. In privacy cases, once the information is in the public domain, the damage is done; neither apology nor

GATIONS


WELCOME TO
Ireland on
Sunday
EVENING
Herald
IRISH DAILY
STAR
Here Rii go
TEEN SET

WHAT THE LEGISLATION SAYS

The *European convention on human rights*

Article 8

'1)Everyone has the right to respect for his private and family life, his home and his correspondence

2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.

Article 13

'Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity'.

European Convention on Human Rights Act, 2003

Section 2

'1)In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the state's obligations under the convention provisions

2) This section applies to any statutory provision or rule of law in force immediately before the passing of this act or any such provision coming into force thereafter'.

Section 4

'Judicial notice shall be taken of the convention provisions and of (a) any declaration, decision, advisory opinion or judgment of the European Court of Human Rights'.

financial compensation from the publisher can undo that. By contrast, a defamatory report can be remedied with a retraction and apology, and a significant sum in compensation, all of which offer a measure of vindication

- What defences are available to the publisher? Legitimate public interest is the obvious plea, and here again an instructive comparison may be made with confidence actions, where public interest is a defence: there is no confidence in iniquity. Some commentators have suggested that, like the confidence action, it should be a defence to a privacy claim to show that the information was already in the public domain. Such a plea is not without problems. It may well be that the continued repetition of the information that constitutes the intrusion and lifts it to the level of unacceptable conduct. Hence, Charlie Bird's 'finger in the dyke' analogy.

Magnum PI

Does the *Human Rights Act* make a difference? Very much so. It offers guidance on the ambit of the privacy protection (article 8 of the ECHR) and it introduces European Court of Human Rights jurisprudence on privacy. Additionally, it guarantees an 'effective remedy' for any breach of convention rights.

Using article 8 as a guideline, the English House of Lords adopted a simple formulation of the privacy right: respect for the private life and personal information of an individual where there is a reasonable expectation that the information will be kept private (*Campbell v Mirror Group Newspapers*).

In words that echo *Campbell*, the European Court of Human rights offered further guidance on article 8 in the Princess Caroline case in June 2004: *'The concept of private life extends to aspects relating to personal identity, such as a person's name, or a person's picture. Furthermore, private life, in the court's view, includes a person's physical and psychological integrity; the guarantee afforded by article 8 of the convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life". The court considers that anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life'* (*Hannover v Germany*, 59320/00).

On the crucial preliminary issue of whether the convention offers a right of action against an individual, as distinct from the state, the House of Lords in *Campbell* had no doubts. Hoffman LJ said: *'I can see no logical ground for saying that a person should have less protection against a private individual than he would have against the state for the publication of personal information for which there is no justification'*.

The European Court touched on the issue in the Caroline case: *'The court reiterates that although the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the state to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves'*.

The European court recognises these as matters for the individual state: *'The boundary between the state's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole'* (para 57, *Hannover*).

Simon and Simon

But why the focus on the print media? The short answer is that the broadcast media is already subject to statutory restrictions on privacy invasion, regulated by the Broadcasting Commission of Ireland (BCI) for Irish broadcasters and by Ofcom for British-based broadcasters. Incidentally, it has been argued that such arbitrary discrimination between the press and broadcast media may infringe the free speech

BROADCAST REGULATION

RTÉ 'shall not, in its programmes and in the means employed to make such programmes, unreasonably encroach on the privacy of an individual' (1976).

Independent broadcasters have been subject to similar restrictions since 1988. As with Ofcom in England, the BCI is required to draw up codes of standards dealing with issues such as privacy. The current code applied by Ofcom penalises privacy invasion that cannot be justified by an 'overriding public interest in disclosure', such as revealing or detecting crime or disreputable behaviour, protecting public health or safety, exposing misleading claims made by individuals/organisations, or disclosing significant incompetence in public office.

guarantee in article 10 (Dillon-Malone in *ECHR and Irish law*, Jordan Publishing, 2004).

Unlike the broadcast media, the press is not subject to external regulation. The minister for justice is currently considering proposals for a press council. The fine detail has yet to be worked out, but he is known to favour voluntary regulation over a statutory, government-appointed council as recommended by the Defamation Advisory Group. He has in mind 'an independent body composed of persons representative of civic society, with minority representations from media interests and journalists'. The functions of the council would include the preparation of a press code of conduct and the investigation of complaints concerning alleged breaches.

Once written, the code should give guidance on press conduct that is invasive or intrusive. The code of practice of the English Press Complaints Commission on privacy is this:

'Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent. It is unacceptable to photograph individuals in private places without their consent. Note – private places are public or private property where there is a reasonable expectation of privacy'.

'The prospect of having to answer in the criminal courts is likely to be a deterrent to the excesses of the press'

A vital question is whether the press will be obliged to subscribe to or comply with an Irish press council code of standards. The minister is considering an inducement: 'subscription to the press council and adherence to its code of standards by a current-affairs type publication would strengthen its entitlement to avail equally of the defence of reasonable publication, which is the new defence in the proposed *Defamation Bill*, in any court action'. In short, he has in mind a *quid pro quo*: subscribe and comply, and a court will take this into account in any public interest privilege plea in a libel action. Fail to subscribe, and the paper must prove that it subscribes to a form of responsible journalism.

The minister may also consider whether the press council should have prior restraint jurisdiction. It remains to be seen how, when and in what form these proposals reach fruition.

The Equalizer

In the meantime, there is one other possible avenue open to those who find themselves subjected to stalking by photographers (or indeed any person). Section 10 of the *Non-fatal Offences Against the Person Act, 1997* defines the offence of harassment as 'persistently following, watching, pestering, besetting or communicating with' the subject. A one-off event will not be sufficient and the stalker must, by his acts, intentionally or recklessly, seriously interfere with the subject's peace and privacy.

Although it confers no private right of action, the prospect of having to answer in the criminal courts is likely to be a deterrent to the excesses of the press. G

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

Action s

With the PIAB now up and running, Aidan O'Reilly clarifies certain issues relating to the bringing of a personal injury action

The Personal Injuries Assessment Board has provided clarification in relation to its role in the assessment of claims in which compensation is being sought for both material damage and personal injuries arising from the same wrong. Solicitors acting on behalf of clients may seek at any time to settle claims for material damage with a respondent or insurer, notwithstanding the fact that PIAB is arranging for the assessment of personal injuries arising from the same wrong. In the past, most insurance companies would refuse to settle the material damage element of a claim separately to the personal injury claim for the same claimant arising from the same cause of action. PIAB has confirmed that 'where liability is not an issue, the respondent's insurers will normally arrange for the settlement of the car damage element of the claim'.

However, practitioners should note section 4(1) of the *PIAB Act, 2003*, which defines a civil action to which the act applies as 'an action intended to be pursued for the purpose of recovering damages, in respect of a wrong, for (a) personal injuries, or (b) **both such injuries and damage to property (but only if both have been caused by the same wrong)**'.

The effect of this section (in conjunction with section 12 of the act) is that, in circumstances where the amount sought for material damage is disputed by the respondent or insurer, a claimant will be precluded from issuing proceedings against the respondent or insurer until such time as the PIAB completes its assessment and that assessment is rejected by one or both of the parties.

The PIAB has confirmed that *'any unresolved damage claim will form part of the PIAB assessment process. When the respondent consents to an assessment, both the personal injuries and the property damage "caused by the same wrong" … will form part of the claim to be assessed*'.

However, it is worth noting that in circumstances where unresolved claims for material damage fall within the PIAB assessment process, settlements in relation to such material damage may still be sought and agreed with a respondent or insurer at any time prior to the completion of the PIAB assessment process. Practitioners should note that if the material damage element of the claim is settled and the personal injury element remains outstanding, then any such settlement should specifically refer to the fact that it relates to material damage only.

It has also come to the society's attention that, since the introduction of PIAB, some insurers have adopted a policy of refusing to pay solicitors' costs in circumstances where a settlement in respect of the claim has been negotiated and agreed. Accordingly, practitioners should be extremely careful to ascertain

MAIN POINTS

- **Issues arising from the commencement of PIAB**
- ***Civil Liability and Courts Act, 2004.***
- ***Statute of limitations***

tations

whether the amount of the final settlement is inclusive or exclusive of costs. Practitioners should be aware that costs in such circumstances may become a matter for negotiation between solicitor and client. Settlement negotiations should address the issue of costs and all proposals regarding costs should be fully explained to the client.

Minors and people of unsound mind

The effect of section 35(2) of the act is to require that all assessments made by the board in respect of minors or persons of unsound mind must be ruled by the courts on application in that behalf being made by a next friend, committee or other person. The procedure for making such an application to the High Court, Circuit Court and District Court is outlined in SI no 517/2004, SI no 542/2004 and SI no 526/2004 respectively. Section 35(3) of the act provides that the costs of such an application will be borne by the respondent(s). It is reasonable to assume that this would include counsel's fees.

However, section 35 does not address payment of solicitors' costs incurred in formulating applications on behalf of minors or persons of unsound mind up to that point, that is, costs incurred prior to such an application for ruling being made to the court. Section 44 of the act provides that the board may direct a respondent to pay 'fees or expenses that, in the opinion of the board, have been reasonably and necessarily incurred by the claimant in complying with the provisions of this part or any rule under section 46'. Statements from PIAB would indicate that solicitors' costs incurred in the formulation of claimants' applications would not be considered by the board to fall within section 44.

The *Rules of the Superior Courts (*Personal Injuries Assessment Board Act 2003*), 2004* (SI no 517/2004) are instructive in this regard. SI no 517/2004 provides that, where applicable, the provisions of order 22, rule 10(3) to 10(6) and rule 11 of the *Rules of the Superior Courts* shall apply to PIAB assessments made in respect of minors or persons of unsound mind.

Order 22, rule 10(4) provides that the court, having approved the amount, may give directions as to 'how the money is to be applied or dealt with and as to any payment to be made … to the plaintiff or the next friend in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the infant or person of unsound mind or otherwise, or to the plaintiff's solicitor in respect of costs'.

Accordingly, upon approval by the High Court of a PIAB assessment, an application may be made for a direction from the court that the claimant's legal costs be paid out of the amount paid into court.

The District Court and Circuit Court rules are silent on the matter. However, order 12, rule 13 of the District Court rules states: *'Where no provision is made in any statute or rules of court governing practice and procedure in a particular proceeding, the court may adopt such procedure as it shall consider appropriate'*.

Order 67, rule 16 of the Circuit Court rules states: *'Where there is no rule provided by these rules to govern practice or procedure, the practice and procedure in the High Court may be followed'*.

Practitioners are at liberty to make an application at District or Circuit Court level for a direction in relation to payment of costs out of the amount paid into court.

As mentioned, the District Court and Circuit Court rules are silent on recovery of costs, but it is the society's understanding that the matter has been referred to the relevant rules committees for further consideration.

Statute of limitations nearing expiration

Section 50 of the act provides that, for the purpose of the *Statute of limitations*, the period beginning on the making of an application to PIAB and ending six months from the date of issue of an authorisation shall be disregarded. To date, PIAB has insisted that an application must be accompanied by a medical report in order for it to be deemed complete and thereby registered. It is important that practitioners are aware of this, particularly in circumstances where a claimant has a very limited amount of time left under the *Statute of limitations* within which to initiate the claim. In some instances, it may not be possible to obtain a medical report in support of the application within the relevant time frame and, as a result, the board may deem the application to be incomplete. Consequently, the *Statute of limitations* will continue to run and the claim may become statute-barred.

Prior to the commencement of PIAB, it would have been sufficient to issue a civil bill or plenary summons, thereby suspending time for the purposes of the *Statute of limitations*. However, section 12 of the *PIAB Act* effectively precludes a solicitor from issuing proceedings until such time as the claim has been considered by PIAB. As a consequence, issuing a civil bill or plenary or personal injuries summons is no longer sufficient to protect the client's interest.

Practitioners assisting clients in such circumstances should, in the absence of a medical report, complete the application (insofar as that is possible) and submit it to PIAB in accordance with the Law Society's guidelines (see **panel**, below). If available, doctors' notes and/or relevant correspondence relating to the extent of the injury or injuries should be submitted along with the other required supporting documentation. In addition, the application should be accompanied by a letter stating:

- That the *Statute of limitations* period applicable to the claim is nearing expiration and stating the reasons why it will not be possible to obtain a medical report within the required timeframe
- That the board is requested to provide written confirmation, within an appropriate period of time, that the application has been registered and that time has stopped running for the purposes of the *Statute of limitations*.

In particularly urgent cases, it may be advisable to contact the board directly and request to speak to a senior manager to outline the circumstances of the application, the difficulty in obtaining a medical report, and the serious consequences of a failure on the part of PIAB to register the application. Practitioners' experiences to date would suggest that the board has taken a reasonably flexible approach in dealing with the registration of such applications.

However, in circumstances where time is running against the client and the board refuses to register the application without an accompanying medical report, the client's interest must be protected. Accordingly, practitioners should inform PIAB that an application to court will be made seeking a mandatory injunction against the board to compel it to register the application for the purposes of suspending time under the *Statute of limitations*.

Reduction in the *Statute of limitations* period

Section 7 of the *Civil Liability and Courts Act, 2004* will be commenced on 31 March 2005 and provides for a reduction in the *Statute of limitations* period for personal injury claims, including medical negligence claims, from three years to two years. Section 7(d) provides for the amendment of the *Statute of Limitations (Amendment) Act, 1991* by the insertion of the following section:

'*5A(1) Where the relevant date in respect of a cause of action falls before the commencement of section 7 of the* Civil Liability and Courts Act, 2004, *an action (being an action to which section 3(1), 4(1), 5(1) or 6(1) of this act applies) in respect of that cause of action shall not be brought after the expiration of*

a) Two years from the said commencement, or

b) Three years from the relevant date,

whichever occurs first.

(2) In this section "relevant date" means the date of accrual of the cause of action or the date of knowledge of the person concerned as respects that cause of action, whichever occurs later'.

Calculating the limitations period

The basic rule is that the limitation period will expire **three years from the date** of accrual of the cause of action or the date of knowledge of the person concerned as respects that cause of action, **or on 30 March 2007, whichever occurs first**.

If in doubt, practitioners should ascertain under which of the following three categories the claim falls, and then apply the appropriate rule. If the date of accrual of the cause of action or the date of knowledge of the person concerned as respects that cause of action occurred:

- Before 31 March 2004: the *Statute of limitations* will expire three years from the date of accrual or knowledge
- Between 31 March 2004 and 31st March 2005 inclusive: the *Statute of limitations* will expire on 30 March 2007
- After 31 March 2005: the *Statute of limitations* will expire two years from the date of accrual or knowledge

Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 24, 27, 28, 40 of the *Civil Liability and Courts Act, 2004* will also be commenced on 31 March 2005. The society will provide more detailed information to practitioners in the coming weeks when the various rules and ministerial orders required under these sections have been finalised.

Civil Liability and Courts Act

Section 8 of the *Civil Liability and Courts Act, 2004* was commenced in September 2004 and provides that a claimant in a personal injuries action must now issue a notice providing details of the nature of the wrong alleged to a respondent within two months of the date of the cause of action or as soon as practicable thereafter. Failure to do so, without reasonable cause, may have implications, including costs. The notice must be served by registered post, in person or by leaving it personally at the address of the respondent (service is governed by section 4 of the act). There is no obligation to serve by ordinary post, although this would be sensible in case the registered letter is later returned. It is important to note that the notice must state the nature of the wrong, so the standard PIAB precedent letters (pages 9-10 of the society's guidelines and precedents) will require modifying to provide details of the individual accident. G

Aidan O'Reilly is the Law Society's policy development executive.

SOLICITORS' UNDERTAKINGS

The society recommends that solicitors do not give undertakings to third parties on behalf of clients for as long as the claim remains within the PIAB process.

'In circumstances where time is running against the client and the board refuses to register the application without an accompanying medical report, the client's interest must be protected'

The society's guidelines and precedents for practitioners representing clients making applications to PIAB were issued to all practising solicitors in August 2004. They are also available to download by using your solicitor number to log on to the Law Society website at *www.lawsociety.ie* and selecting 'precedents for practice'.

A helping HAND

The Solicitors' Benevolent Association depends on subscriptions and donations from the profession. How is this money distributed and who is entitled to make an application to the SBA? Geraldine Pearse explains

MAIN POINTS

- Work of the SBA
- Profile of the beneficiaries
- Notice of AGM

Practitioners pay a voluntary subscription to the Solicitors' Benevolent Association with the annual fee for their practising certificate. This donation currently stands at €38 for those qualified for three years and €25 for those qualified less than three years. For the year ending 30 November 2003 (which are the latest audited figures available), the total amount of subscriptions collected in the 32 counties was almost €300,000. Further donations, investment income and legacies brought the total for distribution to €400,000.

There are currently 52 beneficiaries in receipt of monthly grants from the SBA. Forty-two beneficiaries are resident in the 26 counties, nine are resident in Northern Ireland and one in England. They are all related to solicitors either living or dead.

The grants vary in amount depending on individual circumstances. Each applicant is asked to furnish details of their monthly income and expenditure as well as of their assets and liabilities. This applies to their spouses also. They are also required to give details of their dependants. The information furnished must be certified by a solicitor and by one other person, both of whom must state for how long they have known the applicant.

Many of the applicants are in receipt of state benefits such as unemployment assistance, disability benefit, rent allowance and so on. The grants from the association may be used to supplement these payments. They may help towards mortgage repayments, nursing home fees, education fees, medical fees, essential household repairs or funeral expenses.

For the majority of applicants, however, the grant is used for day-to-day living expenses. Younger beneficiaries tend to be assisted in the short term until they are financially independent, while those in the older age groups tend to be long-term beneficiaries. Payments are reviewed on a regular basis and recipients are asked to inform the association if there has been any change in their circumstances.

Payments may be discontinued if there has been a rise in income or a fall in expenditure. This might arise if, for example, children were no longer dependent or a breadwinner returned to work after an illness.

A number of older beneficiaries who are in receipt of grants have provided acknowledgements that grants paid to them are by way of loan, repayable out of their estates. This is a development of recent years and has resulted in repayments totalling €29,000 since 1998.

Individual circumstances must remain confidential, but the following are extracts from letters recently received:

- *'The generous support I have received from the benevolent fund has been invaluable to me'.*
- *'The grant has made a big impact in terms of my finances and also my peace of mind'.*
- *'With the financial burden he must carry to support his children, without the association's grant, life would be very difficult for him'.* G

Geraldine Pearse is secretary of the Solicitors' Benevolent Association.

AGE PROFILE OF BENEFICIARIES

No	Age
1	20-29
2	30-39
8	40-49
11	50-59
15	60-69
8	70-79
4	80-89
3	90-99

SBA'S ANNUAL GENERAL MEETING

Notice is hereby given that the 141st annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 18 April at 12.30pm:

- To consider the annual report and accounts for the year ended 30 November 2004
- To elect directors, and
- To deal with other matters appropriate to a general meeting.

MARKETING

It may be hard to swallow, but it's true. Even the best solicitors in the country may not be running their businesses to maximum effect. Adrienne Regan shows how small changes in the way you work can mean big changes to your business and your profits

MAIN POINTS

- Tips for marketing your practice
- Client service and retention
- 'personal' and 'non-personal' techniques

It keeps coming back to the same core issue. Professionals spend years acquiring their qualifications and the right to establish a practice, without being required to learn the rudiments of running a business.

Of course, practice and interpretation of the law is the central part of any legal practice. That is what people ultimately pay for. But it's important to realise that these skills and qualifications are not what makes your business successful.

Before going any further, let's ask ourselves what defines a successful practice. A successful practice is one that attracts a sufficient volume of the right kind of new business to maintain the desired level of growth, income and free time.

Many solicitors who run their own practices find themselves facing three core problems. They find it hard to identify and attract clients that fit their business profile; they have to accept inappropriate business to meet volume targets; and their workloads eat into their personal and family time.

These issues affect business in the short term, well-being in the medium term, and retirement and succession in the long term. The reality is that, by modifying some systems within the business and adopting some relatively simple procedures, a legal practice (whatever its size) can give everyone employed in it the living they deserve and the work/life balance they need for their own good health and that of their family life.

Fail to plan, plan to fail

Ideally, the first step is a business plan or, at the very least, a set of personal goals. This exercise helps you to identify what it is that you want out of your practice and out of your life. When you have that defined, each becomes more pleasant and enjoyable. A business plan encourages you to define what sort of clients you are trying to attract, to set targets for attracting new business and to plan toward your ultimate goal – whether it's passing the practice on to your children, selling it for profit or merging with another practice to consolidate your position.

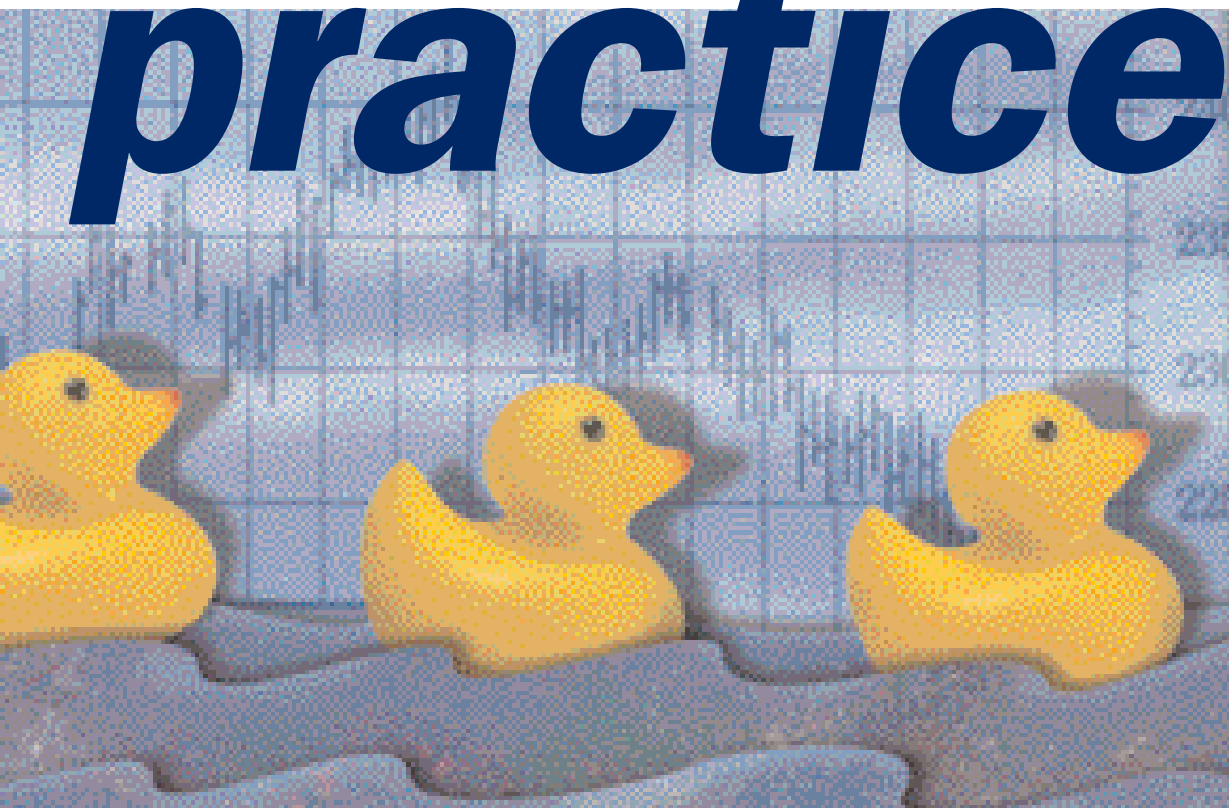
If such a plan is a map, you still need a vehicle to help you reach your destination, now that you've identified it. That vehicle has many names, ranging from networking to promotion but, at the end of the day, it all falls under the banner of marketing.

For too long, marketing has been underused and undervalued by 'the professions'. The business aspects of a practice, on which the professional elements depend for their health and survival, have not been prioritised. In this day and age, where competition and segmentation influence and inform every area of commerce, nobody can rely on a brass plate and membership of the local golf club as sufficient support for a successful business. Of course you will get business by simply being there, but is it the sort of business you want and can it deliver the income you require?

Time and again, we find that solicitors overlook some of the fundamental aspects of running a business that result in repeat business, encourage referral and provide higher profits.

Cashflow, for example. Did you leave enough in the practice last year to invest in new people this year? Or to upgrade your IT systems? How you use

YOUR practice



Get your ducks in a row to boost your practice's profit

your practice's income to best advantage is vital. And it's not all about depriving the Revenue through successful tax avoidance. There are times when spending money today can lead to considerable rewards down the line, whether it be a well-deserved pay rise to retain a member of staff or relocating your office to a more attractive address.

There are many aspects of housekeeping that need attention in any business and which are especially important in a service-based consultancy, and that, after all, is what a practice is. For example, the traditional hierarchy of partners, juniors and clerical staff is inevitable from a salary and seniority point of view, but it should not get in the way of effective working relationships. A happy team is a productive and loyal team, and that happiness is dependent on how each individual is incentivised, listened to and appreciated.

Morale and attitude have an immediate impact on three levels. On one level, personnel who feel appreciated are better team players. At a client level, contented staff exude the positive, can-do attitude that reassures clients that they are getting the service they're paying for. Finally, your staff have a life beyond the office. If they are proud to work with you, they will attract positive comment and potential new business.

Do unto others

Telephone etiquette is another quality for which the legal profession is not renowned. In fact, many members of the general public are under the impression that solicitors either fail to return calls or have a stopwatch running so they can charge phone time by the minute. Returning phone calls is more than simply good manners; it's client service, client retention and the maintenance of your reputation.

As a general rule of thumb, assume that every call you receive is about a highly-profitable business proposition, then build a mechanism of response. If you are too busy or if you suspect the caller is merely trying to sell you double glazing, then deputise the response to a personal assistant. Your PA can then treat the call with courtesy while ascertaining whether or not the matter actually requires your attention.

Telephone calls are only one part of communications feedback. Successful and profitable client relations revolve around clear, pro-active communications. For example, when a case is closed or a matter settled, don't just send the clients a bill.

TOP TIPS FOR MARKETING YOUR PRACTICE:

- Visit clients at their premises. This shows your interest in their business as well as their legal issues. It also shows that you don't live in an ivory tower
- Ask for feedback between cases. Your client's perspective is important; asking for it shows humility and professionalism – two qualities not often seen together
- Return telephone calls within a defined timescale. It's common courtesy, common sense – but not too commonly done
- Reserve time in the diary every week for marketing – an hour a day is the rule of thumb to keep new business in the pipeline
- Build a comprehensive database: know where your business is coming from
- Don't leave home without a business card
- Follow up on marketing actions. Stay focused and finish what you set out to do
- The more you show you care, the more repeat business you will get
- Use easy to understand language in all your communication.

Call them and ask them for feedback.

Think about it: if you believe you've done a good job, you have nothing to fear as you will probably receive only thanks and gratitude. By the same token, if you feel you have under-performed in any way, now is the time to find out. It's like the message on the restaurant menu: *If you enjoy our food, tell everyone; if you don't, tell us.*

Asking clients for feedback shows that you care. It is also the ideal form of market research. Their response will help you find out whether or not they represent further business opportunities.

The information you glean from clients, either through feedback or through the work itself, is gold dust. Keeping records of activity and keeping a manageable and accessible database will win you business and save you time further down the line.

What mechanisms do you employ for remaining in contact with past clients? How do you define a client? Is it somebody who did business with you once? Or somebody with whom you conduct regular business? The person who bought a house five years ago may be ready to move again. They may be among the tens of thousands of adults who have not completed a will. Or they may even need a good solicitor to help them with their impending divorce. Don't expect them to remember you. It's your job to remember them.

Cost is not the primary concern for most clients. Where the law is concerned, they want reassurance and support, culminating in the best result. Whether they are buying a property or defending a case, your attitude to their concerns is what provides the reassurance. Your legal training and experience delivers the result. Retaining clients and winning referral depends on achieving a balance of both factors.

Where do I start?

The first step in marketing is to divide your services into groups and match them to the needs of your clients. This immediately eliminates any client prospects for whom you don't have a suitable offering. This in turn allows you to focus your energies by raising the quality of your prospect pool.

It's important to stand back from your service offering and assess it with a clear eye. This can be done by breaking your business practices down into six headings – the six Ps of service: product, price, place, promotion, people and processes.

Your **product** doesn't just describe the category heading (litigation, conveyancing, copyright law and so on). It should include your practice's specific approach, what sets it apart from how other practices handle such business.

Price helps to define where you sit in the market – small value, big volume business versus fewer clients with larger spends.

Place is your position in relation to your competitors as well as your physical location and the opportunities it offers.

Promotion refers to the ways in which you attempt to attract new business, be it networking, referral or advertising – in a word, marketing.

People are important at all levels, from the person who answers the phone to the partner handling the case.

Finally, **processes**. Different practices operate different systems and processes which may, or may not, affect a client's experience. It's worth comparing your practice's systems with those of other organisations to assess their efficiency. Improved systems could improve your bottom line, as well as your client's experience.

Know your client

Having examined your product offering, the next step is to categorise your clients according to their needs. Charities, SMEs, insurance claimants and family law cases all have different needs and expectations. Some practices handle all of these groups, while others specialise. Your marketing plan must be tailored accordingly.

What is the first impression a visitor gets on arriving in your office? Is it clean, comfortable and welcoming? Is it corporate and official-looking? How comfortable will the various client types feel in this environment? The shadow of Domby and Son obscures the talents of many a practice, even today, leaving clients intimidated.

A successful marketing plan is an invitation to people to come and get to know you. Having identified your key clients and core practice areas, you are then ready to take your marketing approach outside the building.

Different techniques work in different businesses, and what we must identify is what works for the legal profession. David Maister, respected proponent of professional services marketing, said that 'marketing works when it demonstrates, not when it asserts'. Some techniques demonstrate your expertise and commitment; others merely make claims on your behalf.

When to get personal

Expanding on his belief in 'demonstration versus assertion', Maister divides marketing tactics into three tiers: personal initiatives (small seminars,

speeches), broader activities (networking, newsletters), and catch-all/catch-none techniques (advertising, direct mail). At one end of the scale, there is 'personal' marketing which addresses a prospect's specific issues, while at the other end there's 'non-personal' activity, such as advertising and brochures. Here, we assess some of those techniques, ranging from the personal to the non-personal:

- Small-scale seminars tend to work well because they can focus in on a particular audience. This is an ideal way of showing off an area of specialisation. Smaller events allow for a good guest-to-staff ratio, giving everyone a chance to meet and be greeted
- Speeches and articles offer a very good channel for increased profile. Aside from the good impression your subject matter may leave, the very fact that you are called upon to speak or write suggests a significance and profile in the profession
- If your practice is in a position to give comment to the media, this provides excellent profile opportunities
- Networking is effective if it hones in on where your prospects are likely to be. General events, attended by all and sundry, are not likely to yield results
- Newsletters are worth producing if they contain news that's relevant to the recipient
- Your website is an important window to your practice, but it won't actively sell your firm. Keep your site up-to-date and relevant
- Direct mail, along with cold calling, doesn't have a good performance record among professional services
- Brochures are a necessary evil. Make sure they are attractive and readable. The less you say, the more focused you are being
- Advertising should be handled with caution by the professions. It is, after all, the least targeted of the tools available to you.

There are many facets to marketing and nobody can be expected to apply them all at once. But it is important to establish marketing processes and procedures within your organisation.

Those interested in finding out more may be interested in the seminar *Marketing techniques for the busy solicitor* being held at the Ardilaun House Hotel in Galway on 19 April 2005. The seminar is recognised as part of the Law Society's CPD programme. G

Adrienne Regan is managing director of Regan Communications, an integrated marketing consultancy for the professions.

Pension planning is just as important for solicitors as it is for other professionals. Carina Myles outlines what you should be doing so you can face the future with confidence

MAIN POINTS

- **Tax relief contribution limits**
- **Approved retirement funds**
- **Making use of all your assets**

Looking to

While it can be easy to put retirement planning on the long finger, early planning is vital. It's essential to take account of all your other assets (excluding your principal private residence) that can help to create wealth and security for you in retirement, especially given the Revenue limitations on tax-effective retirement planning through personal pension funds (see **table** below). Investments you may have made in equities, properties and other savings vehicles should also be considered when reviewing your income in retirement needs.

If you are planning on early retirement, these additional investments will be crucial funding for your income requirements in the period between ceasing employment, for example at aged 55, and drawing down your pension funds at aged 60.

In order to ensure that your retirement fund meets all your needs, you must consider how to replace your earned income in retirement. Earned income will obviously cease as soon as you stop working, and retirement planning gets more expensive the later you leave it.

The table below sets out the contribution levels at various ages for a self-employed male and female at age 60 and 65. These illustrative examples indicate the levels of contributions required in order to achieve a pension income in retirement of approximately €70,000 gross. (€70,000 in ten years' time, for example, is equivalent to €52,000 in current spending power, based on an inflation rate of 3%.)

We have assumed current annuity (guaranteed income in retirement) rates for both a self-employed male and female at age 60 and 65 in order to ascertain the size of the fund required to achieve an income in retirement of approximately €70,000. For example, if you are a male aged 40 and wishing to retire at 60, you would need to be contributing €54,000 annually to your pension fund in order to

CONTRIBUTION REQUIRED TO ACHIEVE A PENSION OF €70,000

MALE: RETIREMENT AGE 60

Target fund at retirement age 60:	€1,928,375
Male aged 40	€54,000
Male aged 45	€81,827*
Male aged 50	€137,000*
Male aged 55	€286,408*

FEMALE: RETIREMENT AGE 60

Target fund at retirement age 60:	€2,046,784
Female aged 40	€58,000
Female aged 45	€86,418*
Female aged 50	€145,000*
Female aged 55	€303,992*

MALE: RETIREMENT AGE 65

Target fund at retirement age 65:	€1,643,192
Male aged 40	€32,000
Male aged 45	€46,024
Male aged 50	€70,000*
Male aged 55	€116,214*

FEMALE: RETIREMENT AGE 65

Target fund at retirement age 65:	€1,758,794
Female aged 40	€35,000
Female aged 45	€49,258
Female aged 50	€75,000*
Female aged 55	€124,387*

** **Note:** there is an earnings cap of €254,000, so the maximum a person aged 40-49 can contribute tax effectively is €63,500 (25% of earnings). For those aged 50+, the maximum is €76,200 (30% of earnings).*

the FUTURE

achieve an income of approximately €70,000 a year.

However, for a male starting at age 50 and wanting to retire at 60, you would need to contribute a much larger sum of approximately €137,000 a year in order to achieve the same income in retirement. This level of contribution will exceed the tax-effective contributions you may make annually under Revenue limits.

You can see that the closer you get to retirement, the greater the level of contribution required in order to achieve your goal. If you are starting late, you should also look to build other assets outside of your pension fund that will provide you with an income in retirement.

Assuming current annuity rates, a slightly larger fund is required for a female in order to achieve the same income in retirement. This is because females have a greater life expectancy and so the annuity will on average be paid for a longer period.

A female of 40 would need to contribute €58,000 per annum to a pension fund in order to achieve a fund at retirement age 60 that would provide her with an income of approximately €70,000 a year.

Your options on retirement

Having outlined the requirements and Revenue limits for tax-effective funding, let's take a brief look at some of your retirement options. An annuity or guaranteed income for life is one option. However, the *Finance Acts, 1999/2000* abolished the concept of compulsory annuity purchase for certain individuals. The revised legislation introduced approved retirement funds (ARFs). These schemes enable you to maintain control of your financial affairs in retirement.

Until 1999, assets built up in a pension fund – other than the 25% of the fund that could be taken as a tax-free lump sum – had to be used to purchase an annuity (a guaranteed income for life) on retirement. Provision could be included so that on the member's death in retirement, the pension could

TAX RELIEF CONTRIBUTION LIMITS

Pension planning is one of the most tax-effective ways of reducing personal tax for the self-employed. The annual age-related contribution limits for tax relief purposes are as follows:

Age	% of net relevant earnings
Under 30 yrs of age	15%
30-39 yrs of age	20%
40-49 yrs of age	25%
50 years +	30%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continue to be paid to a surviving spouse (though probably at a reduced rate).

However, once both member and spouse died, the annuity ceased and generally no further benefit was payable. At that stage, the capital was lost. So while pension plans offered a very tax-effective way to invest, when it came to retirement members lost control of the capital.

The introduction (and subsequent refinement) of ARFs brought about a major change in the way many retirees can use their pension fund in retirement. No longer do qualifying retirees have to give up control over the capital that has been accumulated in the pension fund by having to purchase an annuity. Instead, the accumulated fund (after taking the tax-free lump sum element) can be invested in a more flexible manner, with the facility to draw down income as required. In addition, on your death in retirement, any capital remaining in the ARF goes to your next of kin.

If you have left it very late to start thinking about a pension, all is not lost. You may have built up other assets such as property and personal investments in stocks and shares. You must consider all available investment options.

PENSION PLANNING

- It's important to plan for retirement adequately, so that you have in place a timely strategy for replacing earned income in retirement. The later you leave it, the more expensive it gets
- Take account of all pension and non-pension assets and review your overall wealth management when considering how to replace earned income in retirement
- Consider carefully your retirement options and take advice. Ensure that income drawdown is planned tax-efficiently from your various sources of funds.

Retirement planning is not a once-off task, it is something that should be continuously monitored and reviewed to ensure that you can look forward to the future with confidence. With careful planning, you hold the key to ensuring that the income you wish to achieve is maintained throughout your retirement years. G

Carina Myles is a pensions specialist at Bank of Ireland Private Banking Limited.

Tech trends

Put not your faith in a monkey's hands

The Duke of Wellington's flagrantly gay younger brother, Edmund, was nothing if not a good sport. When his crack team of troubadours failed to make an impact at the battle of River Phoenix, he pulled them off halfway through the fight and introduced his trump card, a Monkey Legion raised in the maddest parts of Madagascar. At his subsequent court-martial, Edmund explained that he thought the legion's gorilla tactics 'would leave Napoleon in a tizzy'.

It probably won't surprise you to learn that it might have been an altogether different story if Edmund had owned a BlackBerry, some 200 years before they were invented. What makes the BlackBerry particularly popular is its 'push technology', which means that you don't have to go searching for your e-mails; they are sent to you automatically from your network. The downside is that up to now they have been pretty useless as phones, resembling, as they did, the kind of calculator you would expect to see on an accountant's desk. The new 7100v looks more like a mobile phone and is almost the same size, measuring 56mm wide by 119mm deep by 19mm high. And at 120g, it's not particularly heavy. It has all the functionality and applications you'd expect – including an address book, contacts database, diary and task manager, memo pad, alarm, calculator and picture viewer. It also boasts quad-band for international roaming and a 240-by-360-pixel colour screen – a big improvement on earlier versions. 'Oo-oo-oo', as an appreciative ape might drunkenly say.

The BlackBerry 7100v costs €249 and is available from Vodafone.

Apple of your eye

If you happen to find yourself stuck in a roomful of jabbering chimps, you'll probably wish that Apple had invented the apePod. But they didn't. Instead, they concentrated most of their energies on developing non-simian versions of the ludicrously popular iPod. It was last year's must-have accessory. In the three years since the iPod was launched, Apple has introduced a number of models, including the iPod Mini and iPod Shuffle (the latter being scarcely bigger than a packet of chewing gum). The latest version is the iPod Photo. This model carries up to 15,000 songs but it also allows you to download photos from your Mac or PC and to view them in colour, while you hum away to favourite tunes. The iPod Photo comes with either 30Gb of memory or 60Gb and has the very classy touch-sensitive Apple Click Wheel. The new model also has an improved battery life that lets you listen to 15 hours worth of continuous music or five hours of continuous slideshows with music. If you want to spend an evening showing monkeys your holiday snaps, this is the thing for you. Bless their little hairy hands.

The iPod Photo is available from computer outlets and www.apple.ie. *It costs €369 for the 30Gb version and €469 for the 60Gb model.*

Palming it off

Until the BlackBerry came along, Palm seemed to have cornered the market for handheld computers. But now the bar has been raised and Palm has risen to the challenge with its new Tungsten T3. It includes features that make it much superior to its predecessors, such as a high-resolution colour screen, more memory, a faster processor and a flip cover. Cleverly, the new device lets you flip orientation so you can work in either portrait or landscape formats. Of course, the T3 runs all the applications that you need in a handheld device, including calendar, contacts, memos and tasks, and has made sure that these can now synchronise with their Microsoft *Outlook* equivalents. It also uses Bluetooth technology and has a voice recorder and an MP3 player.

The Tungsten T3 retails for around €389.

You say 'potato', I say 'heart attack'

How many times have you lounged on your leatherette sofa, one that squeaks when you rub it with a damp finger, and wished that you could have a TV, DVD player, radio and computer all rolled up in one neat package? Now you can, thanks to Toshiba. The electronics giant has recently launched its *Qosmio* laptop, which, it says, 'erases the line between computers and consumer electronic devices'. If it delivers what it promises, *Qosmio* will allow you to connect to the internet with a laptop computer that also serves as a TV, record a TV programme while watching a film on DVD, playing a game or writing an e-mail, and burn videos or TV programmes to DVD.

The machine has an extra-bright 15-inch LCD panel and can be worked by remote control. It runs Microsoft Windows Media Centre on a 1.7Ghz Centrino Pentium chip, and comes with 512MB of RAM and an 80GB hard drive.

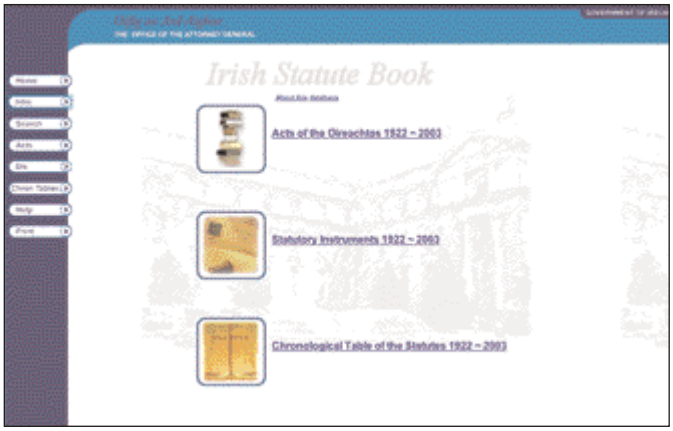
According to Toshiba, 'Qosmio' means 'my personal universe'. So if sitting around like a slob is your world, then this the machine for you. You may never have to leave the sofa again. And if you wear incontinence pants, that goes double.

The Toshiba Qosmio costs around €1,900 plus VAT. For more information, visit www.toshiba.ie.

Sites to see

Who wants to be a millionaire? (*abc.go.com/primetime/millionaire/games*). While the bar seems to have a monopoly on tribunal millionaires, now you can dream at your desk by playing an on-line US version of the popular TV game show. Though packed with annoying American-specific questions (who knows what US TV show extended its time slot from two to three hours? And honestly, who cares?), it's quite fun. And the *Gazette* didn't get past $1,000.

Magical Krakow (*www.krakow.pl/en/turystyka*). With the Law Society's annual conference coming up, you might well be off to Krakow, Poland, in March. If so, plan ahead with this tourist site. It provides information on leisure facilities, entertainment listings, hotels and restaurants, as well as tourist sights, so you can slope off to the Nietoperzowa (the bat cave) during the business session and pretend to be the world's greatest detective.



Irish statute book (*www.irishstatutebook.ie*). It's an old one, but still a good one. And pretty damn useful, too. This site has a chronological listing and the full text of all acts of the Oireachtas and statutory instruments from 1922 to 2003, as well as EU regulations from 1972 to 31 December 2003. It also lists, among other things, pre-Union Irish statutes (1236-1800) and English statutes (1226-1707), just in case you might need to know.

Saints and scholars (*www.legal-island.com*). What is modestly described as 'Ireland's premier information, conferencing and training company in the area of employment law' offers links that are useful if you're looking for decisions or judgments from tribunals or courts relevant to employment law. It also offers information on conferences, legal vacancies and reports on new legislation and developments in both the Republic and the North.

Report of Law Society Council meeting held on 21 January 2005

Result of poll on resolution arising from the society's AGM

The Council noted that the motion that had been presented to the AGM had since been approved by the membership in a postal ballot, by 1,747 votes to 1,219. The text of the motion read as follows:

'That the Law Society should make a recommendation to all member firms that all firms pay maternity leave at full salary for a minimum of 18 weeks to solicitors employed by them in accordance with the recommendations of the recent Gender In Justice *report featured in the July 2004 issue of the* Gazette.'

The results of the poll would be promulgated to the profession in the next issue of the *Gazette*. It was agreed that the profession should be advised to take due care as to how best to implement the recommendation, as there were considerable savings to be made, depending on the manner of payment and the treatment of social welfare benefits and tax credits.

Judicial Appointments Advisory Board

The Council approved the re-appointment of Laurence K Shields as the society's nominee on the Judicial Appointments Advisory Board.

Review of legal costs

Gerard Griffin briefed the Council on the work of the society's Legal Costs Task Force and noted that a number of helpful submissions had been received from the profession, which would be reflected in the society's final submission to the ministerial working group.

Study on competition in the solicitors' profession by the Competition Authority

The director general reported that, at the seminar to launch the report of the Regulatory Review Task Force on the previous day, the minister had addressed a number of the issues under examination by the Competition Authority.

On the issue of self-regulation, the minister had spoken in praise of the Regulatory Review Task Force and had said: 'When I addressed you in September of last year at the presentation of parchments ceremony, I praised your society's regulatory system. It is through on-going scrutiny and improvement of your systems that you will maintain what I believe is an exemplary position'.

On the issue of fusion, the minister had said that: 'Specialisation must be based on the objective common good – the distinction between solicitors and barristers is defensible if it demonstrably delivers a better quality of service and a fairer system of access on equal terms to justice at a cost which is competitive with any alternative fused profession'.

In a departure from his prepared script, the minister had gone on to say that 'if you apply standard economic theory to fusion, it is not likely to result in lower fees. It increases the monopoly power of the profession. There are other issues at stake, such as whether a client in Cahirciveen can access the best service. These are real issues. Economic theory must address these as well'.

The director general said that the seminar launching the report of the Regulatory Review Task Force had been a success and had been reported in reasonable terms by the media. Any person present who approached the matter with an open mind could not but believe that the society operated an efficient and balanced system of regulation and complaints-handling.

Clementi's review of the solicitors' profession in England and Wales

The director general briefed the Council on the contents of the Clementi report on the Regulatory Framework for Legal Services in England and Wales. Clementi's three principal recommendations were: a) a regulator to oversee all legal professional bodies, b) an Office of Legal Complaints (OLC), and c) legal disciplinary practices (LDPs) that can be owned by non-lawyers.

He noted that Clementi's recommendations were radical by any standards, although they were not unanticipated. He emphasised that the starting point in Ireland was considerably different to the starting point in England and Wales. It was undoubtedly the case that, in England and Wales, the starting point was one of failure or, at least, a major collapse in public and political confidence in the regulation of its solicitors' profession. In contrast, the minister had indicated on the previous day that he was very happy with the regulatory system for solicitors in Ireland. It was important that Ireland should resist the importation of solutions that were inappropriate to the Irish situation. The president noted that, in addition to inadequate systems, England and Wales also had to contend with a regulatory maze that did not exist in Ireland.

Judicial review proceedings against the Personal Injuries Assessment Board

Stuart Gilhooly reported on the recent judicial review proceedings against the Personal Injuries Assessment Board, which, he believed, had a good chance of success. In the event that the matter was appealed to the Supreme Court, he noted that, as *amicus curiae*, the society had no right of appeal.

Law reform

John D Shaw outlined the contents of a draft report by the Law Reform Committee on the case for reform of the law in relation to restrictive planning conditions. These conditions caused significant difficulties throughout the country, particularly for the clients of rural solicitors. The Council approved the terms of the proposed report, which would be published by the society in the near future. G

Practice notes

STAMP DUTY: FLOOR AREA COMPLIANCE CERTIFICATES

A serious difficulty has arisen in respect of stamp duty payable on conveyances/transfers of new grant-sized houses to first-time buyers and owner/occupiers (the Conveyancing Committee's interim practice note published in the November 2004 *Gazette* refers).

Prior to July 2004, a purchaser of a new grant-sized house could avail either of the exemption for such houses where a floor area certificate had issued, or, alternatively, elect to stamp as an owner/occupier of a new house, in which case duty was paid on the site value or 25% of the entire consideration, which typically would have been under the stamp duty threshold.

The second option has now been removed and, accordingly, to avoid a charge to stamp duty on a new grant-sized house, a purchaser must claim the exemption. In order to claim the exemption, a 'floor area **compliance** certificate' (FACC) **must be in existence on the date of the deed of transfer/conveyance.**

(Note: the option to pay duty based on the site value or 25% of the entire consideration remains in place in respect of houses over 125 sq m.)

A representative of the committee met officials from the Department of the Environment, Heritage and Local Government recently, and it has been confirmed that the department will not issue a FACC until such time as the house has complied, or the department inspectors are satisfied that it will comply, with a wide range of requirements (contained in the department circular HA1) that go far beyond the internal measurements of the house or compliance with building regulations, and extend to such matters as durability of building materials, their compliance with Irish Agrément Board standards, the appropriateness of building methodologies and so on. The department also indicated that if the issue of a FACC was delayed, this was indicative of a substantive problem with the house.

In the first instance, therefore, purchasers of new houses should not complete the purchase unless the FACC is to hand, and should not accept an undertaking either from the builder or his solicitor. Appropriate special conditions should be inserted as stamp duties are, by law, a matter for the purchaser.

Particular problems arise in the case of contracts that are subject to stage payments.

The stage payment contract typically provides for a site purchase contract together with a building agreement with stage payments, at signing (15% to include booking deposit), first-floor joist level (25%), roof (25%), plastering (25%) and completion (10%).

Where the builder and the house are registered with the Homebond or Premier schemes, the purchaser is protected in relation to the stage payments up to the limits of those schemes. In relation to subsequent stage payments, however, the purchaser has no security and accordingly it is necessary for the purchaser to take ownership by transfer of conveyance of the site contemporaneously with the payment of the first-floor joist level stage payment. This is necessary for three reasons: first, because a purchaser, in the absence of a transfer of the site ownership, would be an unsecured creditor in the event of the builder's insolvency; second, no financial institution will advance the monies to meet the further stage payments without transfer of a site ownership; and, third, the purchaser will most likely be contractually bound to complete the conveyance/ transfer at that stage.

The difficulty is that while in the case of stage payments the purchaser must take a conveyance/transfer at the first floor joist level, it will be seen that the FACC will not issue until the premises has been substantially completed, or even some time afterwards, if there are problems with the particular house. The result of this is that people who clearly are intended to benefit from the relief as first-time buyers and/or owner/occupiers of new grant-sized houses are likely to lose the relief.

Practitioners must advise purchasers in such circumstances that if they buy subject to stage payments, they will be unable to obtain exemption from stamp duty.

Urgent representations are being made to the Department of Finance in relation to the matter, but, in the interim, the foregoing appears to represent the position. The committee also wishes to take this opportunity to restate its long-held view that stage payments in new housing are anti-consumer and should be abolished.

Conveyancing Committee

HIGH COURT BAIL APPLICATIONS

Practitioners should note the introduction of SI no 811/2004, *Rules of the Superior Courts (Bail Applications) 2004,* which came into operation on 29 December 2004.

The rule amends order 84 of the superior court rules by extending rule 15(1) to provide that the affidavit of the applicant must set out fully the basis upon which the application is made to the High Court and sets out 12 matters that must be addressed in the affidavit. These matters include, *inter alia,* the identity, address and occupation of any proposed independent surety and of the amount that such surety may offer; particulars of the address at which it is proposed the applicant would reside, if granted bail; and particulars as to whether any warrants for failure to appear have been issued in relation to the applicant. Practitioners should familiarise themselves with the full list of matters to be dealt with in the affidavit, as failure to do so may result in the application being struck out for non-compliance.

Criminal Law Committee

PAYMENT OF CAT VIA ROS

In March 2004, practitioners were advised that, while the Revenue On-line Service (ROS) could be used to file CAT returns electronically, the on-line payment of tax was not permitted due to a potential conflict between the Revenue's arrangements for electronic payment and certain provisions of the *Solicitors' accounts regulations 2001.*

Following discussions with the Revenue regarding technical aspects of the electronic process leading to the transfer of funds from the solicitor's client account to the Revenue and on foot of certain assurances received from the Revenue regarding the correction of errors that may occur, the society's Compensation Fund Committee has advised that it is satisfied that the process does not conflict with the provisions of the *Solicitors' accounts regulations 2001.* Therefore, practitioners may now fully utilise the Revenue's on-line 'file and pay' for CAT.

Probate, Administration and Taxation Committee

LEGISLATION UPDATE: ACTS PASSED IN 2004

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

Aer Lingus Act, 2004
Number: 10/2004
Date enacted: 7/4/2004
Commencement date: Commencement order(s) to be made (per s13(2) of the act)

Air Navigation and Transport (International Conventions) Act, 2004
Number: 11/2004
Date enacted: 13/4/2004
Commencement date: 13/4/2004

An Bord Bia (Amendment) Act, 2004
Number: 14/2004
Date enacted: 5/5/2004
Commencement date: 5/5/2004 for part 1; 1/7/2004 for the transfer day for the purposes of part 2 (per SI 221/2004); commencement order(s) to be made for parts 3 and 4 (per ss10 and 23) – 1/7/2004 for part 3 (other than ss21 and 22) and 1/7/2004 for part 4 (other than s24(a)(ii) (per SI 220/2004)

Appropriation Act, 2004
Number: 40/2004
Date enacted: 17/12/2004
Commencement date: 17/12/2004

Central Bank and Financial Services Authority of Ireland Act, 2004
Number: 21/2004
Date enacted: 5/7/2004
Commencement date: Commencement order(s) to be made (per s1(2) of the act): 1/8/2004, 1/10/2004, 1/1/2005 and 1/4/2005 for various provisions of the act listed in the schedule to SI 455/2004 – see SI for details; 1/4/2005 for requirements regarding credit union loan agreements in item 1 of part 14 of schedule 3 to the act, and for section 33 of the act in its application to that item (per SI 760/2004, amending SI 455/2004)

Child Trafficking and Pornography (Amendment) Act, 2004
Number: 17/2004
Date enacted: 2/6/2004
Commencement date: 2/6/2004

Civil Liability and Courts Act, 2004
Number: 31/2004
Date enacted: 21/7/2004
Commencement date: 21/7/2004 for ss2, 3, 4, 31 and 32, chapter 1 (ss33 to 38) of part 3 and ss49 and 56; commencement order(s) to be made for all other sections (per ss1(2) and 1(3) of the act): 20/9/2004 for ss1, 5, 6, 8, 19, 21, 22, 25, 26, 29, 39, 41, 42, 43, 44, 54 and 55 and 31/3/2005 for ss7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 23, 24, 27, 28 and 40 (per SI 544/2004)

Civil Registration Act, 2004
Number: 3/2004
Date enacted: 27/2/2004
Commencement date: Commencement order(s) to be made (per s1(2) of the act): 2/3/2004 for s27 (per SI 84/2004); 1/10/2004 for s65 (per SI 588/2004)

Commissions of Investigation Act, 2004
Number: 23/2004
Date enacted: 18/7/2004
Commencement date: 18/7/2004

Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) (Amendment) Act, 2004
Number: 16/2004
Date enacted: 2/6/2004
Commencement date: 2/6/2004

Copyright and Related Rights (Amendment) Act, 2004
Number: 18/2004
Date enacted: 3/6/2004
Commencement date: 3/6/2004

Council of Europe Development Bank Act, 2004
Number: 37/2004
Date enacted: 27/11/2004
Commencement date: 27/11/2004 for all sections other than section 3, which comes into operation on the day on which the state becomes a member of the bank (per s3(4) of the act)

Criminal Justice (Joint Investigation Teams) Act, 2004
Number: 20/2004
Date enacted: 30/6/2004
Commencement date: 1/10/2004 (per SI 585/2004)

Dumping at Sea (Amendment) Act, 2004
Number: 35/2004
Date enacted: 3/11/004
Commencement date: 3/11/2004

Education for Persons with Special Educational Needs Act, 2004
Number: 30/2004
Date enacted: 19/7/2004
Commencement date: Commencement order(s) to be made (per s53(2) of the act)

Electoral (Amendment) Act, 2004
Number: 15/2004
Date enacted: 18/5/2004
Commencement date: Commencement order(s) to be made (per s1(8) of the act): 19/5/2004 for part 1 (ss1-3), part 3 (ss17-29), ss33, 34 and 35 of part 4, and schedule 5 of the act (per SI 215/2004)

Electricity (Supply) (Amendment) Act, 2004
Number: 25/2004
Date enacted: 18/7/2004
Commencement date: 18/7/2004

Equality Act, 2004
Number: 24/2004
Date enacted: 18/7/2004
Commencement date: 18/7/2004

European Parliament Elections (Amendment) Act, 2004
Number: 2/2004
Date enacted: 27/2/2004
Commencement date: 27/2/2004

Finance Act, 2004
Number: 8/2004
Date enacted: 25/3/2004
Commencement date: Various – see ss94(8), 94(9), 94(10) of the act and: 1/4/2004 for s74 (per SI 140/2004); 30/6/2004 for s52 (per SI 407/2004); 30/6/2004 for s53(1)(a)(i) (per SI 408/2004); 1/1/2004 for s33 (per SI 425/2004); 2/2/2004 for ss31 and 42 (per SI 551/2004); 27/9/2004 for s39 (per SI 645/2004); 1/1/2005 for s28, subject to the following: (a) the amendments to section 481 of the *Taxes Consolidation Act, 1997* by section 28 of the *Finance Act, 2004* apply as respects an application made on or after 1/1/2005 by a qualifying company (within the meaning of the said section 481) for a certificate under the said section 481 in relation to a film to which that section relates, (b) insofar as it relates to the insertion of subsection (2E) into section 481 of the *Taxes Consolidation Act, 1997*, 17/12/2004 is appointed as the commencement date for section 28(1)(c) (per SI 814/2004)

Health Act, 2004
Number: 42/2004
Date enacted: 17/12/2004
Commencement date: Commencement order(s) to be made (per s3(2) of the act); 23/12/2004 for the following provisions: (a) part 1 and schedule 1, (b) sections 17(4) and 17(5)(a), (c) section 75 and schedule 6 insofar as those provisions relate to the amendment of the *Health (Corporate Bodies) Act, 1961* (per

SI 886/2004); 1/1/2005 for the following provisions: (a) part 2, (b) part 3 and schedule 2, (c) part 4 (other than sections 17(4) and 17 (5)(a), (d) parts 5, 6 and 7 (other than section 37(2)(f), (e) part 8 (other than section 42), (f) part 10 and schedule 3, (g) section 73 and schedule 4, (h) section 74 and schedule 5, (i) section 75 and schedule 6 insofar as those provisions relate to the enactments specified in schedule 6 (other than the *Health (Corporate Bodies) Act, 1961*), (j) section 75 and schedule 7 insofar as those provisions relate to the enactments specified in schedule 7, (k) part 12 (other than section 79) (per SI 887/2004); 1/1/2005 appointed as the establishment day for the purposes of the act (per SI 885/2004)

Health (Amendment) Act, 2004
Number: 19/2004
Date enacted: 8/6/2004
Commencement date: 15/6/2004 (per SI 378/2004)

Housing (Miscellaneous Provisions) Act, 2004
Number: 43/2004
Date enacted: 21/12/2004
Commencement date: 21/12/2004

Immigration Act, 2004
Number: 1/2004
Date enacted: 13/2/2004
Commencement date: 13/2/2004

Industrial Relations (Miscellaneous Provisions) Act, 2004
Number: 4/2004
Date enacted: 9/3/2004
Commencement date: 6/4/2004 (per SI 138/2004)

International Development Association (Amendment) Act, 2004
Number: 26/2004
Date enacted: 19/7/2004
Commencement date: 19/7/2004

Intoxicating Liquor Act, 2004
Number: 34/2004
Date enacted: 15/10/2004
Commencement date: 15/10/2004

Irish Nationality and Citizenship Act, 2004
Number: 38/2004
Date enacted: 15/12/2004
Commencement date: 1/1/2005 (per SI 873/2004)

Maritime Security Act, 2004
Number: 29/2004
Date enacted: 19/7/2004
Commencement date: 19/7/2004

Maternity Protection (Amendment) Act, 2004
Number: 28/2004
Date enacted: 19/7/2004
Commencement date: Commencement order(s) to be made (per s27(3) of the act): 18/10/2004 for all sections of the act, other than s24 (per SI 652/2004)

Motor Vehicle (Duties and Licences) Act, 2004
Number: 5/2004
Date enacted: 10/3/2004
Commencement date: 10/3/2004

National Monuments (Amendment) Act, 2004
Number: 22/2004
Date enacted: 18/7/2004
Commencement date: 18/7/2004

Ombudsman (Defence Forces) Act, 2004
Number: 36/2004
Date enacted: 10/11/2004
Commencement date: Commencement order(s) to be made (per s19(2) of the act)

Private Security Services Act, 2004
Number: 12/2004
Date enacted: 4/5/2004
Commencement date: Commencement order(s) to be made (per s1(2) of the act): 28/10/2004 for part 1 (ss1-5), ss6, 7, 8, 9, 10, 11, 12, 17, 18, 19, 20 and schedule 1 (per SI 685/2004)

Public Health (Tobacco) (Amendment) Act, 2004
Number: 6/2004
Date enacted: 11/3/2004
Commencement date: Commencement order(s) to be made (per s20 (2) of the act): 29/3/2004 for ss2, 3, 15, 16, 17, 18, 19, 20 (per SI 111/2004)

Public Service Management (Recruitment and Appointments) Act, 2004
Number: 33/2004
Date enacted: 6/10/2004
Commencement date: 6/10/2004; establishment-day order to be made appointing an establishment day for the Commission for Public Service Appointments and for the Public Appointments Service (per s3 of the act)

Public Service Superannuation (Miscellaneous Provisions) Act, 2004
Number: 7/2004
Date enacted: 25/3/2004
Commencement date: 25/3/2004

Residential Tenancies Act, 2004
Number: 27/2004
Date enacted: 19/7/2004
Commencement date: Commencement order(s) to be made (per s2 of the act): 1/9/2004 for part 1, part 4, part 5 (other than ss71 and 72), part 7, part 8 (other than s159(1)), part 9 (other than ss182, 189, 190, 193(a), 193(d), 195(4) and 195(5)) and the schedule (per SI 505/2004); 1/9/2004 for the establishment day for the purposes of part 8 (establishment of the Private Residential Tenancies Board) (per SI 525/2004); 6/12/2004 for all other sections of the act not already commenced (per SI 750/2004)

Road Traffic Act, 2004
Number: 44/2004
Date enacted: 22/12/2004
Commencement date: Commencement order(s) to be made for all sections except section 36, which came into force on 22/12/2004, the date of enactment (per s1(2) of the act): 20/1/2005 for part 1 (ss1-3), part 2 (ss4-15, speed limits), section 27 (exemptions for emergency vehicles) and section 32 (amendment of definition of 'registered owner') (per SI 8/2005); 24/1/2005 for part 3 (ss16-23 fixed charges, penalty points and outsourcing) and part 4 (ss24-33 miscellaneous) except insofar as part 4 is already in operation (per SI 26/2005)

Social Welfare Act, 2004
Number: 41/2004
Date enacted: 17/12/2004
Commencement date: Various – see act

Social Welfare (Miscellaneous Provisions) Act, 2004
Number: 9/2004
Date enacted: 25/3/2004
Commencement date: Various – see act; and 5/4/2004 for ss22 and 23 (per SI 141/2004), 1/5/2004 for s17 (per SI 184/2004), 1/1/2004 for ss13 and 16 (per SI 406/2004), 18/10/2004 for s8 (per SI 658/2004), 19/11/2004 for s9 (per SI 756/2004)

State Airports Act, 2004
Number: 32/2004
Date enacted: 21/7/2004
Commencement date: 21/7/2004 for all sections, except part 3 (ss20-24, aviation regulation), which came into force on the Dublin appointed day (per s20 of the act). Appointment-day orders to be made for the new airport authorities: 1/10/2004 appointed as the Dublin appointed day (per SI 531/2004)

Tribunal of Inquiry into Certain Planning Matters and Payments Act, 2004
Number: 39/2004
Date enacted: 15/12/2004
Commencement date: 15/12/2004

Tribunals of Inquiry (Evidence) (Amendment) Act, 2004
Number: 13/2004
Date enacted: 5/5/2004
Commencement date: 5/5/2004

Twenty-seventh Amendment of the Constitution Act, 2004
Date enacted: 24/6/2004
Commencement date: 24/6/2004

Prepared by the Law Society Library

SOLICITORS DISCIP

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 Colm Murphy, solicitor, practising as Colm Murphy & Company, Solicitors, at Market Street, Kenmare, Co Kerry, and as Murphys at 1 Chapel Street, Killarney, Co Kerry and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002* [5306/DT331]
Law Society of Ireland (applicant)
Colm Murphy (respondent solicitor)

On 21 October 2003, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he had:

a) Failed, up to the date of the swearing of the society's affidavit on 29 April 2002 without reasonable excuse, to comply with a direction of the Registrar's Committee of the Law Society of Ireland made on 29 May 2001 pursuant to section 8(1) of the *Solicitors (Amendment) Act, 1994*.

The tribunal ordered that the respondent solicitor:

a) Do stand censured, advised and admonished
b) Pay a sum of €4,000 to the compensation fund, and
c) Comply with the direction of the Registrar's Committee of the Law Society of Ireland made on the 29 May 2002 pursuant to section 8(1) of the *Solicitors (Amendment) Act, 1994*.

The High Court, 2004, no 142 SA
In the matter of Brendan McManus, a solicitor previously carrying on practice at 35 Beaufield Manor, Stillorgan, Co Dublin, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002* [4089/DT440]
Law Society of Ireland (applicant)
Brendan McManus (respondent solicitor)

On 24 August 2004, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that he:

a) Up to the date of swearing of the society's affidavit of 3 March 2004, failed to register his client's title in the Land Registry in a timely manner or at all
b) Failed to communicate with his client in a timely manner or at all
c) Failed to report that he had received a Land Registry query to the Law Society, as requested by the society in its letter dated 12 May 2003
d) Failed to comply with the section 10 notice served on the solicitor on 14 February 2003 to submit his file to the society within ten days
e) Failed to respond to the society's correspondence, and in particular the society's letters of 14 February 2003, 13 June 2003, 20 August 2003, 28 August 2003 and 12 September 2003.

The tribunal reported to the High Court and recommended that:

a) The respondent solicitor may not be permitted to practise as a sole practitioner and should be permitted only to practise as an assistant solicitor under the direct control and supervision of a solicitor of at least ten years' standing who shall be approved in advance by the appropriate committee of the Law Society of Ireland
b) The respondent solicitor pay the costs of the Law Society of Ireland in relation to the hearing before the tribunal, to be taxed in default of agreement.

On 22 November 2004, the president of the High Court ordered:

1) That the respondent solicitor be prohibited from practising as a sole practitioner and that he be permitted only to practise as an assistant solicitor under the direct control and supervision of a solicitor of at least ten years' standing, to be approved in advance by the appropriate committee of the Law Society – that the respondent be at liberty to apply after the expiration of a period of 12 months from the date of the order in the event of his being unable to remain in employment
2) That the respondent solicitor do pay to the applicant its costs of the proceedings before the disciplinary tribunal and also the costs of and incident to the application to the High Court and order to be taxed in default of agreement – execution on foot of the said order for costs to be stayed for a period of six months from the date of the order.

The High Court, 2004, no 164 SA
In the matter of Daniel P Hurley, solicitor, practising as DP Hurley & Company, Solicitors, at 5 Mary Street, Galway and as John NM Lavelle at The Sound, Westport, Co Mayo, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002* [6611/DT445/04]
Law Society of Ireland (applicant)
Daniel P Hurley (respondent solicitor)

On 12 October 2004, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in respect of the following complaints in that he:

a) Allowed a deficit to arise in his client account, quantified at £297,436 as of 30 September 2000
b) Allowed £231,943 of the deficit to arise when monies were drawn from a deposit received on behalf of a client in circumstances where the deposit should have been left intact pending execution of the contract
c) Made a false declaration of the total consideration in relation to a conveyancing transaction in a 'particulars delivered' document required by the Revenue Commissioners for the purposes of ascertaining stamp duty liability as set out in paragraph 2.2 of the investigation report dated 22 January 2001, thereby defrauding the Revenue of the correct amount of the stamp duty payable
d) Disclosed that he was involved in obtaining £80,000

LINARY TRIBUNAL

cash in £20 notes and was present when the £80,000 was paid under the counter as part of the purchase price of a property being purchased by a named company as set out in paragraph 2.2 of the investigation report, thereby defrauding the Revenue

e) Disclosed that he was involved in obtaining £20,000 in cash and was present when the £20,000 was paid to the spouse of the vendor of a property being purchased by a named company as set out in paragraph 2.2 of the investigation report, thereby defrauding the Revenue

f) Was a one-third shareholder of a named company in respect of which he was also the company solicitor. The solicitor on multiple occasions used other clients' monies drawn from the client account for the benefit of the company concerned, causing debit balances to arise in respect of the company in the clients' ledger. The debit balance in the client ledger account in respect of the company amounted to £599,131.42 as of 30 September 2000

g) Drew other clients' monies out of the client account, which he utilised for his holiday home

h) On a number of occasions, as set out in the investigation report, misappropriated clients' monies on or about times when office account payments were dishonoured by his bank

i) On three occasions paid wages out of the client account, which accounted for £1,045 of the deficit as of 30 September 2000

j) Partly utilised clients' funds to discharge a payment of £4,868.74 arising out of proceedings issued against him for unpaid VAT and PAYE, as set out in paragraph 2.21 of the investigation report

k) Misapplied approximately £27,000 of clients' monies between May and October 2000 when he created a debit balance of £27,760.64 in total on a named client's ledger account

l) Dissipated stakeholders' funds held on behalf of a named company amounting to £234,000, leaving only £2,056.58, which was the main component of the deficit as at 30 September 2000

m) Borrowed clients' money belonging to a named company without written authorisation to do so.

The tribunal reported to the High Court and recommended that:

a) The respondent solicitor not be permitted to practise as a sole practitioner, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Law Society

b) The respondent solicitor pay the whole of the costs of the Law Society of Ireland to be taxed in default of agreement.

On 13 December 2004, the president of the High Court ordered that the respondent solicitor be prohibited from practising as a sole practitioner and that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Law Society and that the respondent solicitor do pay to the applicant its costs of and incident to the application and order and also the costs of the proceedings before the disciplinary tribunal, such costs to be taxed in default of agreement.

In the matter of John B Harte, solicitor, practising under the style and title of James Harte & Son, 39 Parliament Street, Kilkenny, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts, 1954-2002* [2259/DT399/03]
Law Society of Ireland (applicant)
John B Harte (respondent solicitor)

On 7 December 2004, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he had:

a) Failed to respond in a timely manner to the complainants' correspondence in relation to the delay in closing the sale

b) Failed to respond to the complainants' enquiries as to the whereabouts of the purchase monies

c) Failed to respond to the society's specific enquiry as to whether or not he held the purchase monies on deposit receipt and to detail interest accrued thereon

d) Failed to reply to letters from the society and in particular the society's letters of 7 November 2002, 19 November 2002, 2 December 2002 and 21 February 2003

e) Failed to attend at the Registrar's Committee meeting on 18 February 2003 and on 25 March 2003, despite being requested to do so.

The tribunal ordered that the respondent solicitor:

i) Do stand censured

ii) Pay a sum of €6,000 to the compensation fund

iii) Pay the whole of the costs of the Law Society of Ireland and of any person appearing before the tribunal, as taxed by a taxing master of the High Court, in default of agreement.

The High Court, 2004, no 1 SA
In the matter of Thomas Flood, a solicitor carrying on practice under the style and title of Esmond Reilly, Solicitors, at Dargan House, Fenian Street, Dublin 2, and in the matter of the *Solicitors Acts, 1954-2002*
Law Society of Ireland (applicant)
Thomas Flood (respondent solicitor)

On 21 June 2004, the president of the High Court made an order:

1) That Thomas Flood be restrained until further order from practising other than as an assistant solicitor in the employment of a solicitor of at least ten years' standing to be approved by the Law Society of Ireland and in the absence of such approval to be approved by the president of the High Court on notice to the said society

2) That for a period of five years at least from the date of the order, Thomas Flood be prohibited from giving any solicitor's undertaking on his own behalf or on behalf of any solicitor or firm by whom he might be from time to time employed

3) That Thomas Flood do pay to the society the costs of the society of the proceedings before the disciplinary tribunal and the High Court when taxed and ascertained, said costs to be taxed in default of agreement.

The president placed a stay on the order for a period of 28 days from the date of the order.

The president had before him three reports of the disciplinary tribunal.

In respect of case number 4412/DT402, the disciplinary tribunal had found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to comply with an undertaking given to the complainants on 15 November 2002 to deal with any Land Registry queries arising from the application of his clients for registration as owners of the folio and the complainants' clients' application for registration.
b) Failed to respond to the complainants' correspondence and in particular their letter of 16 December 2002 requesting that he furnish them with his clients' dealing number
c) Failed to respond to correspondence from the society and in particular the society's letters of 26 February 2003, 11 March 2003, 24 March 2003 and 28 April 2003
c) Failed to attend at a Registrar's Committee meeting on 6 May 2003, despite being requested to do so.

In respect of case number 4412/DT404, the disciplinary tribunal had found the respondent solicitor guilty of misconduct in his practice as a solicitor in that:

a) Up to the date of swearing of the society's affidavit on 12 August 2003, he failed to comply with an undertaking given on 30 July 1999 to forward an original deed of assignment dated 14 May 1997 duly stamped and registered in a timely manner or at all
b) He failed to respond to multiple correspondence from the complainants
c) He failed to respond to the society's correspondence
d) He failed to attend at the Registrar's Committee meetings on a number of occasions, despite being requested to do so.

In respect of case number 4412/DT406, the disciplinary tribunal had found the respondent solicitor guilty of misconduct in his practice as a solicitor in that:

a) Up to the date of swearing of the society's affidavit on 12 August 2003, he failed to comply with an undertaking dated 4 February 2002 in a timely manner or at all
b) He failed to reply to the society's correspondence, in particular the society's letters of 20 March 2003, 3 April 2003 and 25 April 2003
c) He failed to attend at the Registrar's Committee meeting on 6 May 2003, despite being requested to do so.

The High Court

In the matter of Raymond Jameson, solicitor, carrying on practice under the style and title of Jameson & Company at Fitzwilliam Square, Wicklow, Co Wicklow, and in the matter of the *Solicitors Acts, 1954-2002*

Take notice that by order of the High Court made on Monday 29 November 2004, it was ordered that the name of Raymond Jameson, solicitor, formerly practising under the style and title of Jameson & Company at Fitzwilliam Square, Wicklow, Co Wicklow, be struck off the roll of solicitors. G

Personal injury judgment

Slip and fall in restaurant – whether negligence and breach of statutory duty – test of balance of probabilities whether floor in restaurant was or was not unsafe

CASE

***Patricia Coleman v Shoney's Diner*, judgment of Gilligan J delivered on 8 July 2003.**

THE FACTS

Ms Coleman resided in the Curragh, Co Kildare, and was born on 21 March 1947. She was involved in an accident on the premises of Shoney's Diner in Main Street, Rathdangan, Co Kildare on 11 August 2000, when she slipped and fell heavily, suffering an injury to her left ankle.

Ms Coleman was convinced that the 'accident' occurred at a point in time prior to the floor of the premises being re-tiled. This issue was crucial to the case. The owners of the restaurant maintained that Ms Coleman's description of the premises prior to the re-tiling of the restaurant was inaccurate. The owners of the restaurant adamantly maintained that Ms Coleman was totally incorrect in her recollection as to the condition and layout of the premises at the time of her accident: they stated that the re-tiling had already taken place and this occurred on or about 29 June 2000, so that in fact when Ms Coleman fell on or about 11 August 2000, the premises had already been re-tiled.

THE JUDGMENT

The matter came before Gilligan J of the High Court, who delivered his judgment on 8 July 2003. The judge stated that there was no agreement whatsoever on the evidence as adduced on the part of Ms Coleman and on the part of the diner as to the condition and layout of the floor at the time of Ms Coleman's accident. Neither side made any concession, but subsequent to the new tiles being taken up at an engineering inspection carried out on Saturday 31 May 2003, it became apparent – and indeed it was uncontested – that Ms Coleman's description of the floor prior to it being re-tiled was incorrect.

Evidence had been given by the grandson of Ms Coleman, John Coleman, to the effect that there had been a concrete area immediately inside a door that stretched for a foot to a brass bar associated with the door saddle.

Gilligan J stated that the case quite simply was that Ms Coleman had alleged that the floor was in such condition that the brass bar beside the saddle of the door had to be 'contaminated', so that when she put the sole of her left shoe on the brass bar she slipped and fell, as a result of which she sustained an injury. Ms Coleman alleged that the cleaning system was inadequate. Witnesses for Ms Coleman, her grandson and another person, all maintained that the premises had not been re-tiled at the time of Ms Coleman's fall on 11 August 2000.

There had been evidence that the premises had been re-tiled, with the work commencing on the evening of Wednesday 28 June 2000. Gilligan J stated that the onus of proof in this case was upon Ms Coleman to satisfy the court on the balance of probabilities that the floor was in the condition as described by her on the day of her accident.

Gilligan J held that on any interpretation of the evidence, Ms Coleman's recollection was incorrect. The judge held that the evidence of others was more accurate.

On the issue of the re-tiling of the relevant premises, the judge accepted the evidence of management as to the date when the re-tiling was carried out and noted that management had the benefit of a roster book to corroborate the factual position. Accordingly, in relation to the pre-existing situation, Ms Coleman failed to discharge the onus of proof by satisfying the court that the floor corresponded to her description given in evidence.

In any event, Gilligan J was satisfied as a matter of probability that the floor was in fact re-tiled on 28, 29 and 30 June 2000 and, accordingly, so far as Ms Coleman met with a fall on or about 11 August 2000, she fell on the floor in its re-tiled condition. He was satisfied on the evidence that, in such circumstances, having regard to Ms Coleman's description of events, no case was made out for the owners of the diner to answer on the basis of negligence or breach of duty or breach of statutory duty. Accordingly, Gilligan J dismissed Ms Coleman's claim. G

This judgment was summarised by solicitor Dr Eamonn Hall.

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CONVEYANCING

Contract law, land law

Property – completion notice – specific performance – motion to dismiss – delay – claim for interest – conveyancing – contract – practice and procedure – time limits – service of completion notice – whether vendors entitled to interest – whether claim should be dismissed

The plaintiffs had entered into a contract with the defendants to sell the defendants some lands. The contract of sale provided that the bulk of the monies would be paid within six months of the date of the contract and the balance payable six months thereafter. There was also a provision relating to a timely closure of the sale and the refund of a certain sum. Difficulties subsequently arose and ultimately the plaintiffs served a completion notice on the defendants. Specific performance proceedings were thereafter instituted and a compromise was reached and the sale closed. As such, the proceedings continued as plenary proceedings relating to a claim of interest for delay. The defendants submitted that there were a number of problems, such as wayleaves, pipelines and other claims, that had precluded the vendors from giving good title and therefore that they were not responsible for the delay.

Smyth J dismissed the proceedings. Neither at the date six months from the date of the contract, or on the date of the completion notice or its expiry or at the expiry of the extension of time were the plaintiffs as vendors, willing and able to complete the sale in accordance with the contract. Throughout the entire period, there existed a difficulty of a wayleave with the local authority. The defendants as purchasers were not responsible for the delays encountered in bringing the sale to a conclusion.

***Birmingham and Anor v Coughlan and Anor*, High Court, Mr Justice Smyth, 9/6/2004** [FL10108]

CRIMINAL

Case stated, practice and procedure

Making of valid complaint – issuing of summons – practice and procedure – jurisdiction of District Court – whether summons issued within applicable time limit – whether invalidity of summons cured by attendance – Petty Sessions (Ireland) Act 1851 – Courts (Supplemental Provi-sions) Act, 1961, *section 52*

The accused had been charged with an offence contrary to the *Road Traffic Acts*. The offence allegedly occurred in December 2000 and the relevant summons was applied for some eight months later. When the accused appeared in court, counsel on behalf of the accused sought the dismissal of the summons on the grounds that it was applied for outside the six-month time limit as set out in the *Courts (No 3) Act, 1986* and section 10 of the *Petty Sessions (Ireland) Act 1851*. In the District Court, the judge had held that the giving of evidence of arrest, charge and caution by way of certificates to the District Court some days after the alleged offence was, in fact, the making of a complaint and thus the relevant time limit had been complied with. Counsel for the accused then requested that a case be stated for the opinion of the High Court.

Murphy J answered the case stated. The jurisdiction to hear an alleged offence depended upon the making of a complaint to the relevant authority. Neither summons nor warrant to arrest conferred jurisdiction, but were merely processes to compel the attendance of the person accused. A complaint had not been made within the six-month time limit. This defect in the summons was not capable of being rectified merely by the attendance of the accused. An appearance to challenge the validity of a summons was not a step in proceedings. The district judge was wrong in law to have proceeded on the basis of the summons.

***DPP v Garbutt*, High Court, Mr Justice Murphy, 4/5/2004** [FL10048]

Certiorari, judicial review

Certiorari – mandamus – *unreasonableness* – Transfer of Sentenced Persons Act, 1995 – Transfer of Sentenced Persons (Amendment) Act, 1997 – *whether the minister's decision was unreasonable or irrational in that there was no material to sustain that decision*

The applicant, who was a British national, sought by way of judicial review an order of *certiorari* quashing the decision of the respondent to refuse to transfer him to Britain to serve the remainder of his sentence in a British prison, pursuant to the provisions of the 1995 act. He also sought, in addition to numerous declarations, an order of *mandamus* directing the respondent to consent to his transfer to a British prison. He submitted that the reason for the respondent's decision, which was the possibility that new evidence might come to light that would satisfy the requirements of the DPP to direct charges against the applicant in relation to two other murders, was irrational and unreasonable.

Kearns J refused the application, holding that:

1) The minister, in considering the application, acted reasonably and within the spirit and intent of the act. Further, the minister exercised his discretion in a manner that was not unreasonable at that time in the sense of being irrational or without material to sustain same. Accordingly, the decision of the minister should not be set aside, as compelling reasons were not advanced by the applicant
2) There were no reasons for extending the purview of the judicial review remedy by applying an 'anxious scrutiny' test in a case of this nature.

***Nash v The Minister for Justice, Equality and Law Reform*, High Court, Mr Justice Kearns, 5/11/2004** [FL10157]

Delay, extradition

Practice and procedure – grounds of ill health – whether unjust to deliver up plaintiff – whether plaintiff able to give instructions – Extradition Acts, 1965-1994

The plaintiff had been charged with offences in Britain, involving offences against minors. He absconded to this jurisdiction before his trial, where he was eventually discovered. He was subsequently arrested and orders were made pursuant to section 47 of the *Extradition Act, 1965* for his extradition. In these proceedings, the plaintiff sought an order of release pursuant to section 50 of the *Extradition Act, 1965*, as amended. He contended that an order of release should be made on the basis of the delay that had occurred. It was also contended that due to his ill health, it would be unjust,

invidious or oppressive to proceed with the extradition.

Ó Caoimh J refused the relief sought. The delay complained of could not be said to be extraordinary. In addition, having regard to the age of the complainants at the time of the alleged commission of the offences, the delay complained of could not be described as exceptional. Although the plaintiff did not enjoy good health and needed some recovery, it was clear that if he were extradited, there would be a period of some time before he was tried. The medical evidence adduced fell short of the standard required in order for the court to conclude that it would be unjust, invidious or oppressive to proceed with the extradition.

***Carne v Assistant Garda Commissioner O'Toole*, High Court, Mr Justice Ó Caoimh, 2/7/2004** [FL10083]

Delay, judicial review

Right to expeditious trial – sexual offences – prejudice – dominance – stress and anxiety caused to accused – whether order of prohibition should be granted – whether real risk of unfair trial – whether defence of accused prejudiced

The applicant sought an order of prohibition to prevent his trial for sexual offences from proceeding. The charges related to offences allegedly committed against four complainants. The offences allegedly took place between 1962 and 1975. The first complaint was made in 1996 and the applicant was first interviewed by An Garda Síochána in 1999. The applicant claimed that there had been inordinate and inexcusable delay by the state in the prosecution of the offences. In addition, it was claimed that the applicant had suffered actual prejudice in his capacity to defend himself by reason of the lapse of time between the date of the commission of the alleged offences and the date of trial. It was also submitted that a number of potential witnesses were dead or that memories of other witnesses had deteriorated, which had prejudiced the applicant's defence.

Quirke J granted the order of prohibition sought. In relation to two of the complainants, there was no medical or psychological condition that prevented them from making the complaints. The principal reason for these complainants to have made their complaints might have been to support the other complainants, but this was insufficient to justify the delay that had occurred. An order of prohibition would be granted in respect of these charges. In relation to the other two complainants, there was evidence of dominion by the applicant and continuing effects. However, due to the inordinate delay by the prosecuting authorities and the lapse of time that had occurred, which had affected the evidence available to the applicant, there was an overall degree of prejudice that gave rise to a real and serious risk of an unfair trial.

***G(V) v DPP*, High Court, Mr Justice Quirke, 30/4/2004** [FL10068]

Offence of affray

Appeal – offence of affray – whether prima facie *case of affray – whether judge erred in charge to jury in relation to law when two views open* – Criminal Justice (Public Order) Act, 1994

The applicants sought leave to appeal against their convictions on a charge of affray contrary to section 16 of the *Criminal Justice (Public Order) Act, 1994*. The applicants advanced a number of grounds of appeal, including that the trial judge should have withdrawn the count of affray from the jury when requested to do so by counsel for the applicants; that the convictions on the count of affray were inconsistent with the acquittals on the assault counts; and that the convictions were perverse.

The Court of Criminal Appeal treated the applications as the hearing of the appeals, allowed the appeals and quashed the convictions, holding that there was no evidence of the first applicant using, or threatening to use, unlawful violence towards any other person, and specifically towards any member of a group of two or more people. Therefore, there was no *prima facie* case against the first applicant on the charge of affray. As regards the second applicant, the trial judge erred in his charge to the jury in relation to the law where there were two views open.

***Reid v DPP*, Court of Criminal Appeal, 12/2/2004** [FL10150]

LEGAL PROFESSION

Personal Injuries Assessment Board

Judicial review – Personal Injuries Assessment Board – jurisdiction – procedures – PIAB adopting procedure of refusing to communicate with claimant's solicitors – whether respondent acting outside statutory authority by adopting procedure of refusing to communicate with claimant's solicitor – whether should be quashed – whether respondent acting ultra vires – Personal Injuries Assessment Board Act, 2003, *section* 7

Section 7 of the *Personal Injuries Assessment Board Act, 2003* provides that:

'*1) Nothing in this act is to be read as affecting the right of any person to seek legal advice in respect of his or her relevant claim and no rule shall be made under section 46 that affects that right.*

'*2) Sub-section (1) shall not be read as requiring any procedure to be followed by the board or hearing to be conducted by it that would be required to be followed or conducted by a court were the relevant claim concerned to be the subject of proceedings*'.

The applicant, through his solicitors, instituted a claim for compensation for personal injuries with the respondent. Subsequently, the respondent indicated that it would refuse to correspond directly with his solicitors but would copy correspondence to them. The applicant submitted that the respondent, in declining to accept or act upon the client authorisation furnished by his solicitors, by corresponding directly with the applicant (and copying such correspondence to his solicitors), was acting in breach of section 7 of the *Personal Injuries Assessment Board Act, 2003*, or without authority under any other provision of the act. The applicant also alleged that it interfered with his constitutionally-protected rights to effective legal representation.

MacMenamin J held for the applicant and left over for further consideration the precise terms of the order that should ensue, ruling that the respondent, in declining to accept or act upon the client authorisation by corresponding directly with the applicant (and copying such correspondence to his solicitors), was acting without warrant under section 7 of the *Personal Injuries Assessment Board Act, 2003*. In light of the decision on the question of *vires*, it was unnecessary to advance to a consideration of whether the respondent was acting in breach of the applicant's constitutional rights.

***O'Brien v Personal Injuries Assessment Board*, High Court, Mr Justice MacMenamin, 25/1/2005** [FL10137]

LITIGATION

Amendment of pleadings

Practice and procedure – amendment of pleadings – notice of discontinuance – prejudice – whether amendment should be allowed – whether notice of discontinuance could be withdrawn – Rules of the Superior Courts 1986

The plaintiff and his brother were directors of a company. They had a controlling interest in a lease of a hotel premises from the defendants. A dispute arose over the payment of rent that the defendants sought to recover and there was a counterclaim by the lessees over allegations that the defendants were involved in making defamatory phone calls concerning the

lessees. Subsequently, substantial damages were awarded by the High Court to the lessees. During the on-going litigation that had arisen, the plaintiff had issued a notice of discontinuance as against the third-named defendant. However, owing to a ruling issued by the Supreme Court regarding the actions of the third-named defendant, the plaintiff now sought to withdraw his notice of discontinuance and deliver an amended statement of claim. It was submitted that due to the emergence of new facts, it was also appropriate to allow the amended statement of claim.

O'Sullivan J allowed the application. Not to allow the notice of discontinuance to be withdrawn would be closer to punishing the plaintiff rather than ensuring that the real issues between the parties be dealt with at trial. The decision of the Supreme Court on the plaintiff's brother's counterclaim was clearly highly relevant and something that the court should take into account. The balance of justice was in favour of allowing the notice of discontinuance to be withdrawn. In addition, it was appropriate to allow an amended statement of claim to be delivered.

***Smyth v Tunney and Others*, High Court, Mr Justice O'Sullivan, 29/1/2004** [FL10131]

REFUGEE AND ASYLUM

Certiorari, fair procedures

Immigration – asylum – judicial review – certiorari – *lack of credibility – refugee law – practice and procedure – fair procedures – whether decision of Refugee Appeals Tribunal flawed – whether failure to properly consider evidence of applicant* – Refugee Act, 1996 – Illegal Immigrants (Trafficking) Act, 2000

The applicant had arrived in the state and had applied for refugee status. The applicant was refused refugee status by the Refugee Appeals Commissioner and on appeal by the Refugee Appeals Tribunal. The applicant then initiated the present application, seeking leave to bring judicial review proceedings. Counsel on behalf of the applicant submitted that the Refugee Appeals Tribunal erred in law and adopted unfair procedures in assessing the credibility of the applicant, had failed to consider the various reports given by the applicant of his travel details, and had failed to consider his explanations for any misstatements in that regard.

Herbert J refused leave to bring judicial review proceedings. It was open to the relevant member of the Refugee Appeals Tribunal on the facts to find against the applicant and to reach the conclusions regarding his credibility. This conclusion could not be said to be indefensible as contrary to reason and common sense. The applicant had not established substantial grounds as set out in the *Illegal Immigrants (Trafficking) Act, 2000* and leave would be refused.

***A(EJ) v Refugee Applications Commissioner and the Refugee Appeals Tribunal*, High Court, Mr Justice Herbert, 5/3/2004** [FL10062]

Deportation, judicial review

Immigration – asylum – ultra vires – *deportation order – judicial review – whether the applicants were deprived of fair procedures in their application for asylum* – Immigration Act, 1999 *(deportation) regulations 2002* – Refugee Act, 1996

The first-named applicant came to this state from South Africa with her son and daughter, who were the second- and third-named applicants respectively. The first-named applicant applied for asylum and was refused. She unsuccessfully appealed and the first-named respondent made deportation orders against each of the applicants. Consequently, the applicants sought, by way of an application for judicial review, a declaration that the Immigration Act, 1999 *(deportation) regulations 2002* were *ultra vires* and void. The applicants also sought an order of *certiorari* quashing the deportation orders and the notification of same.

Butler J refused the relief sought, holding that the applicants were not deprived of fair procedures. The first-named respondent did apply his mind to section 4 of the *Criminal Justice (United Nations Convention against Torture) Act, 2000*. The applicants failed to establish that internal relocation was a basis for the decision of the first-named respondent. Furthermore, the deportation order was valid, despite failing to state the country to which the applicants were to be returned, because there would be no question of deporting the applicants anywhere than to the Republic of South Africa.

***Sibiya v The Minister for Justice, Equality and Law Reform*, High Court, Mr Justice Butler, 2/12/2004** [FL10151] G

The information contained here is taken from FirstLaw's Legal Current Awareness Service, published every day on the internet at www.firstlaw.ie. *For more information, contact bartdaly@firstlaw.ie or FirstLaw, Merchant's Court, Merchant's Quay, Dublin 8, tel: 01 679 0370, fax: 01 679 0057.*

Law Society of Ireland

ANNUAL CONFERENCE

30 March – 3 April, 2005

KRACOW 2005

President Owen Binchy invites you to join him at the Society's Annual Conference in Kracow from 30th March to the 3rd April 2005. Kracow is the most legendary and beloved of Poland's cities. Hospitable, vibrant and fascinating, with a renaissance charm plus plenty of sights; arguably the largest old town square in Europe with a bugle call every hour, the king's castle Wawel, Gothic art masterpieces, the old Jewish quarter Kazimierz, man made hills and much more. This year the theme of the conference will be *East Meets West* and you cannot fail to be impressed by the panel of distinguished speakers who will address a wide range of topics.

Please note full brochure and booking form were printed in the December issue of the *Gazette,* and are also available to download from the Law Society website *www.lawsociety.ie.* For further information, please contact Evelyn O'Sullivan, Law Society of Ireland, Blackhall Place, Dublin 7. Tel: 01 672 4823, e-mail: e.osullivan@lawsociety.ie.

The charter flight departure time been changed to 12 noon on Wednesday 30th March to facilitate delegates making train/flight connections to and from Dublin Airport.

ADVANCE BOOKING FORM AND PAYMENT

Delegate name: _____

Name(s) of accompanying person(s): _____

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Tel: _____ Fax: _____ E-mail: _____

BY CHEQUE: I enclose a cheque in the sum of € _____ (€450 per person travelling) representing booking fee (€450 per person travelling).

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Expiry date: ____/____/____ Amount: _____

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Please return the above completed form and payment to: Evelyn O'Sullivan, Law Society of Ireland, Blackhall Place, Dublin 7. DX79.
Tel: 01 672 4823; fax: 01 672 4833; e-mail: e.osullivan@lawsociety.ie

Eurlegal

News from the EU and International Affairs Committee

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

The EU *Technology transfer block exemption regulation*: developing new horizons for Irish business

The application of EU competition rules to technology transfer is, by any standard, an arcane and esoteric subject. Yet the importance of the extent to which the EU competition rules – and more importantly the extent to which they do not – apply to technology transfer agreements involving Irish companies has been significantly boosted by two separate policy developments unconnected with competition law.

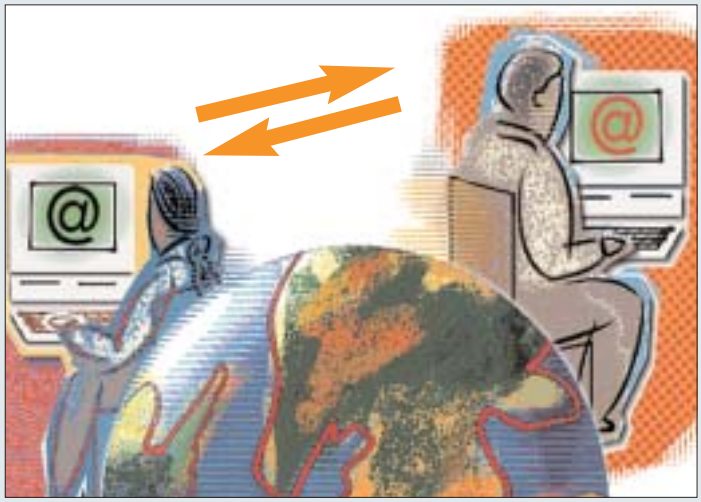
In June 2004, the *Enterprise strategy report* was published, highlighting how Irish enterprise policy will need to be redirected for Irish companies to gain new commercial capabilities, including building technological and applied research and development (R&D) capability.

In November 2004, the *Kok report* underlined the importance of developing innovative and research-based sectors as a driver for the future economic development of the whole of the EU.

The EU's *Technology transfer block exemption regulation* (TtBER), which entered into force on 1 May 2004. Irish companies engaging in technology transfer activities need to aware that the commercial value of their intellectual property (IP) licensing agreements could be jeopardised by EU and Irish competition law challenges.

Working with the TtBER after 1 May 2004

From 1 May 2004, the EU competition law framework within which Irish companies should negotiate their IP licensing agreements has fundamentally changed. Until then, any Irish company that entered into an IP licensing agreement that was not covered by – or exempted from – the application of the EU competition rules under the previous block exemption regulation (no 240/96/EC) could always notify that agreement to the European Commission in Brussels for an individual exemption. If successful, the Irish company could then have relied on the fact of the exemption in the event that the IP licensing agreement was challenged in court.



From 1 May 2004, it is no longer possible for Irish companies to obtain this kind of legal certainty by asking the commission for an individual exemption. This is due to the entry into force of council regulation 1/2003 under which (in vastly oversimplified terms) the commission has shared the power to enforce the EU competition rules with the national competition authorities (and courts) of the 25 EU countries.

Most importantly, under regulation 1/2003, the commission can no longer grant companies individual exemptions from the application of article 81(1) of the *EU treaty* for their potentially problematic agreements.

In practical terms, this means that before any Irish company enters into a potentially anti-competitive IP licensing agreement affecting trade with the EU countries, it should assess for itself whether that agreement is likely to be caught by the EU competition rules and, in the affirmative, decide for itself whether that agreement will be covered by the new TtBER.

Despite the 'decentralisation' of the enforcement of the EU competition rules under regulation 1/2003, the European Commission is likely to retain a central role in the application of the TtBER. According to one of the notices published with the regulation, the commission is best placed to act on a case where, for example, the TtBER needs to be applied in conjunction with other community policies that are exclusively/more effectively enforced by the commission.

This should include the macro-economic strategies to enhance R&D investment across the EU that have been endorsed very recently at the highest political levels (for example, as part of the follow-up to the Lisbon 2010 goals).

The starting point of the TtBER

Fortunately for Irish business, the commission's starting point in any assessment of the competitive effects of an IP licensing agreement is that IP licensing will mostly be pro-competitive, since it facilitates the diffusion of innovation and enables the efficient integration of technological assets of the licensor with the production assets of the licensee(s), where the licensor may not be the most efficient producer.

However, the commission is also concerned to ensure that patents and the patent system stimulate innovation and are not used for other defensive purposes, including delaying (follow-on) innovation.

The TtBER provides that a 'technology transfer agreement' means a:

1) Patent licensing agreement
2) Know-how licensing agreement
3) Software copyright licensing agreement
4) Mixed patent, know-how or software copyright licensing agreement (includes agreements relating to the sale and purchase of products or to the licensing of other IP rights or the assignment of IP rights, provided they do not constitute the primary object of the

agreement and are directly related to the application of the licensed technology, or

5) Assignments of patents, know-how, software copyright (or any combination) (provided that at least part of the risk associated with the exploitation of the technology remains with the assignor) between 'two undertakings' **and** that are directly related to the manufacture or production of goods with the benefit of the licensed technology.

Irish companies that plan to enter into an IP licensing agreement that does not meet this definition of a 'technology transfer agreement' should consider the compatibility of their agreement under article 81(1) of the *EU treaty* by analogy (if necessary) with the non-binding TtBER guidelines, published in the EU *Official journal* on 27 April 2004, as applied to their particular commercial circumstances.

An IP licensing agreement that falls into one of the following non-exhaustive categories will not benefit from the TtBER's automatic exemption and should therefore be assessed by analogy with the guidelines. Generally, these categories include those where:

- The parties' market shares exceed the thresholds set down in the TtBER (below)
- The agreement is between more than two companies
- There is no 'transfer' (or flow) of 'technology' from one company to another
- The agreement relates to other forms of IP rights (excluding trademarks), or
- The last IP right that constitutes the 'technology' transferred expires, is invalid or becomes public.

Moreover, any IP licensing agreement that contains a hard-core restriction need not be assessed any further – it is very likely to be illegal under the EU competition rules.

Hard-core restrictions

Irish companies should avoid inserting hard-core restrictions (HCRs) into their IP licensing agreements because this would automatically deprive the whole agreement of the protection from an EU (and Irish) competition law challenge by virtue of the TtBER when, as explained earlier, the individual exemption route is no longer available from 1 May 2004.

Any such challenge could, of course, have serious adverse consequences for the parties to the IP licensing agreement (for example, undermining the lawful contractual basis on which royalties are paid in return for the transfer of technology).

The TtBER distinguishes between the potential anti-competitive effects of those HCRs contained in IP licensing agreements between competitors and those in agreements between non-competitors.

The TtBER does not exempt any IP licensing agreement between competitors that contains any or all of the following four general categories of restrictions, including those that 'directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object' the:

- Restriction of re-sale prices
- Limitation of output or sales
- Allocation of markets and/or customers, or
- Restriction of a licensee's ability to exploit its own technology or to carry out research and development[1].

These four general categories are subject to a number of very important exceptions that, if available, would mean that (provided all the other conditions are met) the particular IP licensing agreement containing the HCR(s) could still benefit from the TtBER's exemption from the application of article 81(1) of the *EU treaty*.

The TtBER's automatic exemption from article 81(1) does not apply to an IP licensing agreement between non-competitors that:

- Restricts re-sale prices
- Contains certain field-of-use, customer, and territorial limitations, or
- Restricts sales to end users by licensees that belong to a selective distribution system.

Again, the exact scope of the TtBER's exemption for IP licensing agreements between non-competitors will largely be determined by the precise interpretation of the various exceptions to these three general categories of HCRs.

'Safe harbours'

As discussed above, the assessment of any IP licensing agreement under the TtBER should start with ensuring that it does not contain any HCRs. Assuming that it does not, then Irish companies should examine whether the IP licensing agreement falls within one of two alternative 'safe harbours'.

Irish companies should note that while there is no presumption of illegality attaching to IP licensing agreements that fall outside either of these 'safe harbours', the European Commission may take a different view from them regarding whether a particular restriction on competition is necessary for the agreement to work.

Market share thresholds

Provided that it does not contain any HCRs, the TtBER's exemption will be available on condition that:

1) Where the parties to the agreement are competitors, their **combined** market share does not exceed 20% on the affected relevant technology and product markets.
2) Where the parties to the agreement are non-competitors, **each** of their market shares does not exceed 30% on these markets.

The parties to the IP licensing agreement are considered as competitors:

- On the relevant product market: where (1) before the date of the IP licensing agreement, both companies were active on the same market(s) on which the products incorporating the licensed technology are sold without infringing each other's IP rights ('actual competitors'), or (2) the parties would have been likely, on realistic grounds, to invest to enter the relevant market(s) lawfully ('potential competitors')
- On the relevant technology market: where the companies license out competing technologies at the time they enter into the agreement.

The perennial difficulties associated with identifying and then calculating the parties' shares of a particular (product or technology) market was one of the main criticisms leveled at the first draft of the TtBER. Nevertheless, and consistent with its econometric overhaul of the other regulations providing exemptions from article 81(1) started in 1995, the European Commission persisted with market share thresholds as a test for situations where agreements between parties enjoying market power may be anti-competitive and (after 1 May 2004) require individual self-assessment under article 81(3).

The parties to the IP licensing agreement should calculate the relevant market shares as follows:

- On the relevant product market, the licensee's share should be calculated on the basis of the licensee's global sales on that market(s)
- On the relevant technology market, the licensor's market share is calculated on the basis of the sales by the licensor and all the licensees of products incorporating the licensed technology for each relevant market separately.

The TtBER allows for a full two-year extension of the exemption beyond any year in which the 20% or 30% thresholds are first exceeded.

The competing technology centres approach

The guidelines provide that 'outside the area of hardcore restrictions, article 81 is unlikely to be infringed where there are four or more independently controlled technologies in addition to the technologies controlled by the parties to the agreement that may be substitutable for the licensed technology at a comparable cost to the user'.

How reliable this alternative 'safe harbour' will be for Irish companies when assessing any potential competition problems arising from their IP licensing agreements that are not covered by the TtBER will depend to some extent on whether they decide to rely exclusively on the above text (contained in the non-legally binding guidelines) or also to seek informal guidance from the commission.

Excluded restrictions

Quite apart from the HCRs, the TtBER does not exempt the following restrictions from the application of article 81(1):

- Any (in)direct obligation on the licensee to grant an exclusive license (or to assign rights) to the licensor or to a third party in respect of its own severable improvements to or its new application of the licensed technology
- Any (in)direct obligation on the licensee not to challenge the validity of intellectual property rights held by the licensor.

These restrictions are not called HCRs but, if inserted in an IP licensing agreement, will have to be assessed individually for their potential anti-competitive effects. However, even if they are found to be illegal, then provided they are not fundamental clauses, they could be removed and the rest of the IP licensing agreement would continue (subject to all other conditions being satisfied) to benefit from the exemption provided by the TtBER.

Withdrawal of the exemption

Apart from its general powers to intervene set out in regulation 1/2003, the European Commission has retained two specific powers to ensure that the TtBER is enforced consistently across the EU 25.

Firstly, the commission can withdraw the exemption benefiting an individual IP licensing agreement if that agreement has undue anti-competitive effects, particularly where:

- The access of other companies' technologies to the market is restricted
- Potential licensees' access to the market is similarly restricted, or
- Without any objectively valid reason, the parties to the IP licensing agreement do not exploit the licensed technology.

Secondly, the commission could declare that the TtBER's exemption does not apply to a network of similarly anti-competitive IP licensing agreements covering more than 50% of a relevant market.

The benefit of the TtBER's exemption could also be withdrawn by a national competition authority if the main anti-competitive effects of the IP licensing agreement were felt in a single EU country.

When does the TtBER come into force?

The date of the IP licensing agreement will determine when Irish companies should assess the requirements of the TtBER:

- Agreements in force on/before 30 April 2004 – the TtBER (and guidelines) will apply in full from 31 March 2006 (but only if the agreement satisfies the conditions for exemption from article 81(1) in the old *Technology transfer block exemption regulation* (no 240/96) that ceased to apply from 1 May 2004)
- Agreements in force after 30 April – the TtBER applies from 1 May 2004.

What are the implications if an IP licensing agreement is not covered by the TtBER?

Provided it does not contain any HCRs, there is no presumption that an IP licensing agreement that is not covered by the TtBER – for example, because the parties' combined market shares exceed the relevant thresholds or because they involve more than two parties – is illegal under article 81(1) or would fail to qualify for an individual exemption under article 81(3) (if still available).

Consequently, from 1 May 2004, the national competition authorities or the courts of the 25 EU countries would have to establish (in the context of an investigation or private litigation) that the exemption conditions of article 81(3) were not satisfied before the agreement could be declared illegal (and the parties fined).

The scope of the automatic exemption in the TtBER (essentially based on the two-company/market-share thresholds) implies that in certain fast-moving sectors of the Irish economy, the TtBER, rather than serving as the main guide to the application of the EU competition rules to IP transactions, is likely to play a subordinate role to that of the guidelines.

In this respect, it has been said the TtBER is likely to function much like the 'antitrust safety zone' in paragraph 4.3 of the US guidelines that exempts transactions between parties with a very low market share. US commentators on the first draft of the TtBER pointed out that this was one of the least used parts of the US guidelines.

However, unlike their US counterpart, the TtBER guidelines go into considerable detail, describing how the European Commission will enforce the application of the EU antitrust rules to agreements not covered by the TtBER.

In particular, the guidelines set out how the commission will apply the TtBER by analogy to a variety of common features of IP licensing agreements, including royalty obligations, exclusive licensing and sales restrictions, and field-of-use restrictions.

The last substantive section of the guidelines is dedicated to how the commission would apply the TtBER by analogy to so-called 'technology pools' or platforms between more than two companies.

Ordinarily, the arrival of a new set of rules governing how the EU competition rules apply to IP licensing agreements involving Irish companies would be a good reason to start to understand and to devise a system for working with the new rules.

The *Enterprise strategy report* in June 2004 made it clear how important the whole issue of technology transfer will be to driving the application of R&D and technology to decisively reorientate Irish enterprise policy.

In other words, the ability of Irish companies that have or are about to enter into IP licensing agreements to benefit from the protection from EU (and Irish) competition law challenges offered by the TtBER – especially after 1 May 2004 and the abolition of the individual exemption option in Brussels under article 81(3) – will certainly play a major part in encouraging those companies to make the investments in R&D necessary to achieve the strategic national goals set out in the ESG report.

Footnote

1 *In the absence of an individual exemption under article 81(3) of the EU treaty (very unlikely for agreements containing HCRs), the consequences would include a significant reduction in the commercial value of (the portfolio) of IPRs licensed under the agreement, the possibility of administrative fines (for example, imposed by one of the 25 European NCAs or the commission) and the need to consider separating any IP licensing agreement covering the EU from the parties' global licensing strategies.* G

Conor Maguire is a Brussels-based solicitor.

Stuck in the middle with you

Law Society president Owen Binchy and director general Ken Murphy attended a meeting of the Midland Bar Association in January: *(seated, from left)* MBA secretary Aoife Cadden, MBA president Derek McVeigh, Ken Murphy, Owen Binchy, Caren Farrell, Bernie McArdle, MBA treasurer Michele Mellot; *(middle row, from left)* Marguerite Buckley, Tom O'Donovan, John Walsh, John Shaw, Corona Grennan, Mary Ward, Seamus McConnell, Helen O'Reilly, Kathy Garvey; *(back row, from left)* Patrick Martin, Richard Whelehan, Brian Mahon, Tom Farrell, Noel Conway, Padraig Quinn and Andrew Fay

Sound judgement

Judge Con Murphy, solicitor from Bandon in Cork, was recently appointed as a judge of the Circuit Court. He is a former president of the West Cork Bar Association

Fiscal rectitude

Pictured at the launch of the Law Reform Commission's *Report on a fiscal prosecutor and a Revenue Court* at the commission's offices on 31 January are finance minister Brian Cowen *(centre)*, LRC president Mr Justice Declan Budd and full-time commissioner Patricia Rickard-Clarke. In February, the commission also launched a *Consultation paper on charitable trust law* and a *Consultation paper on trust law*

Dance away

Last November, the Meath Solicitors' Bar Association had a presentation dinner dance to honour the elevation of Michael Peart to the High Court and the appointment of Judge Alice Doyle to the Circuit Court, and also to mark the retirement of solicitors Eileen Leahy and Margaret Casey from practice. Pictured at the event are *(back row, from left)* association president Kevin Martin, Law Society junior vice-president Brian Sheridan, Circuit Court judge Brian McMahon, Circuit Court judge Pat McCartan, Mr Justice Michael Peart, Circuit Court judge John O'Hagan, Circuit Court judge Raymond Groarke, district judge John Brophy, Law Society director general Ken Murphy; *(front row, from left)* Eileen Leahy, association president Pat Rogers, Margaret Casey, association treasurer Michael Keaveny, Circuit Court judge Alice Doyle and district judge Flan Brennan

Registering approval

Catherine Treacy, Land Registry chief executive, accepts the award for the overall best e-government category in the *Public sector times* e-government awards. The award was presented by Tom Kitt, minister of state at the Department of the Taoiseach *(left)*, and Oliver Ryan, director of REACH. The Land Registry also won the 'best central e-government' category

What a Corker

Cork law firm Ronan Daly Jermyn has scooped the Esat BT *Cork company of the year* award. Pictured at the award ceremony are guest speaker Peter Sutherland, Esat BT's Anne O'Leary, and the firm's managing partner John Dwyer

SADSI
Solicitors Apprentices Debating Society of Ireland

We're back! And the devil take the begrudgers!

Wednesday 16 February was an important date in the 121 years of SADSI: it marked the first debate we've had in a few years (according to my sources).

There was a magnificent attendance, and the quality of the panel was equally magnificent.

The debate – *'This house proposes that the Dóchas prison model should be the template for all prisons in Ireland'* – was chaired by Mr Justice Michael Peart, and Mountjoy Prison governor John Lonergan and Martin Tansey, president of the Irish Association for the Study of Delinquency, were guest speakers.

Mr Justice Michael Peart did a remarkable job of keeping the debate flowing, and our guest speakers, as always, not only entertained the 70-strong crowd but also managed to educate the enthusiastic students.

Debate chairman Mr Justice Michael Peart and SADSI chairman Liam Fitzgerald with the guest speakers and participants

A load of old wit

When it came down to the debate, the Kings Inns' Brendan Foley proposed the motion in a delightfully witty manner, which was appreciated by the audience. Next to speak was SADSI member Dylan Latimer. Dylan outlined the opposition's argument in a very clever manner, managing to praise the Dóchas model but still oppose the motion, on the grounds that the prison issue was the core of the debate.

Let no man mistake it: this gave our colleagues from the Inns food for thought. Next to speak for the Inns was Barry Ward, who reaffirmed the points outlined by his team-mate. Barry's argument was that the Dóchas model has more to offer by way of rehabilitation and is therefore better than retribution.

This led nicely to our final speaker, Jennifer Carroll, who, as Mr Justice Peart had noted, was 'chomping at the bit all night'. This, of course, was in reference to her clinical points of information and relentless efforts to thwart the proposition's argument.

Jennifer argued that while the Dóchas model was without question the best model, the current prison concept is flawed and so the prison model for Ireland should not be Dóchas, but perhaps instead some model like that in Finland, where they have managed to halve the numbers of people they jail.

The obligatory thanks

The debate was enthralling, but the event couldn't have taken place without some help. Therefore, SADSI would like to thank the Law School and Bank of Ireland for financial support, as well as the Law School staff, the guest chair and speakers, the debaters and, importantly, the SADSI officers: vice-auditor Deirdre Byrne, committee co-ordinator James Fitzmaurice, secretary Audrey Huggard and treasurer Paul Ryan.

Going over the top

But even more importantly, we would like to thank all who attended – the students, who are without doubt among the finest members SADSI have ever had. Their attendance made the evening the success that it was. There were some excellent points raised when the motion was opened to the floor and, on the evidence, future SADSI debates will be well worth attending.

Finally, the committee's objective is to make this year a year that SADSI members will enjoy and remember for a very long time.

Liam Fitzgerald, chairman

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 4 March 2005)

Regd owner: Anthony Hayes and Andree Dargan; folio: 18107F; lands: Pembroke and barony of Carlow; **Co Carlow**

Regd owner: Michael Ryan (deceased); folio: 3414; lands: Crowsgrove and barony of St Mullins Upper; **Co Carlow**

Regd owner: Victor Bredin, Corratober, Cavan; folio: 20176; lands: Fartan Lower; area: 4.4945 hectares; **Co Cavan**

Regd owner: Paul and Carmel McKiernan, Killaghaduff, Ballyconnell, Co Cavan; folio: 10185F; lands: Killaghaduff; area: 0.5130 hectares; **Co Cavan**

Regd owner: Terence McGovern, Kennedy Road, Dunboyne, Co Meath; folio: 651; lands: Altnasheen; area: 11.9255 hectares, 21.3988 hectares and 3.8976 hectares; **Co Cavan**

Regd owner: James Joseph and Anne Carmody; folio: 4375; lands: townland of Rahona East and barony of Moyarta; area: 1.4315 hectares; **Co Clare**

Regd owner: James Joseph and Anne Carmody; folio: 4373; lands: townland of Rahona East and barony of Moyarta; area: 7.1123 hectares; **Co Clare**

Regd owner: Reinhard C Drolshagen; folio: 4669F; lands: townland of Muckinish West and barony of Burren; area: 0.456 acres; **Co Clare**

Regd owner: Patrick Liddy; folio: 11389; lands: townland of (1) Cloongarve, (2) Coolpekaun and barony of (1) and (2) Corcomrome; area: (1) 28.7908 hectares, (2) 12.3327 hectares; **Co Clare**

Regd owner: Oliver Marrinan; folio: 10443F; lands: townland of Baunmore and barony of Moyarta; area: 0.4200 hectares; **Co Clare**

Regd owner: Kathleen Mary Waldron; folio: 5284; lands: townland of Feakle and barony of Tulla Upper; area: 9.4266 hectares; **Co Clare**

Regd owner: Michael and Breda Forde; folio: 18702F; lands: plots of ground situate to the north side of Upper Bridge Street in the parish of Creagh and urban district of Skibbereen, being part of the townland of Coronea in the barony of Carberry West (east division) and county of Cork; **Co Cork**

Regd owner: Frauke Hirschelmann; folio: 40350F; lands: plots of ground being part of the townland of Ardaturrish Beg in the barony of Bantry and county of Cork; **Co Cork**

Regd owner: Theresa O'Driscoll; folio: 51698; lands: plots of ground being part of the townland of Carrigfadda in the barony of Carberry West (east division) and county of Cork; **Co Cork**

Regd owner: John O'Driscoll; folio: 25933; lands: plots of ground being part of the townland of Dunmanus West in the barony of Carberry West (west division) and county of Cork; **Co Cork**

Regd owner: Maithiu O'Connaill and Karola O'Connell; folio: 65234F; lands: plots of ground being part of the townland of Carrigaline Middle in the barony of Kerrycurrihy and county of Cork; **Co Cork**

Regd owner: John O'Mahony; folio: 32922F; lands: plots of ground being part of the townland of Foreaght in the barony of West Carberry (east division) and county of Cork; **Co Cork**

Regd owner: Brigid Hickey and Michael Hickey; folio: 6259L; lands: plots of ground being part of the townland of Ballincollig in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Patrick Brosnan and Josephine Brosnan; folio: 46764; lands: plots of ground being part of the townland of Lyre in the barony of Dunhallow and county of Cork; **Co Cork**

Regd owner: Denis O'Leary; folio: 11771; lands: plots of ground being part of the townland of Carrigdangan in the barony of Muskerry west and county of Cork; **Co Cork**

Regd owner: Thomas Ward and Kitty Ward, Gortcally, Kerrykeel, Letterkenny, Co Donegal; folio: 40928; lands: Gortcally; area: 0.6247; **Co Donegal**

Regd owner: Roltan Manufacturing Limited, Glenties, Co Donegal; folio: 14352; lands: Gortnamucklagh; area: 1.7199 hectares; **Co Donegal**

Regd owner: Thomas F Slevin and Michael Slevin, Rooskey, Killygordon, Co Donegal; folio: 6972; lands: Navenny; area: 1.5454 hectares; **Co Donegal**

Regd owner: Hugh O'Donnell, Terence O'Donnell and Dermot O'Donnell; folio: 3850; lands: Saintjohnstown; area: 0.1214 hectares; **Co Donegal**

Regd owner: Margaret Eileen Campbell; folio: DN5428; lands: property situate in the townland of Shankill and barony of Rathdown; **Co Dublin**

Regd owner: Stephanie Dorman; folio: DN15676; lands: the property situated at Peck's Lane, Castleknock, Co Dublin; **Co Dublin**

Regd owner: Martin Dunne and Maureen Dunne; folio: DN74174L; lands: the plot of ground with the dwellinghouse thereon known as no 9 Richmond Road situate in the parish of Clonturk and district of Drumcondra; **Co Dublin**

Regd owner: Ann Geoghegan; folio: DN62601F; lands: property situate in the townland of Santry and barony of Coolock; **Co Dublin**

Regd owner: Robert Walsh; folio: DN11803F; lands: property situate in the townland of Edmonstown and barony of Rathdown; **Co Dublin**

Regd owner: Alan Hood (half share); folio: DN11803F; lands: property situate in the townland of Edmonstown and barony of Rathdown; **Co Dublin**

Regd owner: Joseph McDermott; folio: DN 9827; lands: property situate in the townland of Coolmine and barony of Newcastle; **Co Dublin**

Regd owner: Niall Ring; folio: DN73467F; lands: property situate to the north of Griffith Avenue in the parish of Clonturk and district of Clontarf; **Co Dublin**

Regd owner: the county council of the county of Dublin; folio: DN18536; lands: a plot of ground situate in the townland of Garristown and barony of Balrothery West; **Co Dublin**

Regd owner: Granyte Surface

Coatings (Ireland) (limited liability company); folio: DN16568F; lands: a plot of ground being part of the townland of Robinhood and barony of Uppercross; **Co Dublin**

Regd owner: Pierce Bermingham and Frances Cahill Bermingham; folio: DN45539L; lands: property situate in the townland of Templeogue and barony of Uppercross; **Co Dublin**

Regd owner: Peter White; folio: 130609F; lands: property known as 15 Elmount View, Beaumont, Dublin 9; **Co Dublin**

Regd owner: Christian and Lisalotte Beha; folio: 24860; lands: townland of (1) to (5) Murvey, (6) Grey Rock and barony of (1) to (6) Ballynahinch; area: (1) 6.8670 hectares, (2) 0.2402 hectares, (3) 155.1767 hectares, (4) 29.0164 hectares, (5) 2.0537 hectares, (6) 0.1770 hectares; **Co Galway**

Regd owner: Mary Cahill (decd); folio: 17841F; lands: townland of Park and barony of Clare; area: (1) 0.463 hectares, (2) 0.300 hectares; **Co Galway**

Regd owner: Raymond and Carmel Cantwell; folio: 55838; lands: townland of Lishenakerran and barony of Galway; area: 0.4148 hectares; **Co Galway**

Regd owner: Brendan Glynn; folio: 57199; lands: townland of (1) Bookeen South, (2), (3) and (5) Skeagharegan, (4) Killimor and barony of (1), (2), (3), (5) Dunkellin, (4) Kilconnell; area: (1) 6 acres, 1 rood; (2) 24 acres, 3 roods, 10 perches; (3) 4.702 acres; (4) 2 acres, 1 rood, 26 perches; (5) 8 acres, 2 roods, 10 perches; **Co Galway**

Regd owner: Kevin Griffin and Frances Griffin; folio: 2530; lands: Dorrow and barony of Ballymoe; area: 36.5431 hectares; **Co Galway**

Regd owner: James Kilgarriff; folio: 35237; lands: townland of Dunmore and barony of Dunmore; area: 0.0739 hectares; **Co Galway**

Regd owner: John Murray; folio: 57341; lands: townland of (1) to (4) Esker (Longford By) and barony of (1) to (4) Longford; area: (1) 8.4933 hectares, (2) 1.1280 hectares, (3) 1.3607 hectares and (4) 0.6424 hectares; **Co Galway**

Regd owner: John Murray; folio: 4491; lands: townland of (1) and (2) Esker (Longford By), (3) Inishee and barony of (1) to (3) Longford; area: (1) 6.2448 hectares, (2) 0.8194 hectares, (3) 0.3389 hectares; **Co Galway**

Regd owner: Martin O'Neill; folio: 52754; lands; townland of Bunowen Beg and barony of Ballynahinch; area: 0.2020 hectares; **Co Galway**

Regd owner: Stephen Ruane; folio: 9021F; lands: townland of Kilgarve and barony of Moycarn; **Co Galway**

Regd owner: Denis and Mabel Counihan; folio: 24760F and 32041F; lands: townland of Ardshanavooly and Ballycasheen and barony of Magunihy; **Co Kerry**

Regd owner: Mortimer O'Shea; folio: 7881; lands: townland of Erneen and barony of Glanarought; **Co Kerry**

Regd owner: Peadar and Caroline Byrne; folio: 18256F; lands: townland of Knockroe and barony of Kilkea and Moone; **Co Kildare**

Regd owner: John Cleary; folio: 34850F; lands: townland of Monread South and barony of Naas North; **Co Kildare**

Regd owner: Philip O'Donnell; folio: 13752; lands: townland of Castlemitchell North and Narragh and Reban West; **Co Kildare**

Regd owner: Bernard Reilly; folio: 10948F; lands: townland of Broadleas Common and barony of Naas South; **Co Kildare**

Regd owner: George Lanigan; folio: 18040; lands: Clonamery and barony of Ida; **Co Kilkenny**

Regd owner: Michael Ryan (deceased); folio: 478; lands: Templequian and Clonmeen North and barony of Clandonagh; **Co Laois**

Regd owner: Richard A Birchall; folio: 9225; lands: Knocklead and barony of Cullenagh; **Co Laois**

Regd owner: Patrick McGoldrick, Killanana, Dromahair, Co Leitrim; folio: 14889; lands: Friarstown; area: 4.5780 hectares and 1.1913 hectares; **Co Leitrim**

Regd owner: Joan O'Dwyer; folio: 10056; lands: townland of Ballycullane and Raheen and barony of Smallcounty and Coshma; **Co Limerick**

Regd owner: Rory O'Donnell; folio: 33232F; lands: townland of Newcastle and barony of Clanwilliam; **Co Limerick**

Regd owner: Thomas Lyons; folio: 20708F; lands: townland of Corgrig and barony of Shanid; **Co Limerick**

Regd owner: Florence Dawn Thornton, Vicarstown, Carrickboy, Co Longford; folio: 3625F; lands: Vicarstown; area: 0.1800 hectares; **Co Longford**

Regd owner: Colin and Josephine Kerr, 27 College Rise, Drogheda, Co Louth; folio: 13362F; lands: Newtownstalaban; **Co Louth**

Regd owner: McMullan Bros Limited, 1 and 2 Upper O'Connell Street, Dublin; folio: 10332; lands: Lisdoo; area: 0.2200 hectares; **Co Louth**

Regd owner: Peter and Catherine McNally, Palace Street, Drogheda, Co Louth; folio: 84L; lands: Lagavooren; **Co Louth**

Regd owner: Patrick Joseph Kieran, Saint Hedwig, Avenue Road, Dundalk, Co Louth; folio: 6900; lands: Marshes Upper; area: 0.0126 hectares; **Co Louth**

Regd owner: Mary Angela Coolican; folio: 42377; lands: townland of Rosserk and barony of Tirawley; area: 9.2243 hectares; **Co Mayo**

Regd owner: Patrick Forde; folio: 23248; lands: townland of Nealepark and barony of Kilmaine; area: 13.4709 hectares; **Co Mayo**

Regd owner: Seamus and Mary Gallagher; folio: 51958; lands: townland of Boherduff (ED Claremorris) and barony of Clanmorris; area: 1 rood, 6 perches; **Co Mayo**

Regd owner: Anne Gannon; folio: 16723; lands: townland of Drummindoo and barony of Murrisk; area: 6.0035 hectares; **Co Mayo**

Regd owner: Patrick Geraghty; folio: 51005; lands: townland of (1) Tiraun, (2) Newtown, (3) Mullaghroe and barony (1), (2) and (3) Erris; area: (1) 1.8210 hectares, (2) 114.1213 hectares, (3) 3.9962 hectares; **Co Mayo**

Regd owner: Mary Ellen Mannion; folio: 28013; lands: townland of Knockbaun (ED Breaghwy) and barony of Carra; area: 6.1840; **Co Mayo**

Regd owner: Anne Moran; folio: 37213; lands: townland of Aughness and barony of Erris; area: 25.6975 hectares; **Co Mayo**

Regd owner: Sylvester Sweeney; folio: 50134; lands: townland of Carn and barony of Erris; area: 0 acres, 1 rood and 28 perches; **Co Mayo**

Regd owner: Allergan Pharmaceuticals (Ireland) Limited Inc; folio: 33693F; lands: townland of Monamore and barony of Murrisk; area: 1.7 hectares; **Co Mayo**

Regd owner: Cathal and Kimberley Hughes; folio: 18047; lands: townland of Rossymailly and barony of Murrisk; area: 3 acres, 1 rood, 30 perches; **Co Mayo**

Regd owner: Frederick and Geraldine Maher; folio: 6518F; lands: barony of Gallen; area: 0.1392 hectares; **Co Mayo**

Regd owner: Peter Ginty; folio: 24757F; lands: townland of Lettera and barony of Erris; area: 501.388 hectares (1/16 undivided share); **Co Mayo**

Regd owner: Gay Cummins and Mary Cummins, Ballymahon, Longwood, Co Meath; folio: 15678F; lands: Ballymahon; area: 0.1951 hectares; **Co Meath**

Regd owner: Patrick Hughes, Flower Hill, Navan, Co Meath; folio: 8269F; lands: Abbeyland; area: 0.0429 hectares; **Co Meath**

Regd owner: Hugh McDonagh Junior, The Moors, Bettystown, Co Meath; folio: 12049; lands: Donacarney Great; area: 16.0210 hectares; **Co Meath**

Regd owner: Peter and Esther Fitzsimons, 8 Newtown Close, Athboy View, Dublin Road, Trim, Co Meath; folio: 30603F; lands: Saintjohns; **Co Meath**

Regd owner: Aidan Dooley; folio: 6983F; lands: a plot of ground comprising 19,188 acres in the townland of Coolderry and the

barony of Farney, shown as plan 1995, and a plot of ground comprising 4,888 acres in the townland of Drumcristin Upper and townland of Faney, shown as plan 14; **Co Monaghan**

Regd owner: Mary Collison (deceased); folio: 45F; lands: Moneygall and barony of Clonlisk; **Co Offaly**

Regd owner: Colm and Nellie Grennan (deceased); folio: 9907; lands: Puttaghan and barony of Ballycowan; **Co Offaly**

Regd owner: Bernard M Beirne; folio: 35667; lands: townland of (1) and (2) Bryan More and barony of (1) and (2) Roscommon; area: (1) 5.4506 hectares, (2) 6.0424 hectares; **Co Roscommon**

Regd owner: Bridget Killeen and Patrick Scanlon; folio: 31056; lands: (1) Cloonburren, (2), (3) and (5) Rathpeak and barony of (1) to (5) Moycarn; area: (1) 0.7385 hectares, (2) 3.7635 hectares, (3) 0.3288 hectares, (4) 2.6001 hectares and (5) 10.5471 hectares; **Co Roscommon**

Regd owner: Kevin Burns and Isabella Burns; folio: 4585F; lands: townland of Hazelwood Demesne and barony of Carbury; area: 0.425 acres; **Co Sligo**

Regd owner: Philip Kearns and Breege Higgins; folio: 11489F; lands: townland of Ardleebeg and barony of Tirerill; area: 0.568 hectares; **Co Sligo**

Regd owner: James Kilgannon (deceased); folio: 17251; lands: (1) Doonmadden, (2) Donaghintraine and barony: (1) and (2) Tireragh; area: (1) 2 acres, 3 roods, 25 perches; (2) 7 acres, 1 rood, 18 perches; **Co Sligo**

Regd owner: Rolf Asmuss and Ursula Asmuss; folio: 4701F; Co Tipperary, townland of Roosca (Burke), Barony Iffa and Offa West; **Co Tipperary**

Regd owner: Michael McGrath; folio: 8214 and 18617F; lands: townland of Moanmore and barony of Clanwilliam; **Co Tipperary**

Regd owner: James Moran; folio: 36186F; lands: townland of Nenagh North and barony of Lower Ormond; **Co Tipperary**

Regd owner: Michael McCarthy; folio: CK4152; lands: townland of Inchiroe and barony of Bantry and in the county of Waterford; **Co Waterford**

Regd owner: Jessica Wilkinson; folio: 17004F; lands: known as the townland of Gurteen Upper, Gurteen Lower, Boola and Knocknaree in the barony of Upperthird and Glenahiry and the county of Waterford; **Co Waterford**

Regd owner: Brendan Griffin, Dublin Road, Mullingar, Co Westmeath; folio: 3842; lands: Culleen Beg; area: 32.831; **Co Westmeath**

Regd owner: Mary Ellen Smith, Brigid Carty and John Kenny, 'St Judes', Clownmore, Mullingar, Co Westmeath; folio: 613F; lands: Mullingar; area: 0.506 hectares**; Co Westmeath**

Regd owner: Francis Harte and Ann Harte, Reynella, Mullingar, Co Westmeath; folio: 1991; lands: Reynella; area: 0.4856 hectares; **Co Westmeath**

Regd owner: Elizabeth Ryan; folio: 2701; lands: Boderan and barony of Shelburne; **Co Wexford**

Regd owner: Mark and Karen McMahon; folio: 21976F; lands: townland of Lathaleere and barony of Talbotstown upper; **Co Wicklow**

Regd owner: Frances Philomena Wilby, Margaret Fahy and Marion Fahy; folio: 5687F; lands: townlands of Clonmannan and Tinnakelly Murragh and baronies of Newcastle; **Co Wicklow**

WILLS

Behan, Bridget (also referred to as Bridie), late of 248 Galtymore Road, Drimnagh, Dublin 12, who died on 23 October 2003. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Aidan T Stapleton & Company, Solicitors, Parliament Buildings, 38 Parliament Street, Dublin 2

Bennett, Michael Patrick (deceased), late of 30 Towerview Avenue, The Steeples, Duleek, Co Meath, who died at Our Lady's Hospital, Navan, Co Meath. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Oliver Shanley & Company, Solicitors, 11 Bridge Street, Navan, Co Meath; tel: 046 902 8333, fax: 046 902 9937

Clarke, Stephen Vincent (deceased), late of Oberstown, Tara, Co Meath, who died on 10 November 2004 at Our Lady's Hospital, Navan, Co Meath. Would any person having knowledge of the whereabouts of a will made by the above named deceased, please contact Oliver Shanley & Company, Solicitors, 11 Bridge Street, Navan, Co Meath; tel: 046 902 8333, fax: 046 902 9937

Daly, Catherine (deceased), late of Reddanswalk, Tipperary, in the county of Tipperary and formerly of 161 Lower Drumcondra Road, Dublin, widow of Dr Hugh Daly, who died on 7 January 2005. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Kennedy Frewen O'Sullivan, Solicitors, St Michael Street, Tipperary, Co Tipperary; tel: 062 51184, fax: 062 51718, e-mail: kfos@securemail.ie

Farrell, Patrick (deceased), late of 22 Beaufield Park, Stillorgan, Co Dublin. Would any person having knowledge of a will made by the above named deceased, who died on 30 January 1992, please contact Gleeson McGrath Baldwin, Solicitors, 29 Anglesea Street, Dublin 2; tel: 01 474 4300, fax: 01 474 4343, e-mail: solicitors@gmgb.ie

Lawless, Liam (deceased), late of 25 Ballygall Crescent, Finglas East, Dublin 11. Would any person having any knowledge of a will made by the above named deceased, who died on 15 November 1994 at the Mater Hospital, Dublin, please contact Doyle and Company, Solicitors, 1 Main Street, Blanchardstown, Dublin 15; tel: 01 820 0666, fax: 01 822 0880

Lynch, Tim (deceased), late of Cregane, Churchtown, Mallow, Co Cork, who died on 13 December 2004. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Declan Duggan of Denis Linehan, Solicitors, Charleville, Co Cork; tel: 063 89667

McCarthy, Brigid (otherwise Bridget) (deceased), late of Ballinamona, Sherin's Cross, Kilmallock, Co Limerick, retired national school teacher, date of death: 22 October 2004. Would any person having knowledge of any will (apart from a will dated 14 October 1994) of the above named deceased please contact James Binchy and Son, Solicitors, Main Street, Charleville, Co Cork; tel: 063 81214, fax: 063 81153; (reference OMB)

O'Grady, Margaret (deceased), late of Killalane, Skerries, Co Dublin, who died on 8 March 2004. Would any person having any knowledge of the whereabouts of a will made by the above named deceased please contact O'Leary Arnold & Co, Solicitors, South Strand, Skerries, Co Dublin

O'Reilly, Alophonus (deceased), late of 37 Strand Road, Sandymount, Dublin 4. Would any person having knowledge of a will executed by the above named deceased, who is presumed to have died on 4 January 1996, please contact Silke & Company, Solicitors, 43 William Street, Galway; tel: 091 561667

Sheehy, Christine (deceased), late of Sheehy's Bar, Ballylooby, Cahir, Co Tipperary. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 10 January 2005 at Sheehy's Bar, Ballylooby, Cahir, Co Tipperary, please contact John Kelly, Donal T Ryan, Solicitors, Castle Street, Cahir, Co Tipperary; tel: 052 41244, fax: 052 42050, e-mail: johnkelly@dtryan.ie

White John (deceased), late of 3 Coyle Square, off Evergreen Street, Cork. Would any person having knowledge of a will made by the above named deceased, who died on 10 September 1989 at the Mercy Hospital, Cork, please contact Dierdre Cooper of Daly Derham & Co, Solicitors, 32 Washington Street, Cork; tel: 021 427 3269, fax: 021 427 3260, e-mail: deirdre@dalyderham.ie

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

Dublin 1 – top floor, new building, Foley Street rejuvenation area; 600 sq ft available on flexible terms. Owner will fit out. Own access. Public transport hub. Contact: mw@oocw.ie

Seven-day publican's licence for sale. Contact Walter P Toolan & Sons, High Street, Ballinamore, Co Leitrim; tel: 071 964 4004, fax: 071 964 4788

Thomastown District Court agency services. Representation required for clients at Thomastown District Court. Contact Mary R O'Shea, O'Shea Russell, Logan Street, Thomastown, Co Kilkenny; tel: 056 772 4850 or 056 772 4851, fax: 056 772 4122

Wanted – seven-day publican's on-licence. Contact Dodd & Company, Solicitors, 61 Lower Baggot Street, Dublin 2; tel: 01 661 0333, fax: 01 661 0340, e-mail: info@doddsolicitors.com

Wanted – seven-day ordinary publican's licence. Details to Desmond J Houlihan, Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 674 2244, fax: 065 684 2233, e-mail: desmondjhoulihan@securemail.ie

Seven-day publican's licence for sale. Contact Gallagher McCartney, Solicitors, New Row, Donegal Town; tel: 074 972 1753

SOLICITOR'S PRACTICE FOR SALE IN CORK CITY AREA

Well-established sole practitioner

Reply in confidence to box no 24/05

Sale of practice – sole practitioner (Fitzwilliam area) with substantial client base (mainly conveyancing) retiring and disposing of practice; principal prepared to remain on part-time basis for some period as consultant. All enquiries c/o Howlin & O'Rourke Accountants, Unit 4, Seapoint Building, Clontarf Road, Dublin 3

TITLE DEEDS

Jackson, Patrick and Brigid, both deceased and late of 15 Ferguson Road, Drumcondra, Dublin 9. Would any person having knowledge of the whereabouts of the title documents to the property at 15 Ferguson Road, Drumcondra, Dublin 9, please contact Killeen Solicitors, 14 Mountjoy Square, Dublin 1; tel: 01 855 5587, fax: 01 855 4091, e-mail: info@killeen-solrs.ie

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1978*: an application by Ursula Regan, personal representative of Ellen Mary McWilliams, deceased

Notice to any person having any interest in the freehold estate of lands at 11 Frascati Park, Blackrock, in the county of Dublin, being the lands comprised in an indenture of lease dated 8 November 1930 between Benjamin McKinley of the one part and Richard M Hooper of the other part for a term of 100 years from 1 June 1930 for the yearly rent of £10.

Take notice that Ursula Regan, personal representative of Ellen Mary McWilliams, deceased, the owner, has submitted an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the aforementioned property to the below named solicitors within 21 days from the date of this notice.

In default of any such notice being received by the below named solicitors, the said Ursula Regan, personal representative of Ellen Mary McWilliams, 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 reversion in each of the aforesaid property are unknown or unascertained.

Date: 4 March 2005

Signed: O'Neill Regan & Co (solicitors for the applicant), 12 Carysfort Avenue, Blackrock, Co Dublin

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 *The Irish Times* Limited relating to no 24 Fleet Street, Dublin 2

Any person having an estate in the freehold of or superior interest in the premises known as 24 Fleet Street in the parish of St Mark and city of Dublin, which is held by the applicant under lease dated 12 July 1844 made between (1) George Alker, (2) Anne Alker, (3) the Reverend Joseph Vize and Samuel Alker, (4) Walter Boyd and (5) William Fry, John Fry and Henry Fry, whereby the said premises together with other property was demised for a term of 250 years from 1 January 1844, subject to the yearly rent of €317.43 (£250).

Take notice that the above applicant, *The Irish Times* Limited, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold estate and all superior interests therein. Any party asserting that they hold such estate or interest in the said property is called upon to furnish evidence of title to same to the undermentioned solicitors within 21 days from the date hereof.

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

Date: 4 March 2005

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2; (reference: 016376.0003.NBC)

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 *The Irish Times* Limited relating to no 25 Fleet Street, Dublin 2

Any person having any estate in the freehold of or superior interest in the premises known as 25 Fleet Street in the parish of St Mark and city of Dublin, which is held by the applicant under lease dated 4 February 1822 made between John and Elizabeth Hornidge of the one part and William Chaigneau Colville of the other part for a term of 999 years from the date of the said lease, subject to the yearly rent of €126.97 (£100), subsequently adjusted to £88.21 (now €112).

Take notice that the applicant, *The Irish Times* Limited, intends to apply to the county registrar for the city of Dublin for the acquisition of the said freehold estate and any superior interests therein. Any party asserting that they hold the freehold estate or such superior interests in the said property is called upon to furnish evidence of title to same to the under-mentioned solicitors within 21 days from the date hereof.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the nearest opportunity after the end of 21 days from the date of this notice and will apply to the said county registrar for the said city for

such direction as may be appropriate on the basis that the person or persons beneficially entitled to such estate or interests in said property is unknown or unascertained.
Date: 4 March 2005
Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2; (reference: 016376. 0003.NBC)

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the lands and premises in the townland of Kiltoorish, parish of Iniskeel, barony of Boylagh and county of Donegal and formerly known as Kiltoorish National School, Kiltoorish, Co Donegal: an application by St Columba's Diocesan Trust
Take notice that any person having any interest in the freehold estate of or superior interest in the following premises: all that and those the plot of ground in the townland of Kiltoorish, parish of Iniskeel, barony of Boylagh and county of Donegal containing in breadth in the front 120 feet, in breadth in the rear 120 feet, and in depth from front to rear 90 feet, together with the building thereon, formerly known as Kiltoorish National School, Kiltoorish, Co Donegal, held under an indenture of lease dated 7 August 1889 made between Valentine Ryan of the first part, Teague Harkin of the second part, Reverend Bernard Kelly, Patrick Gallagher and Neil Gallagher of the third part and the Commissioners of National Education in Ireland of the fourth part, for a term of 99 years from 7 August 1889 subject to the yearly rent of one penny (old currency), if demanded.

Take notice that the applicant, St Columba's Diocesan Trust, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county of Donegal for the acquisition of the freehold interest and any intermediate interests 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, St Columba's Diocesan Trust intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Donegal for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
Date: 4 March 2005
Signed: Gallagher McCartney (solicitors for the applicant), New Road, Donegal Town, Co Donegal

In the matter of the *Landlord and Tenant Acts, 1976-1994* and in the matter of the *Landlord and Tenant (Ground Rents) No 2 Act, 1978*: an application by John S O'Driscoll's Seaside Lounge, 8 Marine Terrace, Strand Road, Bray, in the county of Wicklow
Take notice that any person having any interest in the freehold estate of the following property: 8 Marine Terrace, Strand Road, Bray, in the county of Wicklow. Take notice that (the applicant) John S O'Driscoll intends to submit an application to the county registrar for the county/city of Wicklow 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, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Wicklow 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: 4 March 2005
Signed: Cullen Tyrrell & O'Beirne (solicitors for the applicant), 'Woodville', Herbert Road, Bray, Co Wicklow

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1978* and in the matter of an arbitration pursuant to section 17 of the *Landlord and Tenant (Ground Rents) Act, 1967*: Eugene Breen and Don Breen (applicants); unknown and unascertained persons, being the successor in title to the interest on George William Powell, decd, late of 272 Hagley Rd, Birmingham, England (respondents)
Notice of application. Whereas:
1) The applicants hold the premises described in the schedule hereto as yearly tenants upon the expiry of an indenture of lease made on 15 July 1897 between George William Powell, deceased, late of 272 Hagley Road, Birmingham, England, of the first part, as lessor, and Daniel Dooley, the applicants' predecessor in title, of Roscrea, Co Tipperary, of the second part, as lessee
2) The lands held under the aforesaid tenancy are covered partly by permanent buildings, and the land not so covered is subsidiary and ancillary to those buildings
3) The permanent buildings were erected by the applicants' predecessors in title
4) The applicants are entitled to acquire the fee simple in the said premises by reason of the fact that they are persons who hold lands in the circumstances referred to in s15(1) of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*
5) The successors in title to the interest of George William Powell of 272 Hagley Road, Birmingham, England, are unknown and unascertained.

Take notice that on 4 April 2004 at 10.30 o'clock in the forenoon, or as soon as may be thereafter, counsel on behalf of the applicants shall apply to the county registrar of the county of Tipperary, sitting at the Courthouse, Clonmel, in the county of Tipperary, to have the following matters determined by arbitration in relation to the said premises and for the following orders:
1) An order determining the entitlement of the applicants to acquire the fee simple in the said premises as set out in the schedule hereto
2) An order awarding such fee simple to the applicants
3) An order fixing the price for the acquisition of the said fee simple
4) An order determining and directing the person or persons entitled to receive the purchase money in respect of the acquisition of the fee simple and the amount which each person is entitled to receive
5) An order directing all parties necessary and known to join in any conveyance of the fee simple and any intermediate interest to the applicants
6) And/or, if necessary, the appointment of an officer of this honourable court to execute in the name of the successors in title to the interest of George William Powell and such other parties as may be necessary for conveyance of the fee simple and any intermediate interests to the applicants
7) Such further or other order as may seen necessary to the county registrar
8) An order providing for the costs of this application.

Take notice that application shall be grounded upon this notice of application, the applicants' notice of intention to acquire the fee simple, the affidavit of Eugene Breen filed herewith, the nature of the case and reasons to be offered. Any persons wishing to appear in the said application should contact the solicitor for the applicants.
Schedule: all that and those the properties now known as 51, 52, and 53 Grove Street, in the town of Roscrea and in the county of Tipperary, formerly held under an indenture of lease made on 15 July 1897 between one George William Powell as lessor, and one Daniel Dooley, as lessee, for a term of 99 years from 29 September 1895.
Date: 4 March 2005
Signed: Michael J Breen & Co (solicitors for the applicants), Main Street, Roscrea, Co Tipperary

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Solicitor with ten years' PQE in residential conveyancing, litigation, probate and District Court work wishing to relocate to south east. Self-driven, with high professional standards, able to work as part of a team and on own initiative. Please reply to **box no 20/05**

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Locum solicitor required for Mullingar town; general practice (conveyancing/probate would suffice), four to six months, to cover partner's maternity leave; start immediately or as soon as possible; minimum three years' experience required; excellent opportunity to work at senior level with support from other partner and an experienced and friendly staff. Contact Sally-Ann O'Donnell on 087 232 7854 or Paddy Crowley on 044 408 87/8 or send CV to JJ Macken, Bishopsgate St, Mullingar, Co Westmeath; e-mail: info@jjmacken.ie

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Wanted – locum probate solicitor for six months from 1 April 2005 to cover for maternity leave. The solicitor will also be experienced and competent in the areas of inheritance tax planning and drafting of wills and attending to tax clearance certification prior to the administration of any estates. Please contact reference JOP at Plunkett Kirwan & Co, Solicitors, 175 Howth Road, Killester, Dublin 3 or e-mail: john.plunkett@plunkett-kirwan.com

Apprenticeship required: postgrad law student, LLM (2.1), LLB (2.1), seeks legal apprenticeship. All areas considered. Passed all FE1 examinations and Irish exam. Available immediately. Willing to pay own fees; tel: 087 258 6713

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Traineeship required: highly-motivated, personable languages graduate (2.1) with extensive employment experience and excellent references seeks traineeship in Dublin area from April 2005. Ability to work on own initiative and as part of a team. Currently studying on 2004 PPC1 course; tel: 086 348 3691

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Front ranking practice with an enviable client base seeks banking talent for its rapidly expanding department at junior to mid level. You will be dealing with an interesting and diverse workload and have a solid background in commercial lending matters. This is a supportive environment and there are genuine career prospects for the right candidates.

Funds Lawyer: 2-4 yrs pqe
Our client is a mid tier practice with a strong investment fund client base. You will need to have a solid grounding in financial services coupled with first class technical and drafting skills.

Corporate/Commercial Lawyer: 1-5 yrs pqe
Pre-eminent Dublin practice requires commercially astute lawyers to work in a demanding and challenging environment. Acting for blue-chip clients as well as SMEs, you will be dealing with general commercial transactions as well as M&A, business structuring, venture capital and private equity transactions.

Construction Lawyers: 1-5 yrs pqe
Front-running practice is seeking junior to mid-level assistants to join a burgeoning department. The team acts for major national and international contractors, employers and funders. This is a first class opportunity affording the successful candidate the chance to break away from the norm and really push your career forward as the firm is looking for an individual who will help to build the business and make a strong push for partnership.

Corporate/Commercial Lawyer In-House: 2-4 yrs pqe
Major clearing bank requires high calibre lawyers to work in a supportive team environment dealing with a varied and interesting workload.

Commercial Property/Banking Lawyer In-House: 3-5 yrs pqe
Our client is a niche financial services business seeking an ambitious solicitor to work in a small team providing high quality legal advice across a broad spectrum of operations.

Regardless of your level of seniority, if you are a qualified solicitor in an Irish law firm or working in-house and seeking a fresh challenge, we would be very interested in hearing from you.

For more vacancies, please visit our website or contact Michael Benson bcl.solr for a discussion in the strictest confidence.

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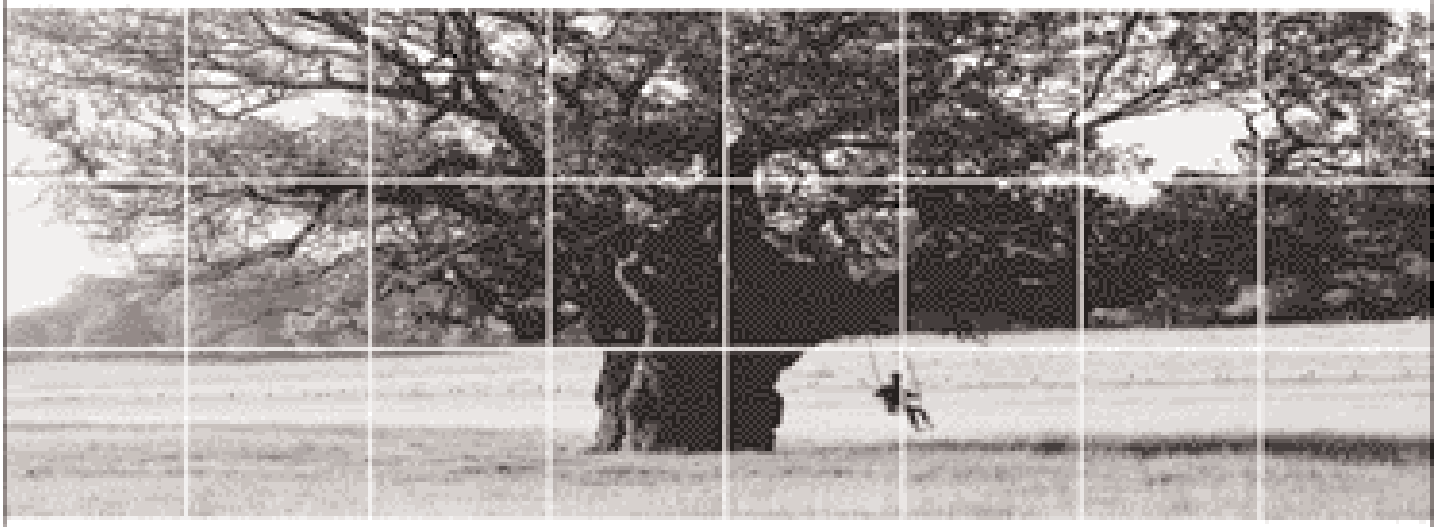

Private Practice Opportunities

Tax Consultant/ Lawyer 1-2 years' PQE €58K

A leading Dublin law firm seeks a qualified Accountant with 1-2 years' PQE (ACA or equivalent) 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: J0118327

Senior Company Secretary 8-10 years' PQE To €120K

An experienced Senior Company Secretary is required to head up the secretarial division of a well renowned city law firm. Ideally you will have 8-10 years' experience as a member of the Institute of Chartered Secretaries and Administrator and have experience in all aspects of corporate secretarial and company law practice.
Ref: J0118726

Capital Markets Lawyer circa 1 years' PQE To €55K

A strong Capital Markets Lawyer with circa 1 years' PQE is required to join the banking/ capital markets practice of a prominent Dublin law firm. Ideally you will have strong banking experience and have had some exposure to capital markets. This represents an outstanding opportunity for a junior lawyer to join one of Dublin's most elite law firms.
Ref: J0118666

IT/IP Lawyer 2-4 years' PQE To €70K

A highly reputable Dublin law firm would like to appoint a senior lawyer with 2-4 years' PQE IP/IT experience to join their high profile technology and intellectual property unit. You will be required to advise on all aspects of information technology, intellectual property and e-Business law.
Ref: J0118642

Senior Commercial Property Lawyer circa 3-5 years' PQE To €90K

A top Dublin firm seeks Senior Commercial Property Lawyer. Experience in big ticket deals advising developers and large financial service organisations, is essential. This is an exceptional opportunity for an ambitious lawyer with aspirations to advance to senior level within a reputable firm.
Ref: J0113091

Investment Funds Lawyers 2-5 years' PQE To €80K

A Major city law firm seeks funds lawyers with 2-5 years' experience. Ideally you will have some experience in setting up, listing and operating funds in Ireland and/ or internationally. This is an exceptional opportunity to advance your career.
Ref: J0110982

In-House Opportunities

Head of Legal & Compliance 8-10 years' PQE circa €100K

A well regarded financial services organisation seeks a senior lawyer, to lead their legal department, advise on domestic and off-shore fund products and provide legal and regulatory advice on all issues across the investment division. Ideally you will have 7-10 years' PQE with significant experience of investment schemes and the IS industry.
Ref: J0118812

Junior In-house Funds Lawyer 0-2 years' PQE To €52K

A Boutique financial services company would like to appoint a qualified solicitor with 0-2 years' PQE to join their in-house team. This varied role includes assisting the Head of Legal with fund launches, documentation and a diverse range of client legal matters. This is an exceptional opportunity for an NQ with strong fund, banking or corporate experience to move in-house.
Ref: J0119116

Assistant Legal Counsel 3-4 years' PQE To €80K

An Assistant Legal Counsel is required to join an IFSC Fund Treasury Division. The successful candidate will have 3-4 years' PQE in a top legal practice or investment bank, together with strong academics, excellent organisational, interpersonal and drafting skills. You must be capable of working on your own initiative.
Ref: J0106896

Head of Legal Affairs 7-10 years' PQE To €130K

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Ref: J0118666

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6+ years’ PQE. Ref: PF 0502-80

Funds
Top tier firm requires fund expertise with multi jurisdictional experience and wide product knowledge. Knowledge of Irish Investment fund law essential. 3-5+ years’ PQE. Ref: PF 0502-78

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. 3-5+ years’ PQE. Ref: PF 0502-67

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. 1-2yrs PQE. Ref:PF 0502-74

Medical Negligence
Top tier practice seeks an experienced defence litigation lawyer with strong medical negligence experience representing both organisations and individuals. 3+ years’ PQE. Ref: PF 0502-73

Commercial Property
Top Tier Company seeks commercial property with development, leasing and secured lending experience. Some construction experience desirable. Applicants from small, medium or large law firm welcome. 3-5 years PQE. Ref: PF 0502-87

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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 0502-95

Employment
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Commercial Property
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Private Client
This medium sized general practice seeks a strong private client solicitor with good relevant experience. 5 years’ PQE. Ref: PF0502-89

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: PF1572

■ IN-HOUSE

Head of Legal Affairs
Chance to lead the legal team of this global financial services company. Responsible for legally managing key business initiatives, reviewing compliance of policies & procedures, control of legal function on global level, managing external relationships. 10 years’ PQE. Ref: PF1574

Legal Counsel - Commercial
This global IT Company is seeking a commercial lawyer. Dealing with commercial issues, contracts, employment, consumer, data protection and competition law this is a fantastic chance to get into an in-house role. 1-3years’ PQE Ref: PF1577

Employment Lawyer
A great chance to join this large international IT company. Working on both non-contentious and contentious matters you will offer support to HR teams across the EMEA. 5 years’ PQE+ Ref: PF1579

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: PF1573

Senior Counsel
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