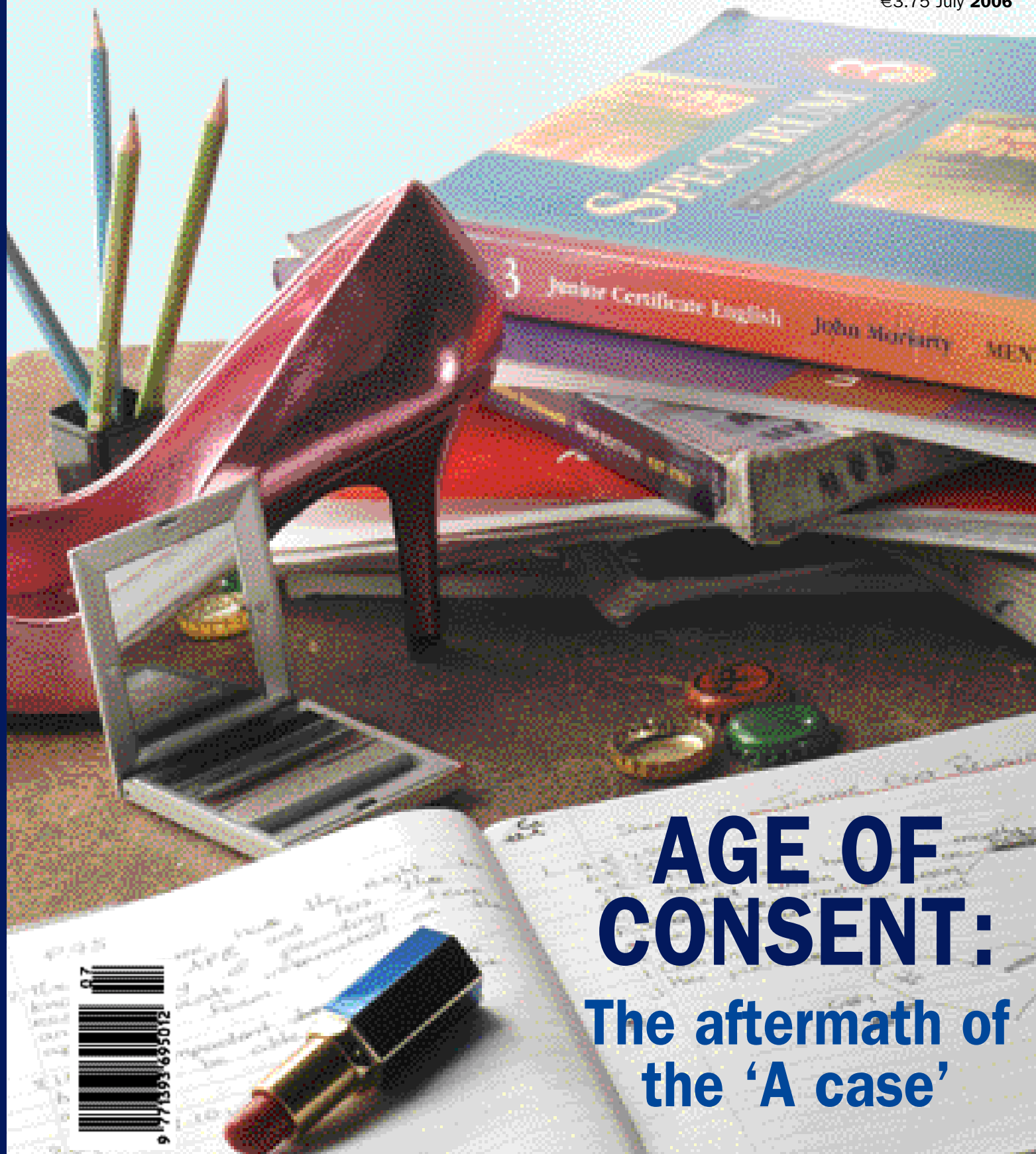


LAW SOCIETY

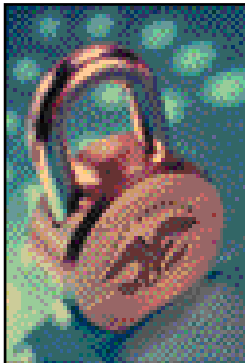
Gazette

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AGE OF CONSENT: The aftermath of the 'A case'

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On the cover

The recent judgment on the defence of 'mistake as to age' and the subsequent decision in the *Mr A* case led to political turmoil and fervent public debate. But how does the resulting law measure up?

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July 2006

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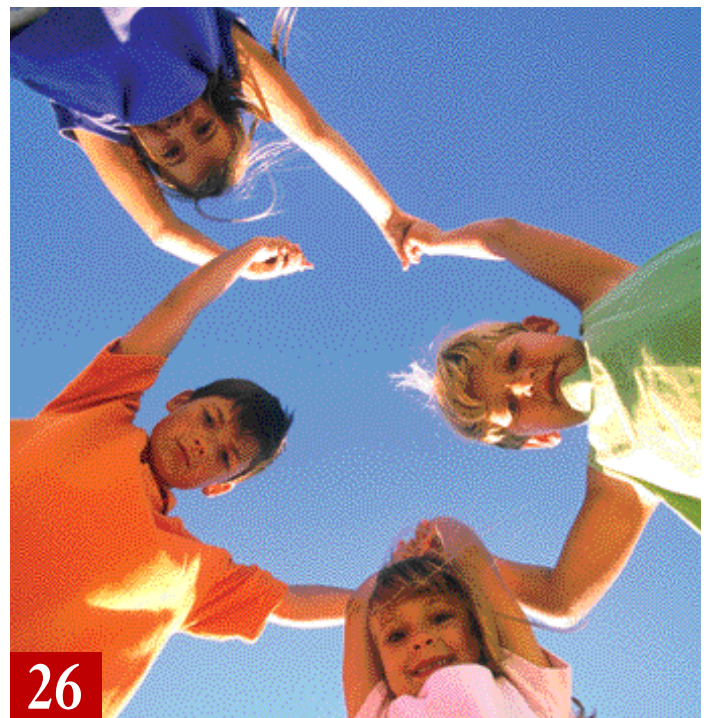
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Law Society plays host to international visitors

“During the month, the Society hosted the law societies of England and Wales, Northern Ireland and Scotland”

The month has passed very quickly – a sure sign of activity. During the past month, the first stage of the Client Focus Seminars has been completed. Seminars were held in Dublin, Cork, Limerick, Galway, Sligo, Athlone and Waterford. While the numbers of attendees were not as high as expected, the content was generally agreed to be excellent. The committee, under the leadership of John O'Malley, will now bring forward proposals as to how the work can be enhanced and completed.

I have continued to visit, with the director general, Bar associations around the country. This month found us in Kilkenny, Wicklow, Laois and Tipperary. The profession is busy and in good heart. In Nenagh, we were present at the opening of the revamped courthouse. The courthouse is splendid and the Tipperary Solicitors' Bar Association was rightly praised for its role in this development.

During the month, the Society hosted the law societies of England and Wales, Northern Ireland and Scotland. It was most interesting to learn, first hand, of the proposals made in regard to the reform of the legal professions in those jurisdictions. Only Scotland was including a review of the judiciary in its review of legal services. The Law Society of England and Wales faces the greatest challenges to its future and it will be interesting to ascertain what happens to the profession in the future in that jurisdiction.

The Union Internationale Avocats (UIA) held an executive meeting in the Law Society in June. The Law Society was delighted to participate in this event and to meet lawyers from many different jurisdictions.

It was a great pleasure for us to host the four South African lawyers receiving training in Eugene F Collins, William Fry, A&L Goodbody and Matheson Ormsby Prentice to dinner in the Society. It was very informative for us to learn more about their work in South Africa and to hear at first hand about the difficulties they face in practice in South Africa.

The annual human rights lecture took place on 29 June. Mr Justice Kirby of the High Court of Australia spoke most eloquently on the Dreyfus case. Two weeks earlier, over 1,000 people crowded into the French Supreme Court to listen to the Chief Justice of the French Supreme Court speak on this case.

Mr Justice Kirby emphasised the lessons the century-old case still holds for the legal professions – rights of citizens and the rule of law were predominant. Congratulations to Alma Clissmann on all the work involved in this project.

I would like to welcome Louise Campbell to the staff of the Law Society. Louise is the first support services executive appointed by the Law Society, as recommended in the *Braiden Report*. Her role is to help coordinate and deliver the Society's support services so that the profession can know and benefit much more from them in the future.

I would also like to congratulate Geoffrey Shannon, who was appointed by the Minister for Children, Brian Lenihan, as a special adviser in relation to child law. This appointment is well merited and I wish Geoffrey well in his new role.

Michael G Irvine
President



Send your news to: **Law Society Gazette, Blackhall Place, Dublin 7, or email: nationwide@lawsociety.ie**

■ CORK

Declining standards?

There has been a 'noticeable decline' in conveyancing standards in the profession, according to the Southern Law Association (SLA).

The association's conveyancing committee has decided to try to assess the extent of the problem and has recently written to all members asking for information, on a no-names basis, of poor conveyancing practices.

Some of the complaints received by the association include failure to respond to colleagues, failure to deal with pre-contract enquiries and to comply with undertakings, many of which, according to the association, "should not have been given in the first place".

Other unacceptable practices include inserting unlawful conditions in draft contracts, which is contrary to the guidelines of the Law Society's Conveyancing Committee, and also not having closing documents at closings. It's a long list...

On the lighter side

This year's nominated charity of the SLA is the Irish Heart Foundation. On 21 July, there will be a 10k run (even a walk will do) starting and ending at the Cricket Club, via the Mardyke, past the Sacred Heart Church, over Leemount Bridge and by the Carrigrohane Straight/Lee Fields.

"We felt that we would get you all off your couches and onto the streets," say Gail Enright and Patrick Mullins, both SLA council members.

The run is being supported



The President and Council of the Southern Law Association (SLA) recently held a lunch at Hayfield Manor Hotel to mark the service of solicitors in Cork city and county who have been qualified for 50 years or more. (Back, l to r): Dermot Moloney, John A Phelan, Edward O'Driscoll, Patrick J O'Driscoll and Nicholas Hughes. (Front, l to r): John Russell, SLA President Sinead Behan, and Charles Hennessy

by local Circuit and District Court judges, as well as the courts' staff and the Gardaí. Many of them will be taking part in the event.

To register, contact Colette Curtin, secretary of the SLA.

■ DUBLIN

Hands across the borders

Dublin hosted a major international conference of lawyers in June, when leading European lawyers attended the Union of International Lawyers event.

Colleague James Grennan of A&L Goodbody, vice-president of the European lawyers' body, led the Dublin conference.

The Dublin Solicitors' Bar Association (DSBA) hosted a reception for the visitors. "This is a very appropriate 'hands-across-the-border' type of event and we are delighted that they decided to come to Dublin," says Kevin O'Higgins of the DSBA. He added that one of the more useful aspects

of such events is the networking opportunities they provide.

There's already a waiting list for the Dublin solicitors' annual conference in Rome in September. Yes, ambling dreamily along the Via Cavour in the autumn sunshine (between sessions, of course) beats rushing to another closing in Dublin.

Are you experienced?

Dublin colleagues with more than 50 years' experience in the profession were fêted last month at a lunch under the aegis of the DSBA.

Organised by colleague Helene Coffey, of Coffey & McMahon, the get-together was held in the Four Seasons Hotel in Ballsbridge (where else would lawyers go?) and was very well attended. The anecdotes, reminiscences and humour continued into the evening. The lunch included a special presentation to

respected doyenne of the profession and former Law Society President Moya Quinlan, who is more than 60 years in practice.

Back to basics

'CPD Online' is now operational by the DSBA – due in no small measure to the unpaid work of former DSBA President Orla Coyne, John Glynn and Pauline O'Donovan.

The recent and well-attended practice management seminars run by the DSBA were followed last month by sessions on company law. A seminar on the new legislation establishing the Property Registration Authority was also scheduled.

■ CAVAN

Mystery tour

The highly-successful 'mystery tour' organised every year by the Cavan Bar Association will be held in August this year. "It's a great event, purely to meet colleagues and barristers practising in the courts here, and is a fun day," says Jacqueline Maloney.

CPD in Cavan

CPD continues. Further lectures are planned for later this year to follow the recent scheduled lecture by David Leonard BL on the practical aspects of judicial review, *habeas corpus* and bail applications. "What we need, to a significant extent, is practical subjects being addressed in lectures and seminars. This is what we are trying to do here," concluded Jacqueline. **G**

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

■ STATUTORY RAPE CASES ADJOURNED

A number of men charged with unlawful carnal knowledge had their cases adjourned in the Dublin Circuit Criminal Court on 29 June 2006.

The cases included the man who successfully challenged the constitutionality of the legislation in the Supreme Court.

Judge Catherine Delahunt agreed to adjourn six cases of statutory rape of girls aged under 15 and girls between 15 and 17 until 31 October.

Issues were raised by defence counsel, Marie Torrence, in relation to the court's jurisdiction in these cases, given the Supreme Court ruling. She has now indicated she will bring these issues before the High Court.

■ PAC REPORT HIGHLIGHTS SPEED CAMERA FLAWS

A report from the Public Accounts Committee has shown that nearly half of all photographs taken by garda speed cameras are useless. The figures are contained in a study of the penalty points system that the committee published on 21 June 2006.

The committee undertook an analysis of the penalty points system as part of its examination of the Department of Justice, Equality and Law Reform. Its figures indicate that of over 100,000 photos taken by fixed cameras – just under half – were defective. The PAC study also found that just over 50% of on-the-spot fines were paid up – and that only one in seven of the remainder were successfully pursued through the courts.

As a result, the PAC report says that the effectiveness of the penalty points system has been seriously eroded by administrative inefficiency.

■ RETIREMENT TRUST SCHEME

Unit prices: 1 June 2006

Managed fund: €5.47912

All-equity fund: €1.25901

Cash fund: €2.65327

Long bond fund: €1.28656

TSBA celebrates reopening of

The refurbished courthouse in Nenagh was officially opened on 23 June by the Minister for Justice, Equality and Law Reform, Michael McDowell TD. The board of the Courts Service was represented by the President of the Circuit Court, Mr Justice Matthew Deery, who presided over the event.

Members of the Tipperary Solicitors' Bar Association (TSBA) got a sneak preview of the €11.6 million refurbished facilities a week earlier, however, when, on 16 June, the highly active association held a pre-president's gala dinner reception at the courthouse. Speakers included President of the Law Society Michael Irvine, District Justice Michael Reilly and TSBA President Peter McDermott.

Michael Irvine spoke of his fond memories of travelling to Tipperary to lecture members of the TSBA on company law. The advice from his late senior partner, Peter Prentice, was that it was a very sensible procedure "because they are very nice people and will treat you well".

"I have very good friends here," said Michael. "I have many happy memories and I am delighted to be with you on this beautiful evening to see your

beautiful courthouse. I congratulate your president, Mr Pat McDermott. He has been a marvellous ambassador for years to the Law Society and we are very lucky to have him representing you. I would also like to thank Maura Derivan for her hard work. I know that things like this just don't happen by accident, so I would like to thank everybody who was concerned with the restoration of this courthouse."

Proud tradition

Judge Michael Reilly reminded the TSBA of its proud tradition. "It has always been to the forefront in legal thinking and innovation over the years. It has arranged seminars for its members and, for as long as I can remember, has guided the legal profession in this county in a sensible way. It also has a proud standing with the Law Society, having contributed a number of presidents to that august body."

The district justice shared some of the history of the courthouse. In 1838, Nenagh was designated an assize town. Prior to that, court business was transacted in a small building in Pound Street. As that location was not suitable for assize

hearings, the current site was procured. The courthouse was laid out in 1841 by a local builder, John Hanley, to a plan designed by Dublin architect John B Keane. The cost of the building was £7,000. It followed Mr Keane's design of Tullamore Courthouse, with its distinctive Ionic pillars and two semi-circular courts. This design, in fact, followed that of Carlow and Tralee courthouses by the highly-distinguished architect, William Morrison.

In September 1843, as the building was almost completed, it was linked to the nearby county gaol by an underground passage that has been tastefully retained in the reconstruction and is on public view.

The first assizes were held in the then new courthouse on 18 March 1844 and presided over by Judge Nicholas Ball. Judge Ball had been Attorney General, MP, for the Borough of Clonmel and a member of the Privy Council that decided to divide Tipperary into two ridings in 1837.

One famous trial lasted 14 days and sat until 10pm most nights and to midnight on one occasion. Four people were convicted and the death sentence was pronounced. The

Medico-Legal Society to celebrate Golden Jubilee with conference

The Medico-Legal Society is 50 years old this year. To mark the occasion, the society will hold a one-day conference in Dublin Castle on Saturday 7 October. This will be followed by a gala dinner.

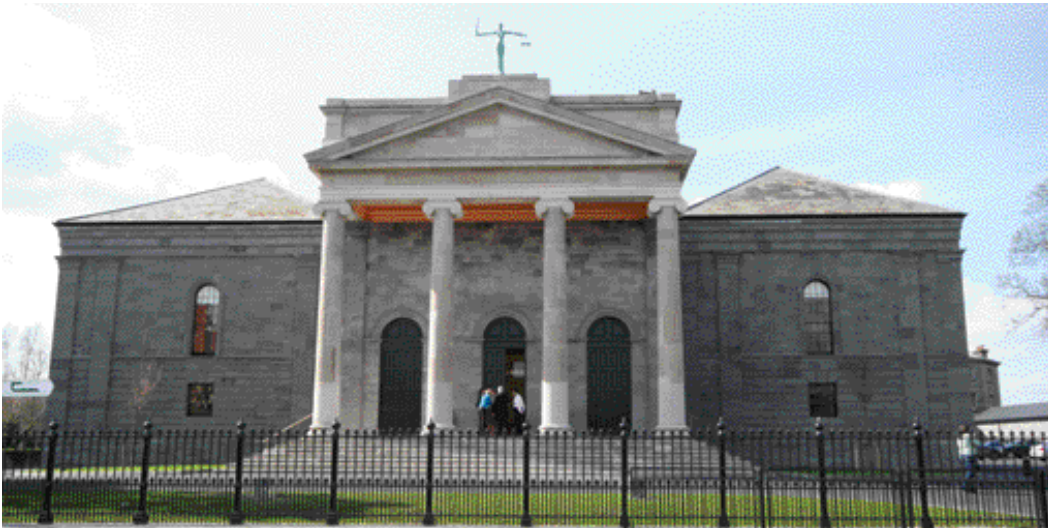
A number of distinguished speakers from the medical and legal worlds will speak on a number of issues, including bioethics (speakers: Dr

Siobhán O'Sullivan, Bioethics Council; Dr Simon Mills BL; and Prof Gerry White, Trinity College) and 'Acquired Infections – The Lawyers' Dream?' (speakers: Prof Hilary Humphries, Royal College of Surgeons in Ireland; Dr Brian Farrell, Coroner, Dublin; and Deirdre Hegarty, Solicitor, Hepatitis C Compensation Board). Attorney General Rory

Brady will open the conference, while Mr Justice Peter Kelly, President of the Society, will formally close the event.

If you're interested in further details, please contact: Dr Antonia Lehane, 59 Main Street, Swords, Co Dublin. Tel: 01 840 7430 or email: antonialehane@eircom.net.

€12M Nenagh courthouse



PIC: ELEANOR REILLY

four were hanged in the adjoining county goal. Many more notable trials were held here over the years.

“To the great credit of ‘the powers that be,” said Judge Reilly, the building has been restored to its original glory and has been upgraded to provide for, not only the ordinary courts, but has a family court, consultation rooms, waiting areas, a victim-support room, a media room and facilities for the taking of video-link evidence. It has, also, a modern public office, a chief clerk’s office, a county registrar’s office and excellent facilities for solicitors and barristers. The basement

contains a secure area for those in custody and secure consultation rooms.

“I hope that, in future, the building will be maintained to its present standard as it is only fitting that, as the focal point for the town of Nenagh, it should remain a structure for all to be proud of.”

The district justice went on to congratulate the President of the TSBA, Pat McDermott. “I know that without the effort of your association none of this would have happened. If it had not been for the courageous step in issuing proceedings, this building would be a ruin. You and your colleagues are to be

congratulated on your endeavours, which have resulted in a courthouse as fine as can be seen anywhere in the country.”

Since the state was founded, five District Court judges have presided at Nenagh Courthouse: District Justice Flood, District Justice Coffey, District Justice de Burca and District Justice Michael Reilly since 1983, with Tom O’Donnell presiding for a short period. There have only been three District Court clerks serving in Nenagh – Denis Hogan until 1934, followed by the late Dan Murphy who served until 1971, after which, the current clerk, John Buckley, was appointed.

■ COMPENSATION FUND PAYOUT

The following claim amount was admitted and approved for payment by the Regulation of Practice Committee at its meeting in May 2006: Thomas Flood, Dargan House, Fenian Street, Dublin 2 – €12,255.03.

■ IRISH LAW FIRM LAUNCHES PUBLIC AFFAIRS PRACTICE

Mason Hayes + Curran has established a new practice area that offers public affairs support to existing and potential clients. The firm will provide advice to clients on public affairs issues and will assist in drafting, tracking and amending relevant legislation.

Approximately 40 acts, as well as an additional 900 statutory instruments, are made each year in Ireland alone.

Led by Dr Brian Hunt, the team will advise clients on current and proposed changes in legislation and offer advice on the various ways in which they can contribute to the shaping of legislation.

■ COURT RULES AGAINST GUANTANAMO TRIBUNALS

The US Supreme Court has ruled that the Bush administration does not have the authority to try terrorism suspects by military tribunal. In a landmark decision on 29 June 2006, the court said the administration had violated the *Geneva Convention* and the US military code of justice in ordering a military tribunal to prosecute Salim Ahmed Hamdan, a Yemeni and former driver for al-Qaeda leader, Osama bin Laden.

The Supreme Court also rejected the argument that the congressional authorisation to declare war gave the president “a sweeping mandate” to establish military commissions whenever necessary.

The ruling could have far-reaching consequences for the conduct of the US ‘War on Terror’.

‘MOPS’ named ‘Irish Tax Firm of the Year’ at London event

Leading Irish corporate law firm, Matheson Ormsby Prentice, has been named ‘Irish Tax Firm of the Year’ by the *International Tax Review*. The firm has been chosen as the leading tax advisors from a pool comprising both Irish law firms and accountancy practices. Managing partner Liam Quirke accepted the award at the annual International Tax

Review European Awards ceremony on 24 May 2006 in London.

The *International Tax Review* European awards are seen as the benchmark for excellence in the field of tax advice. Matheson Ormsby Prentice was identified as ‘Irish Tax Firm of the Year’ following comprehensive client and peer research, indicating outstanding

performance in the tax-law arena over the past 12 months. It boasts the largest tax team of any Irish law firm and is the only Irish law firm that has a tax presence in the US.

In September 2005, Matheson Ormsby Prentice was honoured with the ‘Clients Choice 2005’ award for Ireland from the International Law Office.

■ NET UNDERMINES MARRIAGE

The growing trend for people to meet over the internet is having a profound effect on Australian marriages, says the *Sydney Morning Herald*. Cyber-romances are playing a role in thousands of break-ups.

New research shows that as many as 50% of Australians dabbling in online romances are already in relationships – and many are having multiple affairs.

Tom Altobelli, a family law practitioner with 25 years' experience and a spokesman for the Law Society of New South Wales, says that about one in 20 of the cases he has handled has involved internet infidelity. He estimated that this figure would be echoed in other lawyers' practices – the internet could play a role in about 2,500 Australian divorce cases a year.

■ JUDICIAL TRAINING PLANS

On 29 June 2006, the European Commission adopted a communication on judicial training in the European Union (refer to: <http://europa.eu/rapid>). The aim is to devote more resources to judicial training at European level – even though responsibility in this area lies primarily with the member states. The commission says that judicial training should focus on three main areas:

- Increasing the familiarity of legal practitioners with the union's legal instruments,
- Improving mutual knowledge of the judicial systems of the member states, and
- Improving language training.

It is seeking to support training and networking by strengthening the existing European Judicial Training Network. In order to develop its policy, it intends to assign more resources to training justice practitioners under the new financial programmes, in particular the 'Fundamental Rights and Justice' programme.

'Communication is key' says tribunal report

According to the annual report of the Solicitors Disciplinary Tribunal, the number of applications it dealt with increased by almost two-thirds in 2005. There were 24 findings of misconduct by the tribunal, which is a statutory body that operates independently of the Law Society. It mainly hears complaints of professional misconduct against solicitors and trainees.

Of the total number of applications received, the Law Society referred 45 solicitors to the tribunal in 2005. A further 38 complaints were received from members of the public and other bodies. This compares with 24 complaints from the Law Society and 27 by other groups in 2004.

The rise in the number of complaints by members of the public reflects the fact that lay applicants are becoming more aware of the existence of the tribunal. According to the tribunal chairman, Frank Daly, "this awareness has resulted in an incremental increase in the number of direct applications from lay applicants for the past three years. During the year under review, 118 people applied for, and received, information on how to make a direct application to the tribunal."

Of the 83 applications to the tribunal, there were 24 findings of misconduct. Eleven of these related to the failure by respondent solicitors to file accountants' reports, within the permitted time, with the Law Society.

The tribunal, after hearing submissions from the respondent solicitors in respect of mitigating factors and the submissions of the Law Society,



imposed penalties ranging from monetary fines to recommending to the President of the High Court that the respondent solicitor 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 another solicitor of at least ten years' standing, this to be approved in advance by the Law Society.

Obligation

The tribunal was conscious of the responsibility of the Law Society in ensuring that accountants' reports are filed in a timely and prompt manner. In the report, it points out the obligation that rests with every member of the profession to see that this is achieved. "It is time-consuming and, at times, difficult to comply with the regulations, but it is an obligation that is part and parcel of practising in the profession."

The report also highlights the failure of a particular solicitor to carry out the instructions of a client. "In one particular case, the respondent solicitor was found guilty of misconduct in failing to register his clients as owners of their property, which was purchased

in 1998, in a timely manner, or at all. He also failed to respond to his clients and explain the situation. He further compounded the situation by, *inter alia*, failing to reply to the Law Society's correspondence, misleading the then Registrar's Committee [now the Complaints and Client Relations Committee] of the Law Society and failing to comply with an undertaking given to them. The tribunal also took into account the 12 findings of misconduct previously made by the tribunal against the respondent solicitor, when it recommended to the President of the High Court that the name of the respondent solicitor be struck off the Roll of Solicitors."

The report of the Solicitors Disciplinary Tribunal states that solicitors must continue to be cognisant of the fact that "clients have very high expectations of their solicitors and require a constant flow of information regarding the progress of their affairs. As a result of this expectation, lack of communication and delay by a solicitor in progressing a case are still major sources of complaint ... Notwithstanding this, the onus is on solicitors to keep clients informed about such delays and their reasons. Whether the delay is unavoidable or not, it is imperative to communicate and explain matters to a client. Communication is the key to avoiding complaints in regard to delay."

In all, solicitors found guilty of misconduct were ordered to pay sums ranging from €250 to €5,000 to the compensation fund of the Law Society. The total amount of such sums in 2005 amounted to €22,600.



Prosecuting war criminals

There is legal foundation attaching liability for torture, regardless of the location of the crime or the nationality of the victim or perpetrator, writes James Mehigan

Bringing cases against war criminals in Ireland has little precedent. The procedure for taking such a case is largely untested. If the DPP or the gardaí aren't interested, there is the option of initiating the case privately in the District Court as a 'common informer'. Once the District Court has seised the case and passed it on to the Central Criminal Court, the DPP will run the prosecution. While the AG must consent to the prosecution of grave breaches of the *Geneva Conventions*, such consent is not required for the prosecution of torture.

Two in the bush

Criminal proceedings can be brought in Ireland for grave breaches of the *Geneva Conventions* as well as for breaches of the UN *Convention Against Torture*, regardless of the nationality of the accused or the location of the alleged offence. Section 3 of the *Geneva Conventions Act 1962* provides that "any person, whatever his nationality, who, whether in or outside the state, commits, or aids, abets or procures the commission by any other person of, any such grave breach of any of the scheduled conventions" shall be guilty of an offence.

Section 2 of the *Criminal Justice (UN Convention Against Torture) Act 2000* criminalises acts of torture carried out by a perpetrator, regardless of nationality and location of commission. Unlike the *Geneva Conventions Act*, this act does not have a provision that demands the AG's consent for proceedings to be instituted.



Prisoner abuse at Abu Ghraib Prison, Iraq

The *Genocide Act 1973* is not as unambiguous about the universal jurisdiction of the Irish courts as a venue for prosecution. Similarly, the *International Criminal Court Bill 2003* is not as clear about the question of universality for the crimes it defines (crimes against humanity, war crimes and genocide). It is clear, however, that for grave breaches of the *Geneva Conventions* and for torture, there are no territorial restrictions with regard to the location of the alleged offence or the nationality of the accused.

Grave breaches under s3 of the *Geneva Conventions Act 1962* and acts of torture under s2 of the *Criminal Justice (UN Convention Against Torture) Act 2000* are both indictable offences, and as such there is no statute of limitations.

Blair Witch Project

The citizen's right to prosecute as a common informer has survived the establishment of the DPP, and the DPP has no power to intervene in the District Court to prevent such a prosecution (*State (DPP) v District Justice Ruane*, [1985]

ILRM 349). In order to initiate proceedings, the common informer must make a complaint to a district judge who, if satisfied, will issue a summons to the defendant. However, in the case of an alleged war criminal, who is likely to flee the state, it may be more useful to obtain a bench warrant for the arrest of the defendant. Once the warrant has been issued, the gardaí are obliged to arrest the defendant, if practicable.

In *State (Ennis) v Farrell* ([1966] IR 107), the Supreme Court considered to what extent a common informer could proceed with the prosecution of an offence that could not be tried summarily. Ó Dálaigh CJ held: "the duty of the district justice in the case of a private prosecution in respect of an indictable offence is therefore clear. He must permit the private prosecutor to direct and conduct the entire of the preliminary investigation – and at the conclusion of the evidence, and including any evidence offered by the defendant, must consider whether he should refuse informations or return the accused for trial."

In the case of an indictable offence, the common informer can only conduct the prosecution until it is passed up to the higher court. At that point, the DPP takes over the prosecution completely. If the District Court judge receives information in such a case, the common informer is entitled to assume that the DPP will proceed with the prosecution to trial on indictment and a decision not to prosecute can only be taken after the fullest consideration and for very good reason. However, the AG's permission is required to prosecute a grave breach, and if this is withheld, it is possible that the case could not proceed any further.

A common informer action was taken in Ireland in November 2004 against the Chinese deputy prime minister Huang Ju. The victim claimed to have been tortured in Chinese 're-education camps' because of his membership of the Falun Gong movement.

The application for a bench warrant for Mr Huang's arrest was rejected by the district judge, as the matter had been laid before the Garda Commissioner and, as such, would only be investigated by the gardaí. **G**

James Mehigan is a PhD candidate at the International Centre for Comparative Criminological Research, Open University. Anyone interested in exploring the use of universal jurisdiction law is invited to contact the Human Rights Committee, c/o Alma Clissmann, Law Society; a.clissmann@lawsociety.ie.

Computer literacy high among

Results of the TNS mrbi survey – commissioned by the Technology Committee of the Law Society indicate a high rate of computer literacy among members of the profession

Solicitors have a high rate of computer literacy, a Law Society-commissioned survey has found – but smaller firms need to catch up with the advanced computer systems used in larger firms. Among the headline findings, one-fifth of (mainly smaller) firms were found to be still managing their accounts manually, while many others have failed to embrace the opportunities posed by web marketing.

Results of the TNS mrbi survey – commissioned by the Technology Committee of the Law Society – are very positive, indicating a high rate of computer literacy among members of the profession. Over 200 solicitors' firms were surveyed. The sample was designed to be nationally representative, with quotas taking account of the regions where firms operate and their size. The questionnaire included a screening question, to ensure that the interview was conducted with the solicitor responsible for IT decisions in the firm. Fieldwork took place between 19 and 30 January 2006.

Ownership of basic IT hardware was found to be practically universal – all firms own a computer and a printer. "This is all the more interesting," says Andrew Cody, Chairman of the Technology Committee, "when you consider that when we carried out our last survey of the profession in 1994, internet and email weren't even mentioned! Back then, the survey results revealed that approximately 75% of solicitors in Longford were using typewriters instead of computers, while in Leitrim, there were no computerised accounts."

Now, almost four out of five



firms have some form of computer network in place and two-thirds use scanners. Similarly, almost all firms are using a basic word-processing package. Larger firms, based in Dublin, are most likely to use advanced hardware and software, such as digital dictators, PDAs and accounts management software.

"Because eConveyancing is coming up, we wanted to know the level of IT proficiency within the profession," says Andrew. "We carried out the survey for

three reasons, mainly:

- To advise the eConveyancing Task Force about how ready the profession is for it,
- To advise the Society in relation to communicating with its own members, and
- To help when devising plans for the education of the profession on IT matters."

Web marketing

The survey found that internet access within law firms is virtually universal, with four out of every five (80%) using

broadband. "This was far ahead of our expectations," says the chairman of the Technology Committee, "and shows that solicitors and firms have embraced the new technology." (Those without broadband are more likely to be smaller firms, located outside Dublin.) Internet usage is correspondingly high among staff. Almost all assistant solicitors and support staff use the internet, including nearly nine out of ten principals/partners.

The internet tends to be used most frequently to access information from the Land Registry, the Courts Service website, the Companies Registration Office, government bodies, the Revenue Commissioners and the Law Society members' web page. There were lower levels of access for BAILII, law searchers and the planning authorities.

Email is widely used by solicitors, with over nine in ten using it in the course of their business. It is most widely used to communicate with clients, (with almost two-thirds using it for this purpose on a daily basis). Almost half of solicitors use e-mail to communicate internally with colleagues every day. Again, this application is most frequently used by larger firms in the Dublin area.

Own websites

Despite high levels of internet usage, only one-quarter of firms have their own website. Less than one-fifth of these, however, regard it as a useful tool for generating business. The findings have indicated that law firms will need to embrace web marketing into the future.

The vast majority (over nine in ten) have developed a back-up

COMPUTERISED ACCOUNTS PACKAGES

It is noteworthy that, although more than four out of five firms are using some form of computerised accounts management package, one-fifth (mainly smaller firms) are still managing their accounts manually. There is no clearly dominant accounts management package on the market. "There are 35 different accounts management software packages being used by members of the profession," says Andrew. "Solicitors and firms should be using accounts management packages that are tailored specifically for solicitors' offices. In order to find out the kind of package you should be using, you should visit the Law Society's website (www.lawsociety.ie). Go to the 'Society committees' page, select 'technology' and click on the article *Accounts Packages*, written by chartered accountant and investigating accountant, Munro Moore."

solicitors' firms, survey finds

policy for their computer systems. Most of the firms (88%) that have a back-up policy use a manual back-up system. Less than one-tenth (8%) of such firms use an external company to back up their computer files – of whom the majority are the larger firms, located in the capital. The findings point to a need to improve back-up policies. “In all, 6% have absolutely no back-up policy, whether that’s disk, CD, tape or server,” says Andrew.

Almost all firms do have anti-virus software installed on their computer systems, and in four-fifths of cases, this anti-virus software is up-dated manually by staff at least once a week.

Almost one-third of legal firms allow their solicitors remote access to their office network. Of the one-fifth of firms with external support, whether staff or typists for instance, one-quarter can provide remote access to their networks.

“Some of the findings have exceeded our expectations,” says Andrew. “In our survey, the amount of solicitors who have remote access to their office is 31%. In addition, there is almost 100% email usage, which is heartening to see. Other good news was revealed in the 73%

DOES THE LAW SOCIETY HAVE YOUR PERSONAL BUSINESS EMAIL ADDRESS?

The IT section in the Law Society wishes to update its email address files for members of the profession. Many members currently receive the Society’s regular e-zine through their personal business email addresses – but many more are not receiving such information, either because members’ email addresses are out of date, are not on the Society’s records, or because members have supplied only their generic business email addresses to the IT section.

If you would like to be kept up to date by receiving information from the Society about the profession – directly to your desk – and would like to receive the Society’s e-zine, please forward your personal business email address (rather than your generic company email address) to: customerservice@lawsociety.ie.

who have upgraded some parts of their network or servers within the past year. That’s a strong uptake of people moving forward with technology.”

In addition, smaller firms must look to the example set by their larger counterparts in embracing a more sophisticated level of technology.

Relatively advanced

It is clear that solicitors’ firms are relatively advanced in terms of embracing the digital revolution. It is obvious, also, that the foundations for further advancement are in place, given

the high levels of hardware ownership. The main opportunities for growth in this area include:


- Standardising the types of accounts management packages used,
- Encouraging the use of newer technologies, and
- Placing greater emphasis on web-based resources, such as BAILII, law searchers, and email contact with the Courts Service, to name a few.

The Technology Committee is now considering the survey’s results in detail with a view to

formulating advice and recommendations on possible seminars and workshops to promote the use of information technology among the profession. It is also preparing recommendations for the Law Society on how best to advance its communication, using IT, with members. It will also make recommendations to the Law School on the training and use of IT internally, and will provide advice to working groups within the Society and, in particular, the eConveyancing Task Force.

Says Andrew: “There has been a huge take-up of solicitors who lodge land registry deeds online. I’d like to see a cost reduction for those who do use the technology to lodge their land registry deeds.”

“One of the areas we need to work on, however, is the relatively low level of legal research that’s being carried out online. We studied the usage of 15 legal research databases and found that the take-up was significantly below our expectations. In order to encourage the use of such research databases, we are intending to provide seminars to members of the profession about how to use these databases to their professional advantage.” **G**



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Time to think about the

The recent Supreme Court ruling in *CC v Ireland* should really make us think about whether the ‘nuclear option’ is really the best way to go about vindicating and protecting important constitutional rights, argues Brian Foley

For the most part, no one has come out of the statutory rape debacle with much credit. On the one hand, one can wonder how the legislature did not see something like this coming. On the other hand, one may query whether the Supreme Court dealt with the problem in as proportionate and sensitive a manner as possible. There comes a point, however, where the blame-game can obscure the lessons that we, as a polity, should take from the whole saga. In particular, the Supreme Court ruling in *CC v Ireland* ([2006] IESC 33) should really make us think about whether the ‘nuclear option’, whereby the court invalidates unconstitutional legislation, is really the best way to go about vindicating and protecting important constitutional rights.

Of course, you may think that I am talking rubbish. If legislation is unconstitutional, shouldn't it be automatically invalid? How could we, a people committed to constitutional governance, even tolerate the idea that unconstitutional legislation could ‘live on’ beyond its judicial condemnation? Well, the *CC* case illustrates just how this way of thinking can cause problems. There, the offence of what is colloquially referred to as ‘statutory rape’ was held to be unconstitutional because it did not allow for a defence of reasonable mistake as to age. Indeed, many of us may agree with this – maybe it is wrong to



Sex bomb: nuking legislation can lead to a legislative vacuum

prosecute someone who does not have a guilty mind. The problem, however, is that the same offence has been used to prosecute those who never could have raised this defence. So, nuking the legislation gave ‘real’ rapists a gap through which they could march right into the High Court and demand their release.

Indeed, it is not being alarmist to label the *A* case and its consequent public reaction as one of the severest crises of legitimacy that our Supreme Court has faced in its near 70-year existence. However, a good deal of criticism levied at the court may be slightly too harsh. The nuclear option was used in *CC* largely because the legislation under challenge predated the Constitution. A decision that pre-constitutional legislation is unconstitutional is

usually taken to mean that it was never carried over into the post-1937 constitutional order at all. Basically (and although one can disagree with this), the Supreme Court may say it didn't really have a choice – the legislation (so said the court) was *always* unconstitutional under *Bunreacht na hÉireann* and so it had to be seen as invalid in an *ab initio* sense. Moreover, the Supreme Court has attempted to plug this gap with its decision in *A* case. So, crisis averted?

Maybe so. What is important, however, are the lessons we take from this. The problem with the nuclear option is that it fails to take seriously the significant difference between *deciding* legislation is unconstitutional, and *invalidating* legislation based upon that decision. To illustrate this, let us draw upon

an example from Canada (which our courts may have to deal with in the future). Assume that legislation criminalises all possession of sexual images of persons under the age of 18. Suppose also that a mature, but young couple, in an expression of intimacy and love, wish to create images of themselves for their own use. If they successfully argued that this legislation was unconstitutional, and if that legislation was nuked, it would result in a legislative vacuum – there would be no laws prohibiting the possession of such images – throwing the baby out with the bathwater, if you will.

So, when the Canadian Supreme Court invalidated laws like these in *R v Sharpe* ([2001] 1 SCR 45) on the basis of the ‘Romeo and Juliet’ argument, it was consciously aware of the ‘gap’ that the nuclear option could create. So, rather than nuking the legislation, the court read an exclusion clause into the relevant legislation to cover these ‘peripheral’ cases. Of course, one may be very uncomfortable with this, and view it as a form of judicial legislation. Indeed, the Supreme Court in *CC* seemed to feel this way about ‘reading in’ a defence of reasonable mistake as to age into s1(1) of the *Criminal Law (Amendment) Act 1935*. But this is not the only way that Canadian Courts avoid the problems associated with the nuclear option. For example, in *Attorney General for Ontario v M & H* ([1999] 2 SCR



'nuclear option'?

3), the Supreme Court held that certain exclusions of same-sex couples from spousal support schemes was an unconstitutional discrimination. Again, the Supreme Court chose not to nuke the relevant provisions, but to suspend its declaration that the offending section was of no force or effect for a period of six months, thereby shifting the resolution of the matter to parliament, which could amend the relevant legislation to meet the Supreme Court's constitutional views. Indeed, the constitutional courts of Slovenia and South Africa enjoy similar power, whereby those courts may set a time period after which 'abrogation' of a law under the

Slovenian or South African constitutions will take effect. A somewhat different model is operated in Britain. Under the *Human Rights Act 1998*, a court may declare legislation to be incompatible with the *European Convention on Human Rights*. However, the court cannot invalidate that legislation. Rather, the legislation remains on the statute books until parliament repeals or amends it.

Whatever one thinks about the merits of any particular model, the *A* case debacle suggests that it is perhaps time to think seriously about formally amending the Constitution to introduce a greater degree of sophistication about how our courts resolve

constitutional questions. To give credit where it is due, our courts have, on occasion, shown some interest in developing a better range of remedies, but as the *CC* and *A* cases indicate, greater certainty is needed. Nothing here, however, means that we would have weaker rights. It simply means that we should think about the possibility that nuking legislation can be a disproportionate response to successful rights claims. Rather, Irish political life can have the best of both worlds. We can have a strong judiciary, vigilant in the stewardship of our most cherished of rights. However, starved of the nuclear option, that vigilance will not cross the

boundary into poorly targeted, scatter-shot invalidation of laws, which resonate far beyond the context of the case-at-bar.

Our courts are, perhaps, the best institution to decide what our rights mean in any given case. Our legislature is, in some cases, perhaps, the best institution to put those decisions into action. One may well disagree with this, but at the very least, it may be best to get this disagreement out in the open, so we can decide on just how we want our courts to deal with constitutional questions before the next crisis looms. **G**

Brian Foley is a barrister and PhD candidate at Trinity College Dublin.

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Prime Time highlights solicitor problems

From: René Rosenstock, Solicitor, Delgany, Co Wicklow

I wish to make some brief observations in relation to the *Prime Time* programme and the context in which it was broadcast.

Firstly, in relation to the context, I would say as follows. It appears to me that for the most part, the Law Society's approach to investigating complaints in relation to solicitors is laudable and well intentioned. Indeed, Indecon consultants described the Law Society's procedures as well structured and logical.

Secondly, *Prime Time* highlighted problems concerning several solicitors. The negligent omissions and commissions of these solicitors were of a serious nature.

Thirdly, without offering a detailed commentary on those cases or the Law Society's handling of them, one feature of the Law Society's approach to investigations concerned me. It appeared from your own responses to a number of questions put by Oonagh Smyth, that the Law Society's investigations have on occasion, fallen below an acceptable standard of rigour. I am referring to the practice of the Law Society of corresponding with solicitors in relation to the progress they have made in resolving a client's complaint and the Law Society's apparent omission to seek supporting documentary evidence from the solicitor under investigation, but instead to rely only on the solicitor's written word. I sincerely hope that I am wrong

in believing this to be the Law Society's approach, but this was the impression conveyed by your responses. From what I saw, Oonagh Smyth did not press you on this issue but if this is the Law Society's approach, it seems most unsatisfactory. I suggest that the proper approach is for the Law Society to adopt a more proactive stance and to seek substantiation or independent verification *in all cases* in respect of a solicitor's responses to

created an impression of defensiveness on your part, rather than a candid engagement with the issues at hand. I would have favoured a far briefer defence of the profession by, for example, firmly pointing out (merely once) that solicitors operate to high standards and that almost inevitably, not quite everyone meets those standards.

Fifthly, I thought it was wrong for you to defend the profession by reference to the

the investigation into either of these events. Quite simply, the matter begins and ends with the 1,100 or so complaints that are made to the Law Society and how well the complaints are investigated and resolved.

Sixthly, it should be noted that the figure of 1,100 that you quoted did not account for what must be at least the same number of potential complaints that are unreported. *Prime Time* bore witness to the vulnerability and enfeebled mental state of some people that encounter the legal profession and who would be reluctant to report their problems to the Law Society. It would be foolish to suggest that the figure of 1,100 complaints represents the full extent of public dissatisfaction. It would also be wrong to use this figure as an indicator of some sort of a 'converse satisfaction level'.

The Law Society's procedures work well in many respects. In principle, however, I object to self-regulation by any profession. Solicitors have, in my view, more to gain from independent regulation than by maintaining the status quo. The interests of the profession are not well served by either avoiding or denying the problems that exist. In the greater context, the ability to recognise that reform is necessary must exist. So, too, must the desire to reform. Once that exists, it must be motivated by the positive things that can be achieved for the profession and our clients and not, for example, by the negative incentives of the threat of reform being forced upon solicitors by some external party.



questions during the course of an investigation. It is beyond the scope of this letter to suggest detailed legislative reforms. I would, however, suggest that providing for a power to summons witnesses to give evidence on oath before the regulatory body (whatever it may be in the future) might be desirable.

Fourthly, it seems to me that the appropriate response of the Law Society was to defend and/or answer questions solely in relation to how the Law Society addresses complaints but not to embark upon a wider defence of the profession. The approach that you adopted

small number of complaints that it receives, relative to the number of legal transactions that take place in the State. The latter has no relevance to the former. As an argument it seemed spurious. If a plane crashes, the aviation authorities do not explain their investigation into the crash by saying that, statistically, it is actually safe to fly. The fact that it is statistically safe to fly or the fact that many solicitors are good practitioners might inform your choice to fly or to take legal advice. However, these facts tell one nothing about why a particular plane crashed, why the solicitor was negligent or the effectiveness of

'Sensationalist, hostile and unbalanced'

*Law Society Director General
Ken Murphy responds*

Thank you for your letter in relation to the *Prime Time* programme. The Society welcomes and values feedback from the profession on such matters.

I would like to comment on the main points raised in your letter in accordance with your numbered paragraphs.

Firstly, I am glad you acknowledge that the Law Society's approach to investigating client complaints against solicitors is, as you describe it, laudable and well intentioned. I pointed out to the makers of the *Prime Time* programme and, in fairness to them, they did briefly acknowledge in the broadcast that the Society's complaints-handling system has been described by the Minister for Justice, Equality and Law Reform as "exemplary", by the Independent Adjudicator as "fair and adequate" and by the Competition Authority's own economic consultants, Indecon, as "logically structured, fair and open". In fact, all three have made much more positive and wholeheartedly approving statements about the system than were included in the *Prime Time* programme. All three, I would suggest, also have studied and know a great deal more about the system than does *Prime Time*.

Secondly, the majority of the cases dealt with by *Prime Time* were cases of alleged misconduct rather than alleged negligence. While the general public may consider matters to be 'proved' by television programmes of this kind, the appropriate legal processes for dealing with these matters are not yet completed in most of the cases. It is important to recognise, therefore, that much of what was broadcast was of



Ken Murphy: "the term 'self-regulation' as a description of the system of regulation of solicitors in this jurisdiction is completely misleading"

the nature of allegations rather than findings based on a balanced and impartial process that assessed all relevant facts. Generally speaking, the programme only highlighted one side of these cases.

Thirdly, I can assure you that the Society does not unquestioningly accept written assurances from solicitors that they are now making progress in delay cases. Indeed, as I pointed out in the programme as broadcast, in such cases solicitors are regularly required to attend in person before the Complaints and Client Relations Committee and to meet specific deadlines set by the committee for stages of the work to be completed. The Society's first and foremost objective in such cases is to get the delayed legal work completed as quickly as possible in the interest of the client.

Fourthly, you are of the view that, in my interview with *Prime Time*, I should have focused almost exclusively on answering questions about the Society's complaints' handling rather than embarking upon a wider defence of the profession. I disagree. I believe it was important that I should do both. I formed the view at

an early stage in the Society's extensive dealings with the programme-makers that the effect, if not the actual intention, of the programme would be to show the solicitors' profession in a bad light. This is why when I wrote to Oonagh Smyth of *Prime Time* on 19 May 2006, I expressed concerns about balance. I pointed out that focussing heavily on a series of specific cases, in which people had very serious complaints about their solicitors, would very likely have the effect of suggesting that the experiences of these people are typical of the experiences of a very high proportion, if not the majority, of clients of solicitors in Ireland. Such a suggestion would give a very false and damaging impression to the viewers of the programme. It is, of course, impossible for you to assess the pre-recorded interview I gave to *Prime Time*. You have not seen it. It lasted for almost an hour-and-a-half without a break. I answered as helpfully and comprehensively as possible every question put to me, other than questions relating to specific complaints about individual solicitors, which I cannot discuss as a matter of law. Only about four

minutes of this interview was broadcast and these small segments were chosen by *Prime Time* to fit in with the programme's own agenda. I had asked if, instead of having a pre-recorded interview, which inevitably would be severely edited by *Prime Time*, I might undertake a live studio interview at the end of the programme in which I would have at least had some control over what would be broadcast. The *Prime Time Investigates* series will not permit this, however.

Fifthly and sixthly, I believe it was very right to defend the profession by reference to the small number of complaints it receives, relative to the number of legal transactions that take place in the State. Things can only be viewed properly and proportionately if seen in their true context. We would all wish that the number of 1,100 complaints received on average each year was much lower. It is relevant and appropriate, however, to point out that, on a conservative estimate, practising solicitors in this jurisdiction every year deal with some 750,000 cases and transactions.

On this basis, the proportion of cases and transactions that result in complaints to the Society is 0.1%. Of course, even many of these complaints are revealed, on examination, to have no proper basis. *Prime Time* did, under pressure from the Society, broadcast my comment that it is hardly surprising, given that *Prime Time* had chosen their cases going back over a number of years, that – from literally millions of potential cases – *Prime Time* found a number of people who were dissatisfied. What *Prime Time* did not broadcast was my going on to say with emphasis that every one of the complaints received

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is a very serious matter for the individual concerned and a very serious matter for the Society. Nor did *Prime Time* broadcast my pointing out that the Solicitors Disciplinary Tribunal and the Independent Adjudicator can effectively overrule and redress a decision made by the Society if the Society gets it wrong.

As I said in the course of the interview – although it did not make it through the thousand cuts of *Prime Time*'s editing process – “We are a human institution like any other. We don't get absolutely everything right all the time – no institution does. Where we get it wrong, other bodies can redress it.”

At the end of your letter you say that, in principle, you object to self-regulation by any profession. So do I. Self-regulation has the potential to be self-interest regulation at the expense of the people whom the profession exists to serve. However, the term ‘self-regulation’ as a description of the system of regulation of solicitors in this jurisdiction is completely misleading. Indeed, in the modern world I believe it is only in the media that true self-regulation exists. The term

‘self regulation’ in relation to the solicitors’ profession in Ireland is a misnomer, and the sooner everyone stops using the term the better. The ultimate regulatory authority in relation to solicitors is not the Law Society but the President of the High Court.

The main regulatory and disciplinary powers are vested in the Solicitors’ Disciplinary Tribunal, which is independent of the Law Society, with a third of its members being non-lawyers nominated by the Minister for Justice, Equality and Law Reform.

The Law Society’s Complaints Committee, a third of whose members currently are non-lawyers nominated by IBEC, ICTU and the Director of Consumer Affairs, will shortly have a lay majority. The existing Independent Adjudicator, with extensive powers, is shortly to be replaced by a Legal Services Ombudsman with even greater powers. All this exists under the close eye of the Minister for Justice, Equality and Law Reform who frequently must approve, in the public interest, Law Society regulations before they can take effect. The entire system is designed and operates

under statutes passed by the Oireachtas and must, by law, operate in the public interest. The Law Society plays an important part, along with the others mentioned, in all of this but it is misleading to call it ‘self-regulation’. For some years now, we in the Society have used the more accurate term ‘co-regulation’.

I must also take issue with the suggestion towards the end of your letter that the Law Society and the profession are opposed to reform. Quite the contrary is the case.

Entirely on the Society’s own initiative in recent years, it undertook a root-and-branch review of its regulation with a task force chaired by the former secretary general of the Department of Justice, Joe Brosnan. The *Regulatory Review Task Force Report* was published in 2004, with a copy sent to every solicitor. The extensive reforms, comprising 56 specific changes, were adopted and subsequently implemented by the Society. Space does not permit me to list many other reforms voluntarily undertaken over the years by the Society. However, the Society’s very positive attitude to reform has been warmly praised by the

Minister for Justice, Equality and Law Reform in the context of our general welcome for the very significant changes that are in the course of being introduced under the *Civil Law (Miscellaneous Provisions) Bill 2006*, which is now published and awaits passage through the Oireachtas.

Of course, there was validity in some of the criticisms made, both of the Society and of the solicitors’ profession, in the *Prime Time Investigates* programme. We have to be big enough to recognise this and open enough to learn from it. Nevertheless, it was essential to point out, in the face of a programme that a great many solicitors and non-solicitors alike perceived to be sensationalist, hostile and unbalanced, that the number of cases that give rise to complaint is very small indeed.

Is it wrong for people to conclude from this that the overwhelming majority of solicitors give an excellent service, which satisfies their clients in the overwhelming majority of cases? No, it is not wrong. I believe it is the truth and the solicitors’ profession should not be afraid to say it. **G**

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The hand that

The recent judgment on the defence of ‘mistake as to age’ and the subsequent decision in the *Mr A* case led to political turmoil and fervent public debate.

Edel Kennedy examines the background to the newly-enacted law

As a result of the Supreme Court judgment in *CC v Ireland, DPP and AG*, the *Criminal Law (Sexual Offences) Act 2006* was enacted – effectively restoring the offence of statutory rape to the statute books. Essentially, section 1(1) of the *Criminal Law (Amendment) Act 1935* was deemed unconstitutional by the Supreme Court, on the basis that it wholly removed the mental element of an offence and expressly criminalised the mentally innocent. By virtue of the absence of a defence as to age, the 1935 act was entirely inconsistent with the generally subjective nature of criminal liability in Ireland and was wholly discriminatory. The *CC* judgment represents a carefully considered evaluation of the operation of the criminal justice system. Section 1(1) of the 1935 act criminalised a person without mental guilt, contrary to justice guaranteed under article 40.3.1 of the Constitution.

The potentially far-reaching implications of the *CC* decision were illustrated by the initial release of Mr A and the numerous other applications for release by individuals serving sentences under section 1(1) of the 1935 act. When a law is found to be unconstitutional, it is deemed to be unconstitutional from the enactment of the Constitution. This reasoning was highlighted in *Murphy v AG* (1982), in which the constitutionality of the taxation regime for a married couple was successfully challenged and found to be retrospectively inoperative. The Supreme Court ruling in the *Mr A* case signifies a marked departure from the retrospectivity that would usually apply in such instances and limits the possible consequences of the *CC* judgment.

Rock of ages

In an *ex tempore* decision, Chief Justice John Murray stated that section 1(1) of the 1935 act was declared unconstitutional because the applicant was unable to plead that he had reasonable grounds for believing that the girl was over 15. It was further stated that

Mr A did not raise any constitutional argument for a right to advance a defence relating to mistake, as he did not at any stage assert that he had reasonable grounds for believing that the girl was over 15. The judgment will provide further reasoning for the Supreme Court’s decision that Mr A’s warrant for detention and his detention on foot of that warrant was still lawful. It would appear that the reasoning provided to date does not reject the principle that a law found to be unconstitutional is retrospectively invalid but seems to instead represent a limitation of its application. The imposition of temporal restrictions on the unconstitutionality of challenged law was also raised in the course of arguments for and against the appeal, and is perhaps an issue that will be given further consideration. The full reasoning of the judgment is currently awaited.

The *Criminal Law (Sexual Offences) Act 2006* has addressed the central issue of the *CC* decision by providing the defence of honest belief that the child was older than the statutory age. The court must also consider whether or not there are ‘reasonable grounds’ for such a belief. This insistence that any mistake as to age must be reasonable as well as honest constitutes an objective approach. The requirement for reasonable grounds applies an outer standard to the individual, but child protection interests could justify the use of the objective test.

Acts and omissions

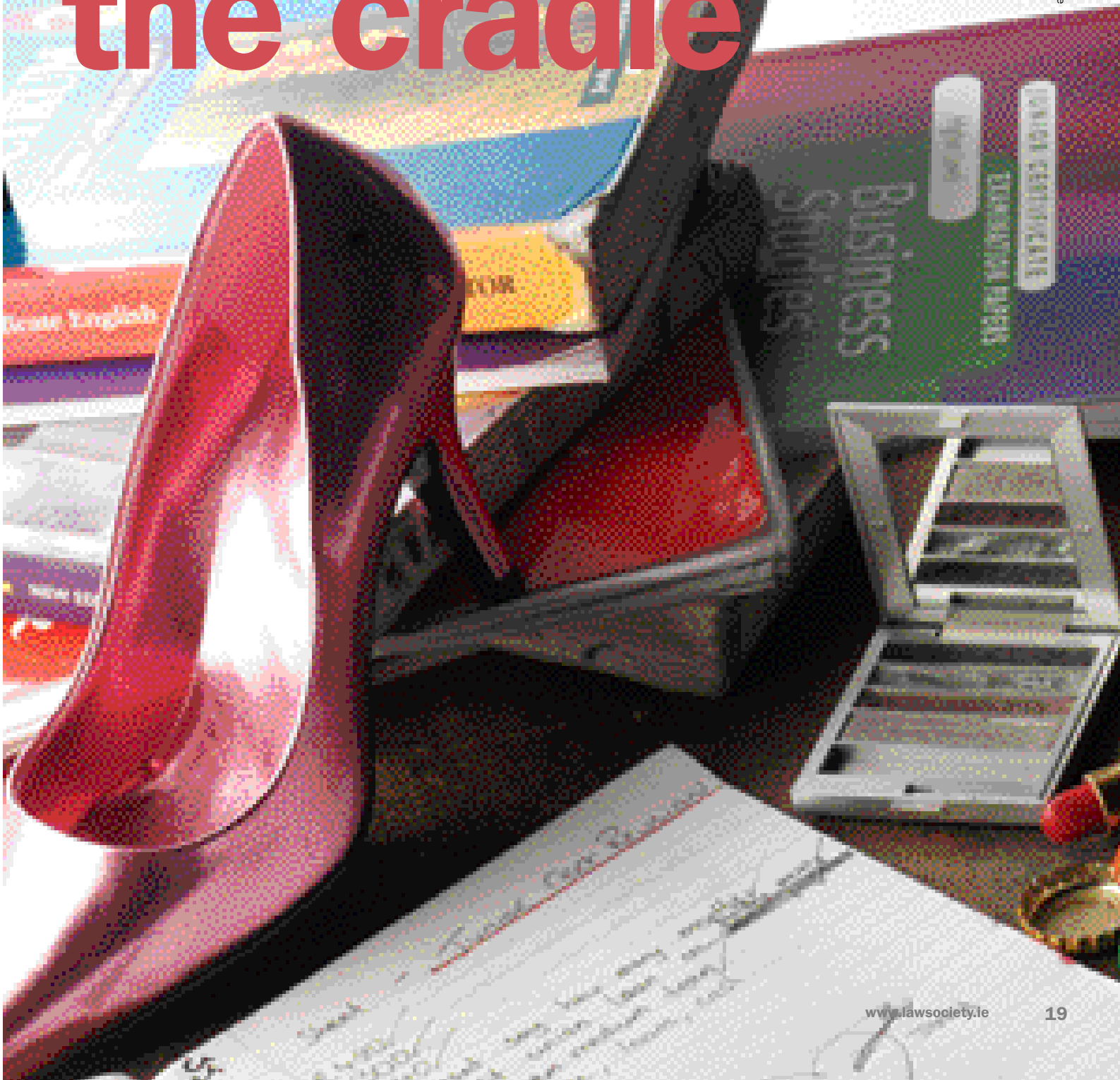
For the purposes of the new act, ‘sexual act’ means an act consisting of sexual intercourse or buggery between persons who are not married to each other. The definition also encompasses an act described in sections 3(1) and 4(1) of the *Criminal Law (Rape) (Amendment) Act 1990*. By virtue of section 2, life imprisonment is reinstated as the maximum sentence for those convicted of sex or attempted sex with a child who is under the age of 15. Under section 3(2), for those who attempt to engage in a sexual act with a child under 17, the maximum penalty is two years – but this increases to a possible

MAIN POINTS

- Criminal liability in sexual offences
- Supreme Court decision in *CC v Ireland, DPP and AG*
- Criminal Law (Sexual Offences) Act 2006

ROBS the cradle

PIG: roshn@indigo.ie



CRIMINAL LAW (SEXUAL OFFENCES) ACT 2006: MAIN FEATURES

- Defence of honest belief available that the child had attained 15 years (s2) or 17 years (s3) in accordance with the CC judgment.
- Persons in authority defined (s1) and are subject to higher penalty on conviction under section 3.
- A person convicted of offence under s3(1) shall be liable to a heavier sentence in respect of any subsequent conviction of an offence under that subsection.
- New offence created of engaging or attempting to engage in a sexual act with a child. This offence is gender neutral.
- Maximum penalty of life imprisonment reinstated on conviction of offence of engaging in sexual act with child under the age of 15 (s2).
- Females under 17 years of age cannot be guilty of an offence under section 1 or 2 by reason only of her engaging in an act of sexual intercourse.
- No proceedings for an offence against a child under 17 years of age can be brought except by the Director of Public Prosecutions.

four years if the person convicted is 'a person in authority', a term that includes parents, step-parents, guardians, grandparents, aunts or uncles, a person in *loco parentis* or a person responsible for the education, supervision or welfare of the victim. Under section 3(1), for those who engage in a sexual act with a child under 17, the maximum penalty is five years, but this increases to ten years if the person is a person in authority.

Under section 3(3), a person convicted of an offence under subsection 1 shall, in respect of any subsequent conviction of an offence under section 3(1), face a maximum penalty of ten years' imprisonment and 15 years if committed by a person in authority. A second conviction for an *attempt* to engage in a sexual act carries a sentence of four years and seven years for a person in authority.

It will not be a defence for a person accused of a sexual act with a child under 17 to plead that the

child consented to the sexual act.

Under section 5, it is an offence to engage in a sexual act with any young person under the age of 17, but it also states: "A female child under the age of 17 shall not be guilty of an offence under this act by reason only of her engaging in an act of sexual intercourse." By virtue of section 5, if a male and female who are both under 17 engage in sexual intercourse, the boy is guilty of a serious offence but the girl is not. It is claimed that the differential treatment of boys and girls in the new act may not sustain a constitutional challenge or the scrutiny of the *European Convention on Human Rights*. The Oireachtas has explained this apparent discrimination as a necessary measure to avoid the criminalisation of teenage mothers. Arguments against this claimed justification state that this measure makes it more difficult for young fathers to be part of their child's life and sends the message that the male should not share in the same duties and responsibilities of parenthood as a female. The government has further defended this section by arguing that criminalising young girls would lead to practical difficulties. An example involving a charge of statutory rape against an older male was given. It was stated that if a young girl was criminalised, she would become an accomplice to the offence and, as such, her evidence would need corroboration.

Different strokes

Before the enactment of the new legislation, it was proposed that an exception should be provided for consensual sexual activity between teenagers who were both under 17. It was suggested that if both parties were aged between 14 and 16, no offence would be committed if there was no more than a two or three-year age gap between them. However, consensual sexual acts other than intercourse between a 16-year-old girl and boy are criminalised under the new legislation. For example, if a young girl performs oral sex on the boy, they are both guilty of a serious offence – but if the boy performs oral sex on the girl, then neither of them is guilty. Another seemingly bizarre anomaly of the new legislation is this: if a boy attempts to have consensual intercourse with a girl but fails, the girl is rendered guilty. Therefore, the girl can protect her legal innocence by proceeding to natural



Edel Kennedy's article, titled 'Age-Old Problem', published in the *Gazette*, October 2005, was the first published article that drew attention to the fact the unanimous decision of *A, B, C v Ireland, AG and DPP* signified a substantial change in Irish law. Edel's article was quoted extensively in the media and was referred to on several occasions by the Fine Gael leader Enda Kenny in the Dáil

intercourse, deemed complete upon proof of penetrative intercourse.

The prevention of exploitation should be a priority of the new legislation, but it appears that the legislation confuses the treatment of a situation involving an older paedophile abusing a younger girl with that of teenagers having consensual sexual intercourse. It should be considered whether such criminalisation is unrealistic, and a public debate on the moral and sociological issues of teenage sex is urgently required.

Sex, lies and videotape

Upon the introduction of the new legislation, concerns were raised about the adversarial court procedure that would result in young girls being asked questions about their appearance. The potential for such questioning exists, but safeguards should be put in place. The government has expressed regret for the delay in bringing forward the necessary video evidence procedures that were agreed and found expression in the *Criminal Justice (Evidence) Act 1992*.

A further claim levied against the new law is that it decriminalises some homosexual acts involving older men and boys under 17. Previously, the law stated that a man could be prosecuted for engaging in acts of gross indecency with a boy between the ages of 15 to 17, even if the boy had consented. This section of the *Criminal Law (Sexual Offences) Act 1993* has been repealed under the new legislation. It has been claimed that, if a situation occurred in which an older man was involved in certain sexual acts that are not within the ambit of the 'sexual acts' definition of the legislation with a consenting 15-year-old boy, then that older man would not be guilty of such an offence.

Section 4 of the 1993 act provided that a male committing, or attempting to commit, an act of gross indecency with another male under 17 shall be guilty of an offence, punishable upon conviction of up to two years' imprisonment. The abolition of section 4 was defended by the government, which

suggested that behaviour previously covered by this section would be open to prosecution as a 'sexual assault'. However, it might be argued that it was not necessary that physical contact take place for the offence of 'gross indecency' under section 4 of the *Criminal Law (Sexual Offences) Act 1993*. It remains to be seen whether or not this assertion will stand up to closer scrutiny in the event that it is tested, as each case will turn on its own set of individual facts. Furthermore, the procurement of an act of gross indecency was an offence under this section and this offence has not been replaced with a similar provision.

Further consideration is also required regarding the issue of whether a child who is compelled by fear or threat to sexually touch another person, without being touched in return, is protected as a victim by the application of the offence of sexual assault. The Law Reform Commission's *Consultation Paper on Child Sexual Abuse* stated: "There is clearly a need for an offence of procuring an act of indecency with a young person. A child may be compelled as a result of a threat, or having otherwise been put in fear, to perform an indecent act with an adult, which would not, strictly speaking, constitute an indecent assault by that adult." It has been suggested that a legislative provision on this matter, modelled on the Canadian Criminal Code, should be enacted into Irish criminal law.

"Consensual sexual acts other than intercourse between a 16-year-old girl and boy are criminalised under the new legislation"

Where angels fear to tread

The *Criminal Law (Sexual Offences) Act 2006* represents the beginning of a process of comprehensive consideration of the important issue of child protection. The government's appointment of a legal expert to carry out an annual audit of the operation of laws, both national and international, related to child-protection issues and the establishment of an all-party committee to examine all laws on sex crimes against minors are further welcome steps in this process.

It is unfortunate, however, that the tendency to rush through important legislation in response to a particular event is a familiar aspect of Irish criminal law (see *Viewpoint*, p12). The murder of Veronica Guerin led to the *Proceeds of Crime Act 1996* in response to the public realisation that organised crime had become a powerful force within the state. Similarly, the Omagh bombing led to the enactment of the *Offences Against the State Act 1998*. The formulation of new legislation on sexual activity involving young people merited a considered approach – however, the government was not afforded that opportunity due to the overwhelming public disquiet. **G**

Edel Kennedy is a trainee solicitor with Dublin law firm Partners at Law. She is the author of the October 2005 Gazette article 'Age-old problem', which highlighted the significant legal issues in this area.

LOOK IT UP

Cases:

- *CC v Ireland, DPP and AG* (23/5/2006)
- *Murphy v AG* [1982] IR 241 (SC)

Legislation:

- *Criminal Justice (Evidence) Act 1992*
- *Criminal Law (Amendment) Act 1935*
- *Criminal Law (Rape) (Amendment) Act 1990*
- *Criminal Law (Sexual Offences) Act 1993*
- *Criminal Law (Sexual Offences) Act 2006*
- *European Convention on Human Rights*
- 'Megan's Law'
- *Sex Offenders Act 2001*

To have and TO HOLD

A judgment last December makes clear that a party to family-law proceedings seeking a property adjustment order has unregistered rights against the interests of the other owning, but estranged, spouse. Patrick Mullins sorts out the priorities

In a very interesting judgment delivered by Mr Justice Clarke on 12 December 2005, the position of a judgment mortgage (see panel, p25) in relation to priorities was considered by the High Court. The judgment – in *ACC Bank Plc v Vincent Markham and Mary Casey* – seeks to clarify the requirement on the part of a family-law litigant to register a *lis pendens* and its effect as against a judgment mortgage creditor of that person's spouse.

Mr Justice Clarke effectively ruled that the law relating to the registration of a *lis pendens* as a burden on registered land is as follows:

- Any party making a claim for a property adjustment order in family-law proceedings is entitled to register a *lis pendens* in respect of such property.
- The registration of a *lis pendens* binds any party who is a purchaser or mortgagee for value. Any direction to transfer the property that might ultimately be made will rank in priority over the interest of any purchaser or mortgagee for value who acquire their interest subsequent to the registration of the *lis pendens*.
- Because a judgment mortgagee is deemed to be a volunteer rather than a mortgagee for value, the judgment mortgagee will – even in the absence of actual notice or the registration of a *lis pendens* – rank behind the interest of a spouse to whom a transfer order is made, provided that family-law proceedings have started before the registration of the judgment mortgage.

In this case, the plaintiff obtained judgment against Mr Markham, and subsequently converted the

judgment into a judgment mortgage against the interest of Mr Markham, in relation to a particular property in County Clare. The property was registered in the Land Registry. Mr Markham and his estranged spouse were the registered owners of the lands. The judgment mortgage was registered by the plaintiff against the interests of Mr Markham only.

The plaintiff sought a declaration to the effect that the judgment mortgage stood well charged, and sought an order for partition, or a sale in lieu of a partition, which would enable ACC to seek payment.

Prior to the date of registration of the judgment mortgage, the second-named defendant, estranged spouse of the first-named defendant, issued proceedings for a judicial separation and sought, among other things, a property adjustment order.

In a bind

ACC was not on notice of the family-law proceedings. No *lis pendens* was lodged by the estranged spouse to put any party on notice of proceedings pending in relation to the property.

The judgment dealt with the issue of priority between the estranged spouse and the bank. Mr Justice Clarke drew a distinction between a purchaser or mortgagee for value, and a volunteer.

The court also considered section 10 of the *Judgments (Ireland) Act 1844*, which states: “No *lis pendens* shall bind or affect a purchaser or mortgagee without express notice thereof unless and until a memorandum or minute containing the name and usual or last-known place of abode” is registered.

The court affirmed a decision by Mr Justice

MAIN POINTS

- Clarifying the requirement to register a *lis pendens* and its effect
- Ranking of the judgment mortgagee and the interest of a spouse
- Start date of family-law proceedings



P.C.: REX FEATURES

Geoghegan in *AS v GS* (1994). In that case, the judge held that the protection to purchasers or mortgagees in the act of 1844 was intended only for those acquiring an interest for value. On the basis that a judgment mortgagee has been held to be a volunteer, he found that a volunteer is done by *lis pendens*, irrespective of whether he or she had notice

of it, and irrespective of whether a *lis pendens* by way of documentation has been registered.

Mr Justice Clarke held that the position of the estranged spouse ranked in priority to the judgment mortgage in favour of ACC. The court also considered the provisions of section 71(4) of the *Registration of Title Act 1964*, which provides that a

LIS PENDENS

Lis pendens ('pending action'). The registration of an action against a landowner: *Judgment (Ireland) Act 1844*, s10; *Byrne v UDT Bank Ltd* ([1984] ILRM 418). A *lis pendens* does not bind or affect a purchaser or mortgagee, who has no express notice of it, unless and until a memorandum containing the requisite details concerning the suit is registered in court, for example, the name and usual or last known abode and title, trade or profession of the person whose estate is intended to be affected by the suit, the court, title of action, and day filed: *Re O'Byrne's*

Estate ([1885] 15 LR Ir 373).

A judgment mortgagee, being a volunteer, is bound by a *lis pendens* irrespective of whether or not he or she has notice of it and irrespective of whether or not the *lis pendens* has been registered: *AS v GS and AIB* ([1994] 2 ILRM 68, HC).

A registered *lis pendens* may be vacated on the order of the court, even without the consent of the person who registered it: RSC Ord 63, r1(29); *Flynn v Buckley* ([1980] IR 423); *Lis Pendens Act 1867*.

(From Murdoch's Dictionary of Irish Law, 4th Edition.)



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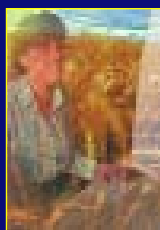
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charge against the interest of a judgment debtor in favour of a judgment mortgagee is subject to existing registered burdens and burdens affecting the interest without registration and "all unregistered rights subject to which the judgment debtor held that interest at the time of registration of the affidavit".

Priority ranking

The court considered the Supreme Court's 1976 decision in *Tempany v Hynes*, where the Supreme Court held that a purchaser from the registered owner of land had such an unregistered right under a contract for sale before execution of the transfer or payment of the purchase monies. In that case, the purchaser was held to take the property free of a post-contract judgment mortgage registered against the interest of the vendor.

Mr Justice Clarke also held that Ms Casey might be said to be a person who had an unregistered right subject to which the first-named defendant held his interest at the time of registration of the affidavit, on the basis that she was a person who had brought a claim that might, if the outcome were successful, entitle her to a direction that certain lands be transferred to her. It followed, therefore, from the provisions of section 71 of the *Registration of Title Act 1964*, that the judgment mortgage was subject to that right, and that her right had priority over the judgment mortgage.

Mr Justice Clarke concluded that any interest that Ms Casey would become entitled to as a result of family-law proceedings would rank in priority to the interest of ACC under the judgment mortgage, by

JUDGMENT MORTGAGE

A judgment mortgage is a mortgage created by the registration as a mortgage, by a judgment creditor against the lands of the judgment debtor, of a judgment of a court for the payment of a sum of money: *Judgment Mortgage Acts 1850 and 1858*. Judgments that may be registered are such money judgments of the Supreme, High, Circuit and District Courts: *Circuit Court (Registration of Judgments) Act 1937*; *Courts Act 1981*, s24.

A judgment may be registered against all legal and equitable interests of the judgment debtor in freehold and in leasehold property; a judgment mortgage is rarely registered against leaseholds, as the judgment mortgagee then becomes liable for rent and covenants therein.

When a judgment is validly registered as a mortgage, the registration has the effect of a mortgage by deed over the debtor's beneficial interest at the time of registration in the lands set out in the judgment mortgage affidavit which is sworn by the judgment creditor: *Judgment Mortgage Act 1850*, s7.

(From Murdoch's Dictionary of Irish Law, 4th Edition.)

virtue of the fact that the family-law proceedings had started and were in process at the time of registration of the judgment mortgage affidavit. In the circumstances, Mr Justice Clarke adjourned the proceedings pending the determination of the family-law proceedings.

Unregistered rights

It is clear, therefore, that a party to family-law proceedings, seeking a property adjustment order, has unregistered rights against the interests of the other owning, but estranged, spouse.

These 'unregistered' rights take priority over a judgment mortgage registered against the interest of the other owning, but estranged spouse, provided that the proceedings before the family law courts have been issued prior to the date of registration of the judgment mortgage.

There is no requirement under law for such a party to family-law proceedings to register a *lis pendens* to obtain priority against a subsequent judgment mortgagee, who registered a judgment mortgage against the interest of the other owning, but estranged, spouse. **G**

Patrick Mullins is a partner in Dillon Mullins and Company, Solicitors.

LOOK IT UP

Cases:

ACC Bank Plc v Vincent Markham and Mary Casey [2005] IEHC 437
AS v GS (1994) 1 IR 407
Tempany v Hynes (1976) IR 101

Legislation:

Judgments (Ireland) Act 1844
Registration of Title Act 1964

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Have you accessed the Law Society website yet?

Companies engaged in certain mergers or acquisitions are required to notify the Competition Authority of their intentions. Failure to do so can lead to void mergers, criminal penalties and possible negligence claims against legal advisers. Rosemary O'Loughlin untangles the issues



PIC: REX FEATURES

ALL *together* NOW

MAIN POINTS

- The Competition Authority and merger enforcement
- Mandatory notifications 'out of time'
- Criminal penalties for failure to notify

Failure to notify the Competition Authority of a merger or acquisition can have serious consequences for the parties involved and for their legal advisors.

Where a transaction that is the subject of a mandatory notification is not notified to the authority, and subsequently implemented by the parties, the merger or acquisition is void. This will remove all legal certainty for any actions taken following the merger, including any contracts entered into or appointments of personnel that are made.

Additionally, there may be criminal penalties for failure to notify, as well as possible negligence claims against a solicitor for failure to properly advise. Awareness on the part of practitioners as to what transactions must be notified to the Competition Authority – particularly media mergers – is therefore fundamentally important.

Since January 2003, the Competition Authority has been primarily responsible for merger enforcement in Ireland. The Competition Authority's powers and functions in this regard are set out in part 3 of the *Competition Act 2002*. Section 18(1) of the *Competition Act 2002* (the act) provides for the mandatory notification of certain mergers and acquisitions to the Competition Authority. Mandatory notification depends on whether:

- The financial and nexus criteria set out in section 18(1) are met, or
- The merger falls within a class of merger or acquisition specified in an order under section 18(5).

Come together

To date, one class of merger has been specified by virtue of SI 622 of 2002. This class is the 'media merger', which is defined in section 23(10) of the act as "a merger or acquisition in which one or more of the undertakings involved carries on a media business in the state".

A 'media business' is defined in section 23(10) also as:

- A business of the publication of newspapers or periodicals consisting substantially of news and comment on current affairs,
- A business of providing a broadcasting service, or
- A business of providing a broadcasting services platform.

It is important to remember that the term 'undertaking involved' includes more than just the particular acquiring or merging company. It includes the entire corporate group, except in the case of an acquisition, where only the target company is included on the acquired side, and not its parent vendor company or person(s).

There are no financial thresholds applicable to media mergers. Therefore, for notification purposes, it does not matter what level of sales are achieved by the media business concerned. This, coupled with the fact that only one of the merging parties need carry on a media business in the state, renders this provision very far-reaching in its application.

I want you

Once the merger or acquisition is a notifiable transaction, the undertakings involved must notify the Competition Authority of the proposal to put it into effect within one month from the conclusion of an agreement or the making of a public bid (section 18(1) of the act).

Consequences include criminal sanctions. Section 18(9) provides that failure to notify renders the person in control of the undertaking guilty of an offence and liable:

- On summary conviction, to a fine not exceeding €3,000;
- On conviction on indictment, to a fine not exceeding €250,000. Section 18(10) provides for recurring penalties for each day that the offence continues.

Section 18(11) defines "a person in control of an undertaking" as:

- In the case of a body corporate, any officer of the body corporate who knowingly and wilfully authorises or permits the contravention;
- In the case of a partnership, each partner who knowingly and wilfully authorises or permits the contravention;
- In the case of any other form of undertaking, any individual in control of that undertaking who knowingly and wilfully authorises or permits the contravention.

Therefore, in order for an offence to be committed, it is necessary that the person concerned "knowingly and wilfully" allowed the contravention. This requires a high standard of evidence.

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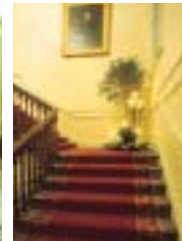
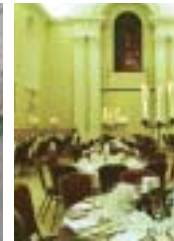
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Legislation:

Competition Act 2002

Notifications:

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Notification M/05/079 *Radio County Sound/Dooley and Feeney*

Notification M/06/017 *CRH Deutschland/Syncotec*

Website:

The Competition Authority's website: www.tca.ie

Moving a step further, a merger or acquisition falling under section 18(1), which is implemented without a prior clearance determination by the Competition Authority, is void. Section 19(1) provides that a merger or acquisition to which section 18(1) applies shall not be put into effect until the Competition Authority so determines. Section 19(2) provides that any putting into effect contrary to section 19(1) renders the merger or acquisition void. Therefore, failure to notify a transaction can have further consequences for the undertakings involved where that non-notified transaction is implemented.

Got to get you into my life

A number of mandatory notifications to the Competition Authority have been made outside of the allocated timeframe. This has been more likely to happen in the case of media mergers, due to the wide category of transaction captured by this provision of the act and the absence of a turnover requirement.

The first 'out of time' transaction considered by the Competition Authority was notification M/04/003 *Radio 2000/Newstalk 106*. This media merger was implemented prior to notification. Once the solicitors for the undertakings concerned were informed by the Competition Authority of the obligation to notify, the notification was made promptly. Since the transaction did not give rise to competition concerns, it was cleared. A subsequent media merger – M/05/079 *Radio County Sound/Dooley and Feeney* – was not notified until four to five months after the solicitors for the undertakings involved were informed by the Competition Authority of their obligation to notify the transaction. This was another transaction that had been put into effect without knowledge of the provisions of the act. The considerable delay in notifying thus extended the period during which the merged entity legally did not exist.

An example of a late-notified non-media merger is M/06/017 *CRH Deutschland/Syncotec*. This transaction was implemented without notification to the Competition Authority. The failure to notify was only subsequently discovered when solicitors for one of the undertakings involved were carrying out due diligence

in relation to a separate transaction. The parties' Irish-based solicitors had not been consulted in relation to the first transaction.

The legal basis on which the Competition Authority can consider notifications of implemented transactions is as follows: the merger that has been implemented is void, therefore no merger has taken place at all. The parties, therefore, are notifying a proposed merger, which the Competition Authority can review in the usual way. If the Competition Authority clears it, it may be lawfully implemented. This may involve the parties re-doing legal acts such as contracts and appointments of staff, among other things. If the Competition Authority should block such a merger, it would mean that the purported new entity would have to undo the merger. Unscrambling the eggs in such a situation can be very tricky.


There is a further risk involved in putting a media merger into effect prior to clearance by the Competition Authority – media mergers are subject to further scrutiny by the Minister for Enterprise, Trade and Employment. So even if the Competition Authority clears a media merger on competition grounds, the minister may prohibit it on other non-competition grounds.

Hello goodbye

The Competition Authority is required to publish its determinations – with due regard for commercial confidentiality – within one month. Where a transaction has been notified 'out of time' or implemented prior to a determination by the Competition Authority, this is noted in the text of the reasoned determination. The public nature of determinations means that any employee, customer, supplier or competitor has knowledge of any period of voidness. Moreover, any client company has knowledge of any delay by their solicitor in notifying a transaction.

Although ignorance will certainly protect parties against criminal liability for failure to notify a merger to the Competition Authority, the same cannot be said in relation to the consequences resulting from implementation.

Voidness arises automatically once a notifiable transaction is implemented without a clearance determination from the Competition Authority. Criminal penalties may be imposed if the failure or continuing failure to notify is a deliberate action. Awareness on the part of solicitors of these consequences is vital in order to protect themselves and their clients.

More information on the Competition Authority's procedures in relation to mergers, as well as the determinations, are available on the authority's website: www.tca.ie. 

Rosemary O'Loughlin is a solicitor and case officer in the mergers division of the Competition Authority.

CARVING its own course

World War II engulfed Europe from 1939-45, but you wouldn't have known it from reading the *Gazette*. Instead, it was more concerned with the effects of petrol and paper shortages. In the ongoing series celebrating the 100th volume of the *Gazette*, Mark McDermott reads between the lines of the censor's pencil

The *Gazette* in the 1940s is notable for its almost total lack of reference to the biggest event of the century – World War II. In total contrast to the period from 1914-18, where significant numbers of solicitors and apprentices joined the Allies to fight against Germany – a fact then celebrated by the *Gazette* – there appeared to be a studious attempt to disregard the slaughter taking place across the water and on the Continent. As a neutral country, it appeared that Ireland was carving its own course and so could not appear to show favouritism to either side.

One of the more significant matters discussed in the pages of the *Gazette* from 1940-45 was the shortage of petrol (as a result of the anonymous war)

– and its impact on the profession as it went about its daily business. “A deputation was received by the Ministry of Supplies at Ballsbridge, Dublin, upon the 3rd May, to consider an application from the Solicitors practising in the cities of Dublin, Cork, Galway and Limerick for an increased allowance of petrol to enable them to carry on their professional duties...

“After considerable discussion the deputation was informed that applications from Solicitors practising in the four cities, stating reasons and necessities for special consideration for an increased allowance of petrol, based exclusively on wants for professional purposes, and stating registration number, make, and horse-power of car, would receive consideration...” (*Gazette*, May 1940, p5).

Their pleas fell on deaf ears, however, with delegation after delegation being listened to during the war years, but ultimately being refused extra petrol rations. “With a serious curtailment of litigation due to the petrol shortage, the curtailment of Land Purchase and the war conditions now prevailing, I am afraid that the position is not a hopeful one,” the Law Society’s president, Jasper Travers Wolfe, opined in a rare reference to the war during his half-yearly general meeting speech on 16 May 1941 (*Gazette*, June 1941, p7). It would be a full year after the war’s end before solicitors would enjoy an increase of petrol rations.

The president addressed another matter during the same speech: “When the Courts of Justice Act was passed it was understood that the appointment of District Justices would be divided fifty-fifty between Counsel and Solicitors. For some years past

Cobh in the 1940s: petrol shortages during the Emergency meant that the Law Society’s president in December 1941, Jasper Travers Wolfe, spent six-and-a-half hours travelling from Cork city to Cobh – a distance of over 50 miles – and 11 hours from Dublin to Cork



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PIC: INDEPENDENT NEWSPAPERS PLC. REPRODUCTION RIGHTS: THE NATIONAL LIBRARY OF IRELAND

30/31 May 1941: Ireland's neutrality did not protect it from German attack. On the night of 30/31 May 1941, German bombers dropped their bombs on the northern part of Dublin. The North Circular Road, Summerhill Parade and North Strand (seen here) were hit – 38 people died and 70 houses were destroyed

MAIN POINTS

- World War II ignored
- Petrol and paper shortages
- Centenary of the Society

PIC: JA HAMPTON/TOPICAL PRESS AGENCY/GETTY IMAGES



2 May 1939: the first conscripts queue up to register for the army at King's Cross, London, at the start of World War II. A notice requires them to provide their birth certificate, or failing that, certain personal information

that has not been followed, but I am glad to say that the last appointment was that of a Solicitor. We can only hope that a gentleman's agreement of 1924 will be observed for the future" (*Gazette*, June 1941, p7).

Centenary of the Society

The centenary of the Society was marked in the July 1941 issue with a potted history of the previous 100 years. "On the 17th day of June, 1841, The Society of Attorneys and Solicitors of Ireland was instituted.

The Society obtained a Charter on the 5th April, 1852, and a supplemental Charter on the 14th December, 1888, and under the latter its title was altered to that of 'The Incorporated Law Society of Ireland'.

"The Council had hoped to celebrate the event in a manner fully appropriate to the occasion but felt that owing to the present national emergency the time was inopportune for the holding of any public social function. The Council has decided in order to mark the event, to found a Centenary Incorporated Law Society of Ireland annuity, to be administered by the Solicitors' Benevolent Association, and to invite subscriptions with this object in view from the members of the Society, and it is intended to issue this appeal at an early date" (*Gazette*, July 1941, p10).

Some £1,400 was raised through donation by August 1942 and presented to the Solicitors' Benevolent Association (SBA), with an annuity of some £40 to be administered by the SBA.

It was back to the petrol and coal shortage in the half-yearly address of the president, Jasper Travers Wolfe, in December 1941: "Owing to the shortage of petrol and coal, travelling facilities, so important especially for the Country Solicitors, have proved a

SOLICITORS AND APPRENTICES IN THE EUROPEAN WARS

When World War I broke out in 1914, numerous Irish solicitors and apprentices readily joined the military service. The Law Society suspended its annual outings, dinners and other social functions for the duration of the war, contributing £127 annually (the cost of the annual dinner) to the Irish Motor Ambulance Service.

Over 110 solicitors, 71 apprentices and 126 barristers (together with 175 sons of solicitors and 166 sons of barristers) had enlisted by mid-1916. A roll of honour began to appear in the *Gazette* in relation to those solicitors and apprentices who had died in military service, with letters of condolence being sent to members of their families, which was acknowledged in the *Gazette*. Honours and awards for valiant service by Irish soldiers were also noted. The war is mentioned frequently throughout the 1914-1918 *Gazette*.

The Council met in November 1918 and almost immediately started a subscription for a war memorial for the 20 solicitors and 18 apprentices who died during the war. The money was eventually raised by 1921 and a memorial now in the Four Courts (near the double doors in the solicitors' area) was created.

Another issue that concerned the Law Society was how military service was to be considered for apprentices. It was decided that military service could be counted towards the three-year time requirement from apprentices. The sentiment emerging from the *Gazette* during this period is one of great sadness – with honour – for those who had fallen during the war.

World War II

The *Gazette*'s coverage of World War II is in total contrast to its treatment of the Great War. Shortages of petrol, paper and other basic necessities during the 'Emergency' were noted in the *Gazette* – though the war's part in such shortages is barely referred to. Despite the Irish Government's neutral policy, 50,000 Irish men and women contributed to the war effort in Europe, joining various

regiments in the British or Commonwealth countries.

The *Gazette* is strangely quiet about World War II, with none of the 'roll of honour' obituaries or indeed any discussion on any Irish soldiers, let alone solicitors or apprentices involved, as was the case during the Great War. Obituaries during this period only refer to solicitors/apprentices dying in Ireland (and not as a result of war service).

The Law Society decided to make special provision for solicitors' apprentices serving in the Irish Defence Forces – but did not extend this provision to those serving with the Allies in World War II. "It was decided to ask the Government to make an Order under the *Emergency Powers Act, 1939*, entitling the Council, at their discretion, in cases where they are satisfied that a solicitor's apprentice has, during the period of his indentures, served in the Defence Forces of the State or in any public service connected with the present emergency, declaring that the period of such service shall for all purposes be reckoned as time duly served under his indentures of apprenticeship" (*Gazette*, May 1943, p2).

The conclusion of the war in Europe merits scant attention in the president's address in May 1945, which notes that the end of the war would hopefully mean that restrictions on petrol rations would soon be lifted.

It is also of interest that, in 1944, over 1,422 solicitors were registered to practice in Ireland – a peak that was not seen again for over 30 years. A note of caution was uttered by the then president in relation to the excessive numbers in the profession and, in particular, the difficult economic situations that faced all solicitors during the 'Emergency'. By the end of 1945, however, the focus of the Law Society and its members returned to Ireland and its legal concerns.

Thanks to Pamela Marin PhD for contributing the above.

very serious matter. It now means to me that every time I come to Dublin to attend a Meeting of the Council I am absent three and often four nights. The journey from Cobh to Dublin prior to the curtailment of the train service took three-and-a-half hours. I have recently made the journey from Dublin to Cork in eleven hours, but I am told that many others have been less fortunate. I have made the journey from Cork to my home town, a distance of just over fifty miles, in six-and-a-half hours, but again, I do not hold the record" (*Gazette*, December 1941, p28).

Death of Mr Wakely

The *Gazette* marked the death-in-service of the Society's Secretary, William George Wakely, in March 1942, with the publication of a black-bordered issue – a unique event in the publication's history. It very obviously showed the esteem in which the secretary was held. Mr Wakely served for over 53 years between 1888 and 1942. The *Gazette*'s tribute was emotional and praiseworthy: "It is with feelings of deepest sorrow and regret that we announce the death of the beloved Secretary of our Society,

William George Wakely, who died at his residence, 'Elmhurst', Temple Gardens, Rathmines, on the 26th March, 1942...

"The history of the Society is his life story. When he was appointed Secretary, the Society was working under its Charters with very limited powers. The scope and influence of the Society were considerably extended during his term of Office, and largely as a result of his personality and efforts... (*Gazette*, April 1942, p41).

"The President and the Press have paid their tributes to his character ... As the resolution passed by the Council truly states he was in all respects a truly great-hearted Christian gentleman and possessed himself all the Christian virtues. He was most courteous and kind in his dealings with all, and regarded everyone with whom he came in contact primarily as a human being, no matter what his station in life" (*Gazette*, April 1942, p43).

The death of former vice-president of the Society, John R Brennan, was also covered in an obituary in the April 1942 issue. Mr Brennan was the maternal grandfather of the current president, Michael Irvine:

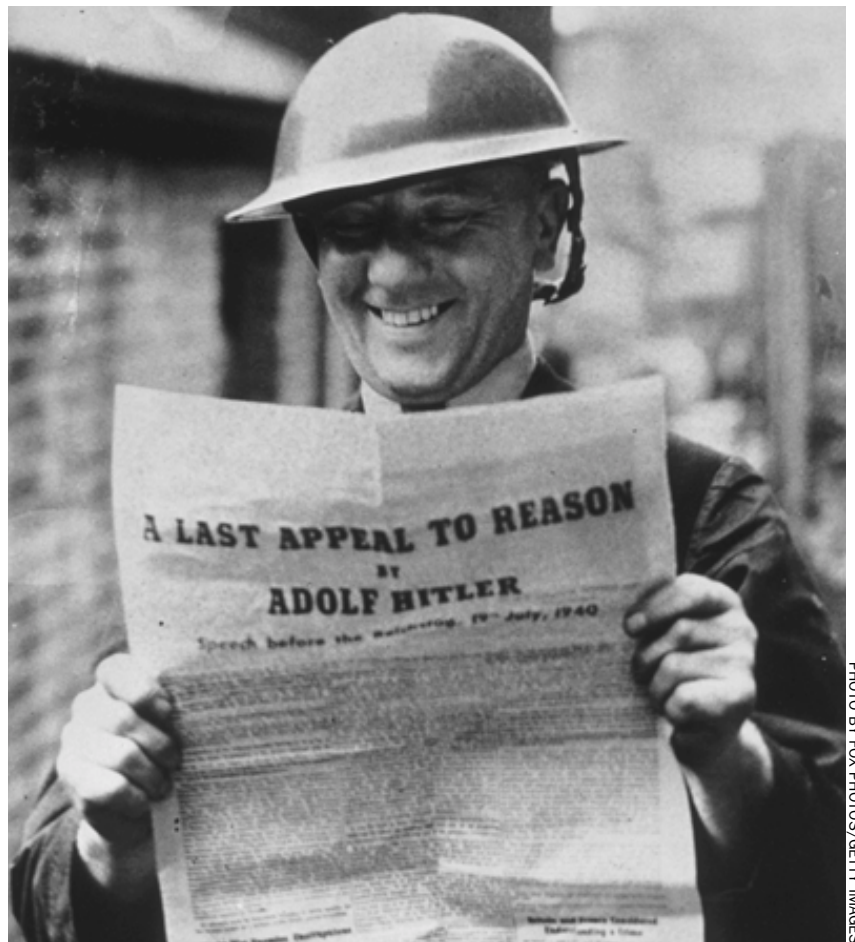
"Mr John R Brennan, Solicitor, died on the 28th

February, 1942, at his residence, 'Glena', Wexford.

"Mr Brennan, along with his wife, lost his life most tragically in a fire, which destroyed their residence. Mr Brennan served his apprenticeship with the late Mr Thomas Huggard, Tralee, obtaining second place and a silver medal at his final examination, and was admitted a Solicitor in Trinity Sittings, 1900, and practised as senior partner in the firm of Huggard, Brennan & Godfrey, in Wexford. He became a member of the Council in the year 1929 and filled the Office of Vice-President in the year 1938-39. He gave valuable assistance in the work of the Council and was very effective in debate. He had a most genial manner and was held in high regard by his colleagues" (*Gazette*, April 1942, p47).

Paper shortage

Petrol and coal weren't the only commodities in short supply as a result of the 'Emergency': "The Society has received from the Minister of Supplies a letter pointing out the gravity of the position regarding paper and inviting the co-operation of the profession in endeavouring to alleviate the shortage of raw materials by increasing the collection of waste paper. It is pointed out that even a partial



2 August 1940: a British ARP worker reads a piece of Nazi propaganda, dropped from a German bomber. It featured an English translation of a speech by Adolf Hitler made at the Reichstag

COURT BEHAVIOUR

"A provincial member writes: The recent announcement that the occupant of the almost forgotten (to us) Woollack has come to the conclusion that women appearing in Court and taking the oath on giving evidence may do so without affecting the elaborate head-dress beloved of the well-known coloured sporting tipster, or even the modest handkerchief, raises the question of how far our own Courts may be disposed to recognise women litigants appearing without head covering. At least in our Circuit and District Courts, men are admonished to 'take off your hat, Sir', while women sweep by arrayed in all their glory. There is the case of the sprightly junior who wished to draw the attention of a certain County Court Judge to his gorgeously befeathered bar-maid witness in a Licensing appeal, and sought his Honour's approval of 'the manner in which his proofs were presented' – the witness, of course, failing to appreciate the reason for the resulting laughter in Court.

"However, in the matter of proper deportment, or dress, it seems but right to regard the woman who appears in our Courts without head-dress as in no way acting disrespectfully, but what of the two persons of the weaker sex, who were seen recently in the back of a certain Court in the country calmly indulging in a surreptitious cigarette?" (*Gazette*, November 1943, p27).

"The Gazette will aim neither to emulate nor to compete with other publications of greater legal interest"

breakdown of the supply of paper would be sufficient to cause a stoppage in the business activities of the country carried on in professional and commercial offices and would give rise to great unemployment hardship and dislocation of essential services..." (*Gazette*, January 1943, p36).

Despite the paper shortage, the *Gazette* underwent a design change for the July 1943 issue (vol 37, no 3). Rather strangely, it and the subsequent issue were printed on superior quality paper, but reverted to type for the November 1943 issue: "The Council in deciding to adopt this new form have had in view the desirability of increasing the utility and interest of the *Gazette* within the limits imposed by war-time restrictions. While the *Gazette* is and will continue to be published primarily as a record of the Society and will aim neither to emulate nor to compete with other publications of greater legal interest, the Council hopes to increase its scope by keeping the profession in touch with recent decisions of the Irish and English Courts of peculiar interest to solicitors ... It should, however, be borne in mind by contributors that brevity is essential in the present circumstances of paper shortage..." (*Gazette*, July 1943, p16).

Not quite the excuse we use today – but still sound advice nevertheless! **G**

GOOD

for the day

The new *Registration of Deeds and Title Act* is supposed to modernise and streamline registration mechanisms and procedures. Denis Linehan gets to grips with it, section by section

The *Registration of Deeds and Title Act 2006* was signed into law on 7 May. Its preamble describes it as “an act to establish a body to be known as an tUdarás Clárucháin Maoine or, in the English language, the Property Registration Authority, with the functions conferred on it by this act, including the management and control of the Registry of Deeds and the Land Registry, to repeal and re-enact, with amendments, the law relating to the registration of deeds and other documents affecting land, to amend the law relating to the registration of the title to land and to amend sections 16 and 28 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*.”

Minister of State Brian Lenihan explained the rationale of the legislation in the following terms: “While it contains many technical proposals and measures, it also establishes the Property Registration Authority to manage and control the Land Registry and the Registry of Deeds. The aim of the bill is to modernise and streamline registration mechanisms and procedures.

“The government recognises the contribution an efficient and accessible land registration system can make to improving the climate for business and enhancing business activity. It is an essential requirement in a modern successful economy. We should not underestimate its practical importance for individual homeowners wishing to dispose of their property or to borrow funds for whatever reason.”

The act is divided into five parts and has one schedule. Part 1 deals with such matters as interpretation and repeals, part 2 provides for the establishment of the Property Registration Authority, part 3 deals with the registration of deeds, part 4 deals with other amendments to the *Registration of Title Act 1964* and part 5 is headed ‘Miscellaneous’. It provides, for instance, for the establishment of a Registration of Deeds and Title Rules Committee.

The schedule deals with the enactments repealed by it. The first part of the schedule refers to the repeals relating to the Registry of Deeds and the second part refers to enactments relating to the Land Registry.

Pocketful of kryptonite

A lengthy definition of ‘deed’ is contained in section 32(1). The definition includes, for instance, a conveyance and a document not attested. Anticipating e-conveyancing, the definition also includes information in electronic or other non-legible form that is capable of being converted into any of the preceding documents.

It is noteworthy that the definition does not include:

- Any document affecting, or insofar as it affects, registered land, or
- Any lease for a term not exceeding 21 years (or such other period as may be prescribed) where actual occupation is in accordance with the lease.

MAIN POINTS

- **Registration of Deeds and Title Act 2006**
- **The new Property Registration Authority**
- **Substantive changes to the legislation relating to the Land Registry**

DEED

PIG: REX FEATURES



Superman – he
knows a good deed
when he sees one

WHAT YOU NEED TO KNOW ABOUT THE REGISTRATION OF DEEDS AND TITLE ACT 2006

This act has recently passed all its stages in the Oireachtas and some sections have been brought into force. Others will be brought into effect by ministerial order, with some parts being implemented on different dates. Among the sections that have been brought into force are: sections 58, 59 and 60, 63, and 70, the effects of which are noted below.

Much of the act relates to the conversion of the Land Registry and Registry of Deeds into a new Property Registration Authority and will be of little immediate concern to solicitors and their clients. A number of the changes will require the making of new rules before the changes can be brought into operation – some of these will provide for greater flexibility in the operation of the registers.

In advance of this legislation, significant changes were made in 2005, in that compulsory registration was extended to three further counties – Longford, Westmeath and Roscommon – as from 1 April 2006. As and from 1 January 2006, certificates of title on first registration are being accepted where the amount of the purchase money or compensation does not exceed €1 million, the previous figure having been €320,000.

Among the changes in the law which have been introduced are:

- 1) A provision enabling adverse possession to a leasehold interest to be registered (section 50).
- 2) The amendment of section 90 of the 1964 act to enable persons who are entitled to be registered as owners of registered land to grant leases and to grant easements, etc (section 63).
- 3) Clarification that words of limitation will no longer be required to effect a grant of easements or *profits a prendre* (section 70).
- 4) The abolition of the need to register titles covered by the *Irish Church Act 1869* (section 52).
- 5) The ability to apply *ab initio* for registration with qualified title (section 57).
- 6) The phasing out of land certificates and certificates of charge,

and the conversion of existing equitable mortgages into legal charges (section 73).

- 7) An amendment to section 25 of the 1964 act to make it clear that it relates only to the requirement to register under section 24 of that act, as amended. (Section 24 applies to situations where registration becomes compulsory under a ministerial order.) (Section 54).
- 8) A provision that enables compulsory registration to be extended by ministerial order, to include specified areas, specified land or specified land in such an area. This would enable multi-apartment buildings to be included (section 53).
- 9) A provision that where a registered owner leases land in the folio, the lessee is to be registered as owner of the leasehold interest. Previously, an application for first registration had to be made (section 58).
- 10) Rules may provide for the amendment of the periods of leases, which will come within section 69 and for which leasehold folios must be opened (section 59).

In addition, there are two sections which are, at best, peripheral to the registration systems, and which are already in force:

- The amendment of section 16 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* to provide generally that a person who holds an interest under which that person would not be entitled to acquire the fee simple in the property cannot grant a sub-lease under which the sub-lessee would be become entitled to acquire the fee simple (section 76).
- The amendment of section 28 of the same act to provide that only covenants in the lease the fee simple interest in which is being acquired are to be extinguished on the acquisition of the fee simple (section 77).

Conveyancing Committee

‘Land’ is also defined in section 32(1). It includes, for instance, land of any tenure, houses or other buildings or structures whatsoever and parts thereof, mines and minerals, as well as incorporeal hereditaments.

Every application for registration is to be allocated a serial number under section 37. Priority

between registered deeds, and between registered and unregistered deeds, is governed by section 38. The priority between registered deeds is determined by the serial numbers allocated to them. An unregistered deed is void against a registered deed affecting the land concerned. However, section 38(3) provides: “This section is without prejudice to the application of any rule of law or equity in cases where a person claiming under a registered deed had knowledge, or is deemed to have had knowledge, of a prior unregistered deed.”

Provision is also made in part 3 for a variety of other matters, including rectification of errors in section 40 and searches and inspection in sections 43 and 44.

The Guardian

Part 4 deals with other amendments to the *Registration of Title Act 1964*. Here, also, e-conveyancing is anticipated. Thus, in section 50(a), both ‘index’ and ‘record’ are defined to include

PROPERTY REGISTRATION AUTHORITY

The Property Registration Authority is established under section 9. It is provided in section 4(2) that “references in the act of 1964 to a registering authority and the registrar, and references in it and in any other enactment to the Registrar of Titles or Registrar of Deeds, are deleted and references to the authority inserted”.

The authority’s functions are set out in section 10(1). As well as research, reporting and policy-making functions, the authority is established:

- To manage and control the Registry of Deeds and the Land Registry,
- To promote and extend the registration of ownership of land, and
- To deal with applications under part 111 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*.

ones that are in electronic or other non-legible form that is capable of being converted into a permanent legible form.

Section 53 amends section 24 of the *Registration of Title Act 1964*. Under the amended section 24(1), the Minister for Justice, after consultation with the authority, may provide for the extension of compulsory registration to a specified area or specified land. The new section 24(2) prescribes when registration becomes compulsory – “where this section applies, the registration of ownership of the land concerned shall, if not already compulsory, become compulsory:

- In the case of freehold land, upon its conveyance on sale, and
- In the case of a leasehold interest, upon the grant or assignment on sale of such an interest.”

Compulsory registration was applied to counties Carlow, Laois and Meath in 1970. It was extended to Longford, Roscommon and Westmeath by ministerial order in September 2005 with effect from 1 April 2006.

A new section 25 was substituted for the existing one in the 1964 act by section 54. This provides that, where registration is compulsory, it must be effected within six months of the disposition, or at such later date as the authority (or, in case of refusal, the court) may sanction in a particular case. Otherwise, the disposition is ineffective.

Filthy Luthor

Rectification of errors in registration originating in the Land Registry by the authority is provided for in section 55. Compensation for error, forgery or fraud in relation to registration is provided for in section 69, which amends section 120 of the *Registration of Title Act 1964*.

A number of substantive changes to the legislation relating to the Land Registry were introduced at committee stage. First, provision was made for the phasing out of land certificates and certificates of charge. Secondly, provision was made for applications for qualified titles. Thus, in relation to freehold land, an application shall be for registration with an absolute title, a qualified title, or a possessory title.

In relation to leasehold land, an application shall be for an absolute title, a good leasehold title, a qualified title or a possessory title. Thirdly, provision was made that leases of registered land will also be registered. Thus, section 58 reads as follows: “section 51 (transfer of registered land) of the act of 1964 is amended by the insertion of the following subsection after subsection 2 ... in this section ‘transfer’ includes ‘lease’ and cognate words shall be construed accordingly”.

Part 5 of the act is headed ‘Miscellaneous’. Section 73 provides for the phasing out of land certificates and certificates of charge. This involves

SECTION 73(1) AND (2)

“The authority shall cease to issue land certificates and certificates of charge under the act of 1964, and, accordingly:

- a) Sections 28, 32(2), 32(3), 51(3), 51(4), 62(5) and 64(3) of that act are repealed, and
- b) Section 105 (certificates) thereof
 - i) Applies only in relation to land certificates and certificates of charge issued before the commencement of this subsection and not already cancelled, and
 - ii) Ceases to have effect three years after the commencement of subsection 2.”

fundamental change and is being done in part to facilitate e-conveyancing (see panel, above).

Section 74 provides for the establishment of the Registration of Deeds and Title Rules Committee.

The Justice League

The rules committee will consist of five members, under section 74(2). These include a High Court judge, the chairperson of the authority, the chief executive of the authority, a practising barrister nominated by the General Council of the Bar of Ireland, and a practising solicitor nominated by the Council of the Law Society of Ireland.

Under section 75, the rules committee must meet at least once every year to consider practice, procedure and administration under the legislation. It must report to the minister as to any amendments it considers should be made to improve its operation and effect.

Sections 76 and 77 make minor amendments to section 16 (restricting a right to acquire fee simple) and section 28 (effect of acquisition of fee simple on covenants), respectively, of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*.

The Watchtower

Extensive repeal of earlier legislation is provided for in the schedule to the act. In relation to the Registry of Deeds, 23 acts are affected, either in whole or in part. For instance, the whole of the *Registration of Deeds Act (Ireland) 1707* is repealed.

In relation to the Land Registry, three acts are affected. These include sections 73 and 75, so far as it applies to the Registration of Title Rules Committee, of the *Courts of Justice Act 1936*.

Also repealed are sections 4, 9 to 15 and 17 of the *Registration of Title Act 1964* and the whole of the *Registration of Title (Amendment) Act 1997*. **G**

Denis M Linehan is the author of Irish Land and Conveyancing Law and the forthcoming Irish Conveyancing Law and Practice.

Tell me MORE

MAIN POINTS

- Appeals under the *Freedom of Information Act 1997*
- Justifying the decision to refuse
- Access to records held by the courts and certain tribunals

A number of appeals have been made to the High Court relating to the *Freedom of Information Act 1997*. How have the courts dealt with these?

Eoin Dee delves into the filing cabinet

In recent times, there have been a number of appeals under the *Freedom of Information Act 1997*. How have these been dealt with? The first appeal to the High Court under the 1997 act was *Minister for Agriculture and Food v Information Commissioner*. In this case, an individual made a request to his employer, the Department of Agriculture and Food, under section 7 of the *Freedom of Information Act 1997*, for sight of his personnel file. The department granted access to records on the file from 21 April 1995, but, relying on section 6(6)(c), refused to grant access to records created prior to that date on the grounds that those records were not being used, or were not proposed to be used, in a manner or for a purpose that would affect the party requesting the information.

The requester applied to the Information Commissioner to review the decision in accordance with section 34 of the 1997 act. The commissioner duly varied the decision and granted the requester full access to certain specified records. Access was further partially granted for other records. The department appealed the decision of the commissioner to the High Court. There, it was held by O'Donovan J that, except where access to records is specifically prohibited by the 1997 act, there is a heavy onus on the public body to justify its decision to refuse access. When considering whether or not a record for which access was sought was being used, or proposed to be used, in a manner that could adversely affect the interest of the person to whom the records related, it was held that account could only be taken of what was happening to the record at that particular time and the stated intention of the record keeper – unless there was reasonable ground for doubting the stated intention. Certain comments of O'Donovan J in the case are of note:

“There can be no doubt that it was the intention of

the legislature when enacting the *Freedom of Information Act 1997* that it was only in exceptional cases that members of the public at large should be deprived of access to information in the possession of public bodies.”

In *Minister for Justice v Information Commissioner*, the matter of section 46 of the 1997 act was considered. Section 46 of the act deals with restrictions to the right of access to records held by the courts and certain tribunals. In this particular case, a relative of the defendant in a criminal trial sought access to records arising from the trial. These records included the shorthand notes and transcript, the book of evidence, the original statements and other documents compiled for the book of evidence. The request was denied but, following a review by the Information Commissioner, access was granted to a typed transcript of the hearing, certain of the witness statements, claims in respect of payment of fees and a statement of the accused in the trial, subject to certain deletions.

The commissioner's decision was subsequently appealed to the High Court on the ground that the documents were exempt and access to them was restricted by section 46(1) of the 1997 act. Finnegan J noted that the exemption does not apply to records relating to court or tribunal proceedings held in public, where the records concerned are not created by the court or tribunal and where disclosure to the general public is not prohibited by the court. It was held that a court transcript was not generally available to the public at large and, consequently, was exempted from production/access within the meaning of section 46 of the 1997 act. Commenting on the role of the court stenographer, Finnegan J noted that “at all times, the official stenographer has a relationship exclusively with the court, and transcripts are only provided by the registrar to a party interested in an



P.C. GETTY IMAGES

appeal or application for leave to appeal". The judge went on to note that:

"... the shorthand note and transcript which may be produced from same is created by the court. It therefore falls outside the exception of section 46(1)(a)(1) ... the shorthand note and transcript fall outside the exception to section 46(1)(a)(1) in that it is a record whose disclosure to the general public is prohibited by the court".

Taking these considerations into account, it was clear that the Information Commissioner had erred in law in directing access to these records.

In the case of *Deely v Information Commissioner*, the appellant sought to invoke the provisions of the 1997 act in order to obtain details of a decision of the notice party – the Director of Public Prosecutions – to prosecute him. The case arose from a road traffic accident that occurred on 1 April 1999. The appellant, no doubt feeling rather aggrieved at being the only party prosecuted, sought to invoke the provisions of the 1997 act against the Director of Public Prosecutions in order to obtain the reasons for his prosecution.

The DPP declined to provide the information. The appellant then sought a review of this decision by the respondent. The respondent refused the appellant's request. An appeal was subsequently dealt with before McKechnie J and was dismissed by him, permitting the refusal of the request for information contained in a record, that was exempt from production/access under section 46 of the 1997 act.

Some of the most significant features of this judgment are the comments by the judge regarding

the overall spirit, function and effect of the 1997 act. He noted that the purpose of the act was "to create accountability and transparency and this to an extent not heretofore contemplated, let alone available, to the general public". The judge noted that the act "is on any view, a piece of legislation independent in existence, forceful in its aim, and liberal in outlook and philosophy".

The judge expressed the view that traditional, literally-based rules of statutory interpretation might not necessarily be appropriate in relation to the interpretation of the terms of the 1997 act. It was noted that the traditional approach to statutory interpretation was to ascertain the will of parliament and to identify the intention of the legislature. The judge noted, however, that this approach "may not in all cases be a complete answer to the exercise demanded" and felt that "one is entitled to look at the act as a whole, and if there is any doubt or ambiguity, the purpose, intention and objects of the act may be considered".

These comments by McKechnie J are highly significant. They seem indicative of a desire within the judiciary to steer towards a liberal interpretation of the terms of the 1997 act and appear to signal an intention not to stick rigidly to the specific terms of that act, but rather to look to the purpose and intent of the legislation in terms of granting or refusing access to records. **G**

Eoin Dee is an associate in the Waterford law firm Nolan Farrell and Goff, and is the author of Discovery, Thomson Round Hall 2004.

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Cases:

- *Minister for Agriculture and Food v Information Commissioner*, 2000 1 IR 309 and 2001 ILRM 40
- *Minister for Justice v Information Commissioner*, unreported, High Court, Carroll J, 11 July 2003
- *Deely v Information Commissioner* McKechnie J, HC, 11 May 2001 and 2001 3 IR 439

Legislation:

- *Freedom of Information Act 1997*

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When I'm SIXTY FOUR



David Rouse: "Bespoke retirement structures have recently become available to the self-employed"

As part of sound practice management, solicitors should review the retirement investment structures available to them. Bespoke retirement structures have recently become available to the self-employed, allowing the individual complete control over investment in the full range of assets, including property, equities, bonds and cash, to name a few. Borrowing can be arranged within the structures, subject to certain guidelines and restrictions.

Practitioners might consider establishing a corporate structure; a salaried employment can fund an occupational retirement arrangement through company special and annual contributions, which may amount to a multiple of salary.

There is an earnings limit of €254,000 (indexed from 2007) and an indexed €5 million cap on retirement funds. Amounts in excess of the cap are taxed on drawdown.

The self-employed can access benefits (including a tax-free lump sum of up to 25% of the fund) from age 60. Company directors can do so from age 50, on early retirement.

Tax relief

Given the tax reliefs involved, the benefits of investment through a tax-exempt vehicle are obvious. For marginal rate tax-payers, up to 48 cent extra in the euro becomes available for investment. Tax as a

cost on an individual's gross income available for investment is removed from the financing decision; the value of tax-free growth over a 20- or 30-year horizon cannot be overlooked.

Solicitors with clients holding a portfolio of investment properties will be familiar with the circle of chasing rental shelters as their portfolio expands. A suitable retirement planning structure eliminates this s23/s50 merry-go-round.

Inheritance issues

For death arising before retirement, the majority of retirement plans provide for spouse's or dependants' benefits. If no such provision is made, the fund can be paid to the deceased's estate.

The implications of death after retirement are more complex and depend on the particular structure you entered at retirement. In the past, you had little choice in deciding what to do with the funds you built up; they were handed over to a life company who guaranteed you an annual payment – the annuity route. On death, a spouse's/dependants' benefit was paid – however, the fund accumulated during your career went to the life company. An approved retirement fund (ARF) now allows you to retain and control the retirement assets you have built up. An ARF is a tax-exempt vehicle designed to pay out retirement benefits. It can be left to your spouse or dependants to be inherited tax efficiently, or indeed tax free in certain cases.

What next?

Conduct a prudent retirement planning health-check of:

- Suitability of current arrangements and investment performance,
- Contribution levels for maximum tax relief,
- Expected retirement date. **G**

BY THE NUMBERS

Income tax relief on personal contributions is restricted to an age-related proportion of earnings:

Age	% of earnings
Up to 29	15%
30 to 39	20%
40 to 49	25%
50 to 54	30%
55 to 59	35%
Over 60	40%

David Rouse is an account manager with Independent Trustee Company Ltd.



Solicitors' summit in Dublin

The leaders of the 150,000 solicitors in Britain and Ireland held a business meeting in Blackhall Place in June. The presidents, vice-presidents and chief executives of the four law societies meet twice a year to learn from each other about the way common challenges facing the profession are being addressed. The meeting takes place in Dublin once every two years. *(Seated, l to r):* Kevin Martin (President, Law Society of England and Wales), Rory McShane (President, Law Society of Northern Ireland), Michael Irvine (President, Law Society of Ireland) and Ruthven Gemmell (President, Law Society of Scotland). *(Standing, l to r):* Douglas Mill (Chief Executive, Law Society of Scotland), Janet Pareskeva (Chief Executive, Law Society of England and Wales), James Cooper (Vice-President, Law Society of Northern Ireland), John Bailie (Chief Executive, Law Society of Northern Ireland), Fiona Woolf (Vice-President, Law Society of England and Wales), Philip Joyce (Senior Vice-President, Law Society of Ireland), Ken Murphy (Director General, Law Society of Ireland) and John MacKinnon (Vice-President, Law Society of Scotland)



Presidential gathering

Attending the summer dinner at Blackhall Place were *(l to r):* Past President Tony Osborne, President of the Law Society Michael Irvine and Senior Vice-President Philip Joyce



Old friends

Former Registrar of the Law Society PJ Connolly is greeted by Law Society President Michael Irvine and his wife Anne



Bowled over

ILP and Fáilte Ireland Chairman Gillian Bowler was conferred with Griffith College's Distinguished Fellowship Award at the College's recent graduation ceremony. Also present are College Chairman Diarmuid Hegarty, Minister for Justice, Equality and Law Reform Michael McDowell, and Professor Wallace Ewart of Griffith College's Graduate School



Diamond service

Law Society Council member, Moya Quinlan, recently celebrated her 60th year in practice and is congratulated here by her son Brendan. A special presentation was made to Moya at the summer dinner to mark her remarkable achievement

Tipperary Solicitors' Bar Association ball

The Tipperary Solicitors' Bar Association (TSBA) held a special function to celebrate the reopening of Nenagh Courthouse on 16 June 2006, followed by the President's Ball at a marquee at Lough Derg Yacht Club in Dromineer.

Over 200 guests attended, including members of the judiciary, senior executives from the Law Society and members of the legal profession.

President of the TSBA, Pat McDermott, thanked those who travelled long distances to attend, especially the President of the High Court, Mr Justice Joseph Finnegan, judges of the Circuit and District Courts, the President of the Law Society Michael Irvine, Director General of the Law Society Ken Murphy, former Law Society President John Carrigan, and the many other invited guests.

Pat thanked Allied Irish Bank for sponsoring the event. He said that the Bar Association was particularly delighted to receive permission to hold the evening reception in Nenagh's new courthouse, where guests were allowed to tour the facilities. Pat also expressed his appreciation to the hard-working TSBA committee members. "None of this would have been possible without the dedication of the committee."

Committee member David Hodgins told the *Gazette*: "The success of the reception and President's Ball reveals the strength of the TSBA and shows the way forward for future similar events."

Following the reception in Nenagh, guests travelled to Dromineer on the shores of Lough Derg, where they enjoyed a gala dinner and partied the night away. After-dinner speeches were made by the President of the High



Men in black

On the steps of Nenagh Courthouse at its reopening were (*front, l to r*): Ronan Kennedy (Secretary of the Tipperary Solicitors' Bar Association), Brendan Hyland, Pat McDermott (President of the TSBA), Michael Irvine (President of the Law Society), Joe Kelly (Treasurer of the TSBA) and Donal Smyth. (*Back, l to r*): Tim Tracey, Philip Joyce (Senior Vice-President of the Law Society), Donald Binchy, Suzanna Menton, Ken Murphy (Director General of the Law Society) and David Hodgins

Court, Mr Justice Joseph Finnegan, who, in a humorous speech, congratulated the TSBA's longest-serving member, John Carrigan, on the impending publication of his memoirs, titled *County Tipperary and Offaly (Birr Division) Sessional Bar Association – A Personal Memoir*. Former TSBA President Brendan Hyland also applauded John on his book, saying that it set a precedent for other Bar associations to follow. Copies of John's memoirs can be obtained by contacting any member of the TSBA committee.



Brought to book!

President of the High Court, Mr Justice Joseph Finnegan, congratulates John Carrigan on the announcement of the launch of his memoirs of his years in the Tipperary Solicitors' Bar Association at the Lough Derg Yacht Club (*l to r*): Yvonne Chapman, Shirley Carrigan, Brendan Hyland, John Carrigan, Pat McDermott, Mr Justice Joseph Finnegan, Janet Carrigan, Ann Hyland, Kay Finnegan, Ken Murphy and Philip Joyce



Holding court!

At the reopening of Nenagh Courthouse were (*l to r*): Tim Tracey, Liz McKeever, David Hodgins, Paul Anglim (representing the event sponsors, AIB) and John Cleary



Beautiful in blue

Marcella Sheehy and Michael Ryan attended the TSBA President's Ball on 16 June



'SLAGS' in sunny Spain

Members of the Southern Law Association Golf Society (SLAGS) travelled with their captain, Sean Durcan, to Soto Grande in Spain on their annual golf trip



Longest day spells brightest future

Felton McKnight Solicitors have moved to bigger and brighter offices in Greystones. The new offices on Church Road were officially opened by the Minister for the Environment, Heritage and Local Government, Dick Roche TD, on the longest day of the year, 21 June. The firm, headed by Mark Felton and Paul McKnight, has been successfully operating in Greystones for the past 14 years and now employs ten people



Colourful bouquet

Kevin O'Higgins of the Dublin Solicitors' Bar Association makes a presentation to Moya Quinlan to celebrate her reaching 60 years of service in the profession



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Jogger-sloggers pound the pavement to raise €0.25M!

Over 1,400 racers, runners, walkers and crawlers shared the winners' podium at this year's 10k Calcutta Run – by raising close to €0.25 million on Saturday 27 May. The 'charity champions' included those from solicitor firms, other professional service companies and financial institutions. They helped raise badly-needed funds for two worthy causes – GOAL's orphanages in Calcutta and Fr Peter McVerry's shelters in Dublin.

The starting gun sounded at Blackhall Place at 2pm. The 10k route wended its way through the Phoenix Park and back to the Law Society's headquarters, where a giant barbecue awaited tired participants. There, an estimated 900 people enjoyed food, refreshments and entertainment late into the evening.

Over €150,000 was donated on the day – but this figure is expected to climb to €250,000 from additional sponsorship collections, firms matching employee sponsorships, the President's Appeal and the proceeds from the day's barbecue, bar and raffle. This will push the overall amount raised over the last eight years to an incredible €1.5 million.

All participants set themselves aggressive fund-raising targets. Average amounts of €150 to €200



Rehearsals began for the new Michael Jackson video



On your marks ...

were achieved, though many raised significantly higher sums, with some sponsorship cards raising between €2,000 and €3,000.

Thanks to the wide support that the annual event receives from those in the legal

profession, GOAL's orphanages and Fr Peter McVerry's shelters can expect to receive €125,000 each.

While there were no record-beating times among the runners, many seemed to better their personal targets,



Former Rose of Tralee and *Celebrity Farm* contestant Tamara Gervasoni limbers up for the run



Today FM's Matt Cooper



Your flexible friend and, er, friends



Calcutta Run winner Eoin Brady

which appeared to be 40, 50 or 60 minutes. About half of the participants walked – something to bear in mind for next year's event. Go on, put that date in your diary for May next year!

tech trends



Read all the technology news here first, in your glorious *Gazette*. Or not, as the case may be

Spectacles, tentacles, wallet and watch

A bloke I know recently asked me: “What would youse do if yeh won ten million squid in de lottery?” I thought: ten million? That’s roughly two for every man, woman and child in the country. The answer was obvious. I’d bide my time, train them into an evil army, and overpower the defence forces and their poxy little tanks with my calamari cohorts. My inky-fingered squid squadrons would reign supreme, even if they tasted a bit rubbery, by clamping themselves to the faces of my political opponents.

One can only dream. Still, it makes you think about what might happen if, suddenly, waves of giant octopi swarmed up the side of your building seeking out your secret files. So what should you do to avoid your laptop falling into the wrong hands, even if they don’t have opposable thumbs?

Well, you could consider employing technology that



enables your laptop or desktop computer to be traced if it is snatched.

Irish company Stealth Shield is the only Irish provider of *Computrace*, which

they say is the leading theft recovery and secure asset-tracking software in the world. The software simply sits on the laptop – undetectable to most marine life – and when you report it stolen, it is tracked over the internet. Gardaí can then retrieve it. Stealth Shield says that, in its experience, 95% of computers are retrieved within 60 days.

And in another plus for the bean counters, the software also allows an administrator to track and monitor all computers within their organisation, including the software that has been installed on them.

As the company rightly says, it’s too late to close the office door after the squid has scarpered.

A one-year licence costs about €46, including VAT.

Stealth Shield is currently offering a 10% discount on the price of a first purchase to Law Society members.

Contact them directly on 01 202 2639.

High on the hog – just like Diggedy Dog

It may not be very tech. Or, indeed, trendy. But it sounds pretty cool. We are talking, of course, about the inflatable pub: the perfect alternative to getting a marquee for next year’s summer barbecue. Coming from the designer of the world’s first inflatable church, it can apparently be customised for use as a fully functioning pub, with room for a real bar.

It has an internal aluminium frame that can be used to support additional lighting or sound systems and can also double as a safety barrier, and the company claims you can get it up in only ten minutes with the aid of two blowers.

There are four versions of the pub in the range. The smallest, known as the ‘Firkin’ – which is a small cask or a unit



Piglet’s favourite bar

of liquid volume equal to half a kilderkin, just so you know – costs Stg£4,379.

The largest pub in the range is called the ‘Hogshead’ and is 40ft long, 19ft wide and 22ft high. The downside is that it costs Stg£16,500. At that price, you’d want it to come with a lot of hogs.

The Airquee inflatable pub is available from English distributors Amber Iris, www.amberiris.co.uk.

Missiles and monkeys

Every office has one. You know, the guy who hangs around your desk or office because he's nothing better to do. He's usually called 'the boss'. But now there are several ways to deal with the problem.

First up, we have the desktop USB Missile Launcher, which fires foam 'missiles' from a swivelling and tilting base – all controlled by your mouse via your computer. Aim for the eyes. It's more fun than running with scissors.

More sophisticated by far is this animatronic life-size, lifelike chimp bust, with soulful eyes that can track movements using infrared vision, ears that have stereoscopic sound sensors, and touch reactive skin. It also boasts 'vocal chords' and



realistically mimics the authentic sounds of a live chimp – appropriately reflecting his 'emotions'.

Chimpy, as I like to call him, has four modes in which he can interact with people: curious, happy, fearful and feisty. You can also put him in guard mode, where you can program him to screech with outrage when yer man comes near your desk.

The desktop missile launcher is available from www.iwantoneofthose.com for Stg£29.99. The 'Alive' chimpanzee costs \$99.95 from www.sharperimage.com – just type the word 'monkey' in the search box.



Value for money?

The techie world was all abuzz with the news that computer giant Dell was introducing a cheap, desktop PC especially for small businesses. Touted as starting (and that's the key word) at just €229, the 3100c features a pretty basic, but

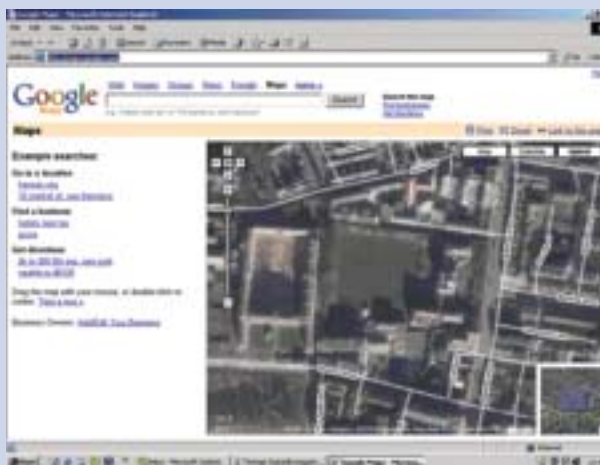
functional, Intel Celeron D Processor 336 and comes loaded with *Windows XP Home Edition*. Of course, that remarkably low price doesn't include VAT and delivery. Or a monitor. Or even a floppy disc drive. In fact, unless you've got those things lying around the office somewhere, the inclusive cost of what you'll need to get the PC up and running, even for basic applications, rises.

First, you'll probably want a monitor. And, although they're on their way out, a lot of people still use floppy drives. You'll need *Office Professional*, if you want to do anything more than rudimentary word-processing. And some sort of technical support and virus protection would be handy. Ticking even the cheapest or 'free trial' boxes in their online store, but not tinkering with the choice of basic memory or processor, and certainly not going for any fancy-pants multimedia options, and our price for this PC rose to €559 – still excluding VAT and delivery.

Not a bad price for a fully functioning basic desktop, but a far cry from €229. And when we went back to check, three days later, the price had risen further and the model number was slightly different. Go figure. Visit Dell online at www.dell.ie.



SITE FOR SORE EYES



See the world as the CIA does (<http://maps.google.com>). It's happened to us all. You've got a conference somewhere in some godforsaken part of the country like (*insert regional prejudice as preferred*). You know the name of the town but don't know your way around. Well, Google to the rescue: here's an online version of their *Google Earth* program. Use your mouse to navigate literally (well, virtually) all over the world. Our version kicks off with a 'map view' of the USA, but the navigation buttons or the 'click-and-grab' function will soon have you back at the old sod. And we're not talking about your father-in-law. Zoom in to see excellently detailed Dublin street maps or satellite imagery of your location to about 100 feet to one inch. You can superimpose street names on satellite photos or just go with the maps. Left, you'll see a 'hybrid' shot of Blackhall Place at 200 feet to one inch. And you can do this for New York, New Delhi or New Zealand. Just don't forget to look for your house.



“As a society, perhaps the most sensitive measurement of our maturity is the manner in which we care for those who are facing the ultimate challenge – the loss of life.”

(REPORT OF THE NATIONAL ADVISORY COMMITTEE ON PALLIATIVE CARE, 2001)

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books

Wigs and Guns: Irish Barristers in the Great War

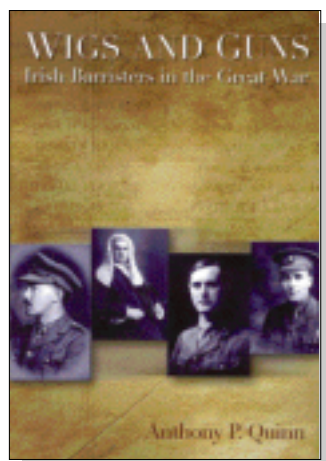


Anthony P Quinn. Four Courts Press (2006), 7 Malpas Street, Dublin 8, in association with the Irish Legal History Society. ISBN: 1-85182-9350. Price: €45 (hardback).

So many Irish died in the Great War of 1914-18, and we should be proud of them. The poem of Rupert Brooke, 27 years old, already remarkable for his looks, charm and poetry, a soldier who died in the Great War – albeit of septicaemia brought on by a mosquito bite – is frequently in my mind: “If I should die think only this of me; That there’s some corner of a foreign field that is for ever...”

I come from a place called Broomfield. In the cemetery there lies a soldier who was awarded the VC in the Great War. No-one ever seemed to care, or think of him. But there is some corner of a foreign field that is forever Broomfield.

FS Lyons, the celebrated historian, wrote in 1978 of how we in Ireland have locked ourselves into “a hall of disturbing mirrors so grotesque



that we can no longer distinguish between the realities of what has happened in this island, from the myths we have chosen to weave”. Thankfully, that is changing and this book helps in this process.

Solicitors and barristers were among the dead who served in the Great War. The author,

Anthony P Quinn BL, states that the main purpose of his book is to record and commemorate 25 barristers who died in the Great War and who are listed on the Bar Memorial in the Four Courts. These lives and their backgrounds are described in narrative form in his book. The book is the 16th in the celebrated Irish Legal History Society series – whose principal founder is Prof WN Osborough.

Irish solicitors and solicitors’ apprentices are not forgotten. They are listed in the book, and aspects of their careers, death and remembrance are included in the text. Thirty-eight solicitors and solicitors’ apprentices died in the Great War. There is the Law Society Memorial by Oliver Sheppard for those solicitors and solicitors’ apprentices who died

in action, originally erected in the Solicitors’ Buildings, Four Courts, in 1921 and subsequently in the Law Society headquarters in Blackhall Place.

The author, in his prologue, states and nobly adheres to his objective that his book is not intended to glorify war nor to encourage divisive bitterness. The purpose of the book was stated to “redress past neglect and to remedy remaining imbalances”.

Anthony Quinn’s book is a work of remarkable scope. It is a valuable contribution to current discussion of the role played by our brothers and sisters in an event of momentous significance. Quinn has opened up a vista of great understanding; his book is commended to readers. **G**

Dr Eamonn Hall is the chief solicitor of Eircom Group plc.

Casebook on the Irish Law of Torts (3rd edition)

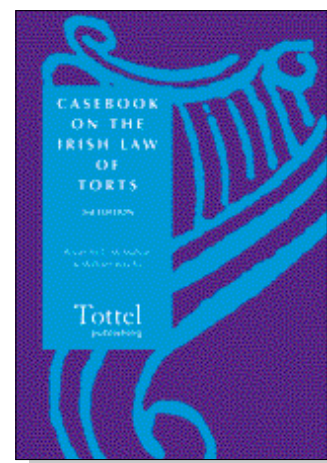
Bryan ME McMahon and William Binchy. Tottel Publishing (2005), Fitzwilliam Business Centre, 26 Upper Pembroke St, Dublin 2. ISBN: 1 845920317. Price: €120.

This latest edition of McMahon and Binchy’s well-known casebook serves as a companion to the same authors’ definitive textbook *Law of Torts* (third edition), which was published in 2000.

Since the publication of the second edition, the landscape of tort litigation in Ireland has been transformed, reflected in the inclusion of 150 more cases

than in the previous edition. Furthermore, the casebook serves as a useful update on the textbook, taking account of a number of important recent superior court decisions in the field; for example, the important decision of the Supreme Court in *Glencar Exploration Plc v Mayo County Council* ([2002] ILRM 481), which, as the authors point out,

is “the most significant decision on the nature and scope of the duty of care since *Ward v McMaster*”. Also included is the important defamation case *O’Brien v Mirror Group Newspapers Limited* ([2001] IIR1 SC). Interesting cases in the limitation of actions include *Devlin v Roche* ([2002] 2IR 360 SE) and *Gough v Neary* ([2003] 3IR92 SE), while important



legislative changes are covered, including the passing of the *Civil Liability and Courts Act 2004* and the *Personal Injuries Assessment Board Act 2003*.

As with the previous edition, the casebook is clearly arranged and attractively set out. Full extracts are taken from all the key decisions, and each chapter concludes with a section of notes and questions relating to the subjects covered. Like the textbook, chapter 1 of the casebook

begins with an overview of the law of tort and continues with a comprehensive treatment of the subject through 45 chapters. As one would expect, the topic of negligence dominates the book, and is dealt with in chapters 5 through 21. The first edition of the textbook revealed “to a

perhaps surprised common law world the existence of a significant body of Irish tort law”, as stated by Mr Justice Walsh in his foreword to that edition. This third edition shows that tort law in Ireland remains a growing and vibrant area. This book, as with its earlier editions

and its companion textbook, will prove indispensable for legal practitioners who require accurate and reliable tort law, quickly. It is another significant achievement for the authors. **G**

Daniel Scanlon is an associate at Matheson Ormsby Prentice.

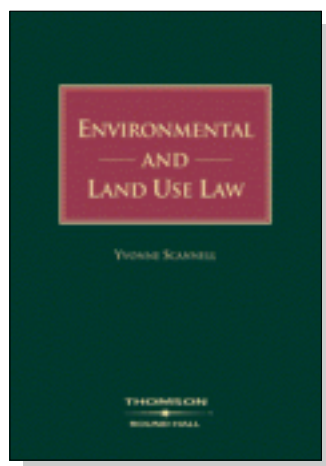
Environmental and Land Use Law

Yvonne Scannell. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-359-8. Price: €320 (hardback).

Since Dr Scannell's other book in this area, *Environmental and Planning Law* (1995), there have been major developments: our comprehensive system of waste management (dating largely from 1996), important measures on biodiversity and protected areas (including the *Habitats Regulations 1997*), and, of course, the *Planning and Development Act 2000*. Important European directives include the *Landfill Directive* (1999) and the *Water Framework Directive* (2000).

So while both books have been timely (the earlier work followed, for example, the establishment of the Irish Environmental Protection Agency), the author prefaces the latest book by cautioning that it should not be considered “a mere update”, adding “too much has changed for that to be feasible”.

The subject is presented with clear progression of the various topics and with characteristic



accessibility for the practitioner, the law student, the citizen, and the environmental NGO alike. This starts with the table of contents – which, on its own, is worth some study for how it maps out the entire corpus of environmental law in Ireland. Early on, there is further essential context, with a consideration of the wider European and international legal and policy setting. The section on environmental impact assessment brings

together all of the law from the 20 years of that discipline, adding important material on the new strategic environmental impact assessment. The 200-page chapter on waste law may on its own be considered the standard work in that area, explaining everything from the case law relating to bin-charge bye-laws to how key European environmental principles – such as the proximity principle and the polluter pays principle – shape Irish waste controls, enforcement and infrastructure. Remedies are discussed in detail – not just specific environmental law remedies, but all the relevant constitutional, common law and tort remedies, and of course judicial review – as they apply to the environment.

The book's 1,000 pages are balanced between law, practice and possibility. There are core chapters on all the substantive controls on air, water, and so on. Few subjects are as full of the ‘regulatory’ approach as

environmental law, and the powers and functions of the EPA and licensing authorities are all covered. The book looks ahead to big questions such as the impact on Irish environmental and public law of the *Environmental Liability Directive* (providing for a harmonised system of liability for environmental damage) and of the *European Convention on Human Rights Act 2003*. Are features of the Irish system (like lack of entitlement to an oral hearing and the ‘manifest unreasonableness’ (*O’Keeffe*) test for striking down administrative action) compatible with the convention? The book captures the full breadth and detail of a subject that is now truly vast in its scope and reach into civic, commercial and industrial life. **G**

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Stamp Duties for Business and Property

Michael O'Connor and Patrick S Cahill. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-423-3. Price: €220.

In the preface, the authors state: “We hope that our work will provide an alternative view and assist practitioners to give balanced advice.” This is in face of the Revenue commentaries that are available on the website, and I agree that, in

many instances, the book does give alternative views that are legally balanced and stateable.

This is an easily readable book, containing many references to statute, case law and Revenue commentaries. The book also provides

glossaries explaining the meaning of various concepts that are necessary to understand in the context of the various matters discussed in the book. It is a useful aid.

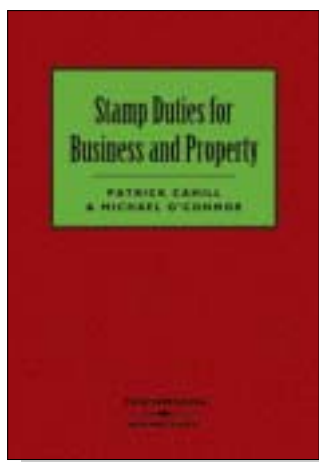
The book starts with a general overview of the stamp-

duty system and, within the first three chapters, covers the affinity of stamp duty and documentation, which was originally required before stamp duty became payable. It goes on to explain the Crest system and electronic transactions other

than Crest and the taxation consequences of those. Having explained that, it sets out the basic rules of stamp duties, with the decisions of some of the most famous cases in stamp-duty history. It goes on to explain the territoriality rules and the general exemptions from stamp duty, including those dealt with in the stamp-duty code and others based on territoriality and on special exemptions contained in non-Revenue legislation.

The book then proceeds to deal with conveyances on sale under three headings: conveyance on sale, conveyances on sale of residential property, and deeded conveyances of sale. These three chapters are particularly useful – I would say essential – for the conveyancer, and for that reason alone the book is invaluable.

The book also covers the administrative provisions



relating to the manner of stamping and the enforcement of the stamp legislation, and if a solicitor is caught within this aspect of stamp-duty law, it can be difficult and worrisome. In this context, it deals with adjudication, appeals and ultimately with the enforcement of the stamp-duty code, including the surcharge penalties and the various

requirements when presenting documentation to the Revenue.

The work contains various appendices. The *Stamp Duties Consolidation Act 1999* (with references to previous legislation) with amendments to the *Finance Act 2005* is in appendix 1. Forms required by the Revenue and different statements of practice and other information that the Revenue has given in relation to stamp duties are set out in appendix 2. In appendix 3, extracts from the *Revenue Practice Manual* on share valuations are set out.

A useful contribution is the precedents set out in appendix 5, particularly in relation to reconstruction and amalgamation. All in all, this is an extremely useful and comprehensive book. There is no doubt that it is essential for all conveyancers and tax advisors, both in relation to property and companies. It is

intelligent and informative.

There are certain aspects that I would like to see dealt with more comprehensively, perhaps in the next edition – for example, an examination of disclaimer, both for consideration and voluntary, and an in-depth consideration of the problems of the case of *Tempamy v Hynes*, both in its own regard and in relation to the timing requirements relating to reconstructions and amalgamations.

The authors, in a previous 'life', published books annually on stamp duty – I find this book easier to access and superior in its layout but, as usual, the knowledge set out in the book is obvious to those who read it. I cannot recommend this book highly enough for the practitioner. **G**

Brian A Bohan is the principal of Dublin law firm Bohan Solicitors.



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BRIEFING

practice notes



BOOKLETS OF LAND REGISTRY TITLE ON CD-ROM FOR NEW HOMES

It has come to the notice of both the Technology and Conveyancing Committees that the issue of booklets of title by builders' solicitors on CD-ROM/DVD is starting to become prevalent. Both committees agree that the procedure should only be used to issue documentation where the title is Land Registry and relates to new housing estates only.

This practice note is accordingly being issued by the Conveyancing and Technology Committees so that practitioners are aware of the practice recommended by both committees and that the matter is receiving the continuing attention of both committees. It should be emphasised that, given the speed of the development of technology and the current e-conveyancing initiative being carried out by the Law Reform Commission, it is likely that the comments in this practice note may not represent the views of the committees for more than the short term.

The following is a summary of

the committees' views on the matter.

1) While the committees are not endorsing the practice, they are aware that it is occurring, and, if it is being adopted, the following matters are considered by the committees to be good practice:

- The purchasers' solicitors are entitled to obtain the documentation in hard copy at any time;
- All closing documents must be in hard copy;
- The procedure is only appropriate to Land Registry cases and particularly new developments;
- The furnishing of documentation by this method should be by agreement only and should not be imposed;
- When issuing a booklet of title on CD-ROM, the vendor's solicitor's initial letter should contain the following sentence: "You are entitled to receive a hard copy of this booklet of title immediately

on request."

- 2) It must be borne in mind that even if there is agreement between the builder's solicitor and the purchaser's solicitor in the matter, such agreement may not necessarily extend to the lending institution or a subsequent purchaser's solicitor. It should further be borne in mind that the standard certificate of title envisages the delivery of hard copies of the documentation to the lending institution.
- 3) The matter remains under review.

Where a booklet of title is being provided on CD-ROM/DVD, the following procedures should be observed:

- The materials should be accessible in an openly readable format, for example, Adobe Acrobat.
- The format should also preserve the security of the original documents.
- All materials should be clearly indexed (by way of page num-

ber), and the index of documents should comprise the first page of the materials on the CD-ROM/DVD. All pages should be numbered.

- The index should indicate the date on which the materials were compiled.
- The CD-ROM/DVD itself should be physically marked or labelled to generally indicate its contents and the date of its production.
- All materials should be easily printable in their entirety and clearly readable in their printed form.

Practitioners are also reminded of the issues dealt with in the practice note on the storage of documents in electronic format, which deals with similar matters (published in the April 2005 issue of the Gazette, p37, and on the Law Society's website at www.lawsociety.ie/newsite/documents/committees/retention.pdf).

*Technology Committee,
Conveyancing Committee*

STAMP-DUTY TREATMENT OF RENT REVIEW MEMORANDUM

The Conveyancing Committee received a query from a practitioner as to whether or not stamp duty is payable on an increase in rent in a 35-year lease following a five-year rent review. On an initial telephone inquiry with Revenue Stamps Branch, it was indicated that much would depend on the type of the instrument in question.

The committee forwarded a sample of the type of rent-review memorandum in question in order to ascertain Revenue's position on the matter. The sample rent-

review memorandum was in the following terms:

BY THIS MEMORANDUM dated the _____

1. _____ (the 'landlord')
and
2. _____ (the 'tenant')

DESIRE TO RECORD that the rent payable under the lease dated the _____ and made between the landlord, of the one part, and the tenant, of the other part, relating to the premises _____ has been fixed in accor-

dance with the provisions of the lease at _____ per annum (_____ per annum), payable from the _____. Such rent is to be exclusive of any additional rent or rents referred to in the lease.

SIGNED for and on behalf of the landlord _____

Date: _____
in the presence of:

SIGNED for and on behalf of the tenant _____

Date: _____
in the presence of:

Revenue has confirmed that a liability to stamp duty will not arise in connection with an increase in rent arising on foot of a rent-review provision in an existing lease, and, accordingly, a stamp-duty liability will not arise in the case of a memorandum recording the details of the rent fixed as a result of the rent review.

Conveyancing Committee

NON-PERSONAL CLOSING

Due to the increasing practice of purchasers' solicitors not personally attending at the offices of vendors' solicitors for completion of sales, the Conveyancing Committee

NEW GENERAL CONDITION 24 OF THE LAW SOCIETY GENERAL CONDITIONS OF SALE 2001 (REVISED) EDITION:

Completion and interest

24. (a) The Sale shall be completed and the balance of the Purchase Price paid by the Purchaser on or before the Closing Date.
- (b) Unless otherwise agreed, completion shall take place at the office of the Vendor's Solicitor.
- (c) Where completion is to take place otherwise than at the office of the Vendor's Solicitor, then the following provisions shall apply:
- (i) the Purchaser's Solicitor shall nominate seven days prior to closing the manner in which all completion documents are to be dispatched (registered post, courier, DX, collection or other agreed mode of dispatch). The mode of dispatch will be at the purchaser's solicitor's sole risk and expense, provided that the Vendor's Solicitor uses the mode of dispatch nominated by the Purchaser's Solicitor or otherwise agreed
 - (ii) not later than four days prior to closing the Purchaser's Solicitor shall send to the Vendor's Solicitor a list of closing requirements in accordance with the terms of the contract and as agreed in replies to Requisitions on Title and rejoinders on title (if any) (hereafter referred to as 'the completion documents'). It is the responsibility of the Purchaser's Solicitor to ensure that closing searches are furnished to the Vendor's Solicitor on or before the Closing Date, and failure to do so will not be a reason to postpone the completion of the Sale.
 - (iii) when the Vendor's Solicitor is immediately able to satisfy these closing requirements, then:
 - where applicable, redemption figures for any mortgage or charge on the Vendor's title shall be furnished to the Purchaser's Solicitor;
 - the Vendor's Solicitor shall undertake with the Purchaser's Solicitor in the following form "In consideration of the completion of the within sale and in consideration of your furnishing the balance of the Purchase Price to us (in the agreed manner), we hereby undertake with you to immediately furnish copies of all completion documents to be signed by the Vendor properly executed and to act as your agent (without charge) in accepting delivery of the Deed of Assurance containing the receipt clause (thereby complying with Section 56 of the *Conveyancing and Law of Property Act 1881*) and immediately thereafter to dispatch to you all of the completion documents in accordance with the agreed list of completion documents and the mode of dispatch nominated or otherwise agreed."
 - (iv) completion shall take place at the office of the Vendor's Solicitor when the Vendor's Solicitor:
 - has received the balance of the Purchase Price
 - is in a position to satisfactorily explain all acts appearing on any closing searches received and
 - is in a position to satisfy all of the Purchaser's closing requirements, in accordance with the terms of the contract.
- (d) All of the completion documents shall thereupon be dispatched to the Purchaser's Solicitor by the mode of dispatch nominated or otherwise agreed to include satisfactory explanation of all acts appearing on searches and the property's keys or authority for their collection. The Vendor's Solicitor shall communicate with the Purchaser's Solicitor in a recorded form advising that completion has taken place, and thereupon the Vendor's Solicitor shall be entitled to release the purchase moneys and the Purchaser shall thereupon be entitled to vacant possession.
- (e) Pending completion in accordance with these Conditions, any moneys received in advance of completion by the Vendor's Solicitor, other than the deposit, shall be held by the Vendor's Solicitor as trustee for the Purchaser.

has been asked to provide guidelines on how to address the difficulties for:

- 1) Purchasers' solicitors in parting with possession of purchase monies (which may include loan proceeds, in respect of which the purchasers' solicitors will have given undertakings to lending institutions) before they receive title deeds to the property being purchased, and
- 2) Vendors' solicitors in parting with title deeds (in respect of which they may have given undertakings/accountable trust receipts to lending institutions) before they receive the balance of purchase monies due to complete the sale.

The committee has decided to deal with the matter by way of amending the existing provisions of General Condition 24 of the current *Law Society General Conditions of Sale 2001 (Revised) Edition*. The text of the revised General Condition 24 is set out in this practice note, and practitioners should familiarise themselves with these changes.

The revised wording of General Condition 24 will be implemented in the next print run of the current edition of the *General Conditions of Sale*, pending the introduction of the next edition of the standard document. Pending the next print run, a Special Condition should be used to incorporate the revised wording of General Condition 24 into the standard contract.

Conveyancing Committee

NOTICE

FIXED-FEE ADVERTISING

Solicitors are reminded that any advertisement that includes fixed fees for services provided must be VAT inclusive. This requirement is contained in the *Prices and Charges (Tax-Inclusive Statements)*

Order, 1973 (SI No 9 of 1973). Advertisements that refer to VAT exclusive prices are not only in breach of the order but also may be in breach of the *Solicitors Advertising Regulations*.



legislation update

19 May – 23 June 2006

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

ACTS PASSED

Criminal Law (Sexual Offences) Act 2006

Number: 15/2006

Contents note: Provides for offences in relation to the commission of sexual acts with children under the age of 17 years, with the inclusion of a defence of honest belief that the child had attained 15 years (for the purposes of section 2) or 17 years (for the purposes of section 3), in accordance with the decision in *CC v Ireland* (23/5/2006), in which the Supreme Court declared section 1(1) of the *Criminal Law (Amendment) Act 1935* (unlawful carnal knowledge of a girl under the age of 15 years) to be unconstitutional.

Date enacted: 2/6/2006

Commencement date: 2/6/2006

Road Safety Authority Act 2006

Number: 14/2006

Contents note: Provides for the establishment of the Road Safety Authority, defines its functions and provides for connected matters. Amends section 9 of the *Road Traffic Act 2002* to provide for the procedures in section 9 in relation to disqualification under the European convention on driving disqualification to apply to bilateral arrangements between member

states before the convention comes into force.

Date enacted: 31/5/2006

Commencement date: 31/5/2006; establishment-day order to be made for the establishment of the Road Safety Authority (per s2 of the act)

SELECTED STATUTORY INSTRUMENTS

Criminal Law (Insanity) Act 2006 (Commencement)

Order 2006

Number: SI 273/2006

Contents note: Appoints 1/6/2006 as the commencement date for all sections of the act, other than s13(1).

European Communities (Artist's Resale Right)

Regulations 2006

Number: SI 312/2006

Contents note: Implement directive 2001/84 on the resale right for the benefit of the author, during his or her lifetime, of an original work of art. Grant a right to the author of an original work of art to a royalty on any sale of the work that is a resale subsequent to the first transfer of ownership by

the author.

Commencement date: 13/6/2006

Leg-implemented: Dir 2001/84

European Communities (Cooperation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006

Number: SI 290/2006

Contents note: Implement regulation 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws.

Commencement date: 30/5/2006

European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006

Number: SI 255/2006

Contents note: Implement directive 2004/25 on takeover bids. Amend the *Irish Takeover Panel Act 1997 Takeover Rules 2001* (as amended by the *Irish Takeover Panel Act 1997 Takeover (Amendment) Rules 2002* and the *Irish Takeover*

Panel Act 1997 Takeover (Amendment) Rules 2005).

Commencement date: 20/5/2006

Leg-implemented: Dir 2004/25

Finance Act 2006

(Commencement of Section 18(1)(a)) Order 2006

Number: SI 256/2006

Contents note: Appoints 18/5/2006 as the commencement date for section 18(1)(a) of the *Finance Act 2006* in relation to the tax relief for investment in films.

Freedom of Information Act 1997 (Prescribed Bodies) Regulations 2006

Number: SI 297/2006

Contents note: Prescribe each of the bodies listed in the schedule to the regulations as a public body for the purposes of the *Freedom of Information Act 1997* by their inclusion in paragraph 1(5) of the first schedule to the *Freedom of Information Act 1997*.

Commencement date: 31/5/2006

Garda Síochána (CCTV) Order 2006

Number: SI 289/2006

Contents note: Establishes criteria, for the purposes of section 38(3)(c) of the *Garda Síochána Act 2005*, for the installation and operation of CCTV systems by a category of persons who, in accordance with s38(3)(c), have met established criteria and whose application to the Garda Commissioner for authorisation of the installation and operation of a CCTV in respect of a specified area within the administrative area of a local

Circuit Court Rules (Employment Equality Acts 1998 and 2004) 2006

Number: SI 275/2006

Contents note: Substitute a new rule 6, 'Employment Equality Acts 1998 and 2004', in order 57 of the *Circuit Court Rules 2001* (SI 510/2001) to prescribe Circuit Court procedures for proceedings brought under the *Employment Equality Acts 1998 and 2004*.

Commencement date: 26/6/2006

Circuit Court Rules (Mode of Address of Judges) 2006

Number: SI 274/2006

Contents note: Substitute a new rule 2 in order 3 of the *Circuit Court Rules 2001* (SI 510/2001) to prescribe the mode of address in court of judges of the Circuit Court.

Commencement date: 5/6/2006

authority has been approved by the local authority after consulting with the joint policing committee for that administrative area.

Commencement date: 30/5/2006

Grangegorman Development Agency Act 2005 (Establishment Day) Order 2006

Number: SI 252/2006

Contents note: Appoints 10/5/2006 as the establishment day for the Grangegorman Development Agency under the *Grangegorman Development Agency Act 2005*.

Health (Country of Origin of Beef) Regulations 2006

Number: SI 307/2006

Contents note: Provide that a food business operator providing prepared beef to consumers shall not: (a) advertise the beef for sale or supply, (b) present it for sale or supply, or (c) sell or supply it unless the country or countries of origin of the beef are indicated at the point of advertising, presenting, sale and supply in clear legible type on the advertisement, menu or other presentation used.

Commencement date: 3/7/2006

Irish Medicines Board (Miscellaneous Provisions) Act 2006 (Commencement) Order 2006

Number: SI 306/2006

Contents note: Appoints 8/6/2006 as the commencement date for section 25 of the act. Section 25 substitutes a new section 54 of the *Health Act 1947*, 'Regulations for prevention of danger from food and drink'.

Occupational Pension Schemes (Cross-Border) Regulations 2006

Number: SI 292/2006

Contents note: Revoke and replace SI 592/2005, which implemented cross-border pen-

District Court (Employment Equality Act 1998) Rules 2006

Number: SI 263/2006

Contents note: Amend the *District Court Rules 1997* (SI 93/1997) by the insertion of rules 1 to 4 in order 99B, 'Employment Equality Act 1998 and Equal Status Act 2000', to provide the procedure and forms for appeals to the District Court under section 63(6) or section 71(6) of the *Employment Equality Act 1998*, as amended by the *Equal Status Act 2000*.

Commencement date: 20/6/2006

District Court (Taxi Regulation) Rules 2006

Number: SI 314/2006

Contents note: Insert a new rule 7, 'Taxi Regulation Act 2003', in order 97 of the *District Court Rules 1997* (SI 93/1997) to provide for applications under section 36 of the *Taxi Regulation Act 2003*.

Commencement date: 19/6/2006

sion provisions of directive 2003/41 on the activities and supervision of institutions for occupational retirement provision. SI 592/2005 was made under section 3 of the *European Communities Act 1972*. These new regulations are made under section 5 of the *Pensions Act 1990*, which was amended by section 44 of the *Social Welfare Law Reform and Pensions Act 2006* to expressly state that regulations made under the *Pensions Act 1990* may be used to implement EC legislation. These regulations provide for the member protection provisions of the *Pensions Act 1990* to be applied to Irish-based members of overseas schemes; the information required when an application for authorisation to operate cross-border is submitted to the Pensions Board; additional conditions of authorisation; and the information required to be submitted to the Pensions Board once a scheme proposes to accept contributions from a foreign employer.

Commencement date: 24/5/2006

Occupational Pension Schemes (Disclosure of Information) Regulations 2006

Number: SI 301/2006

Contents note: Revoke and replace SI 633/2005, which

implemented some aspects of directive 2003/41 on the activities and supervision of institutions for occupational retirement provision. These new regulations are made under section 5 of the *Pensions Act 1990*, which was amended by section 44 of the *Social Welfare Law Reform and Pensions Act 2006* to expressly state that regulations made under the *Pensions Act 1990* may be used to implement EC legislation. Regulate the disclosure of financial and other information by trustees of occupational pension schemes.

Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2006

Number: SI 295/2006

Contents note: Revoke and replace SI 595/2005, which implemented some aspects of directive 2003/41 on the activities and supervision of institutions for occupational retirement provision. These new regulations are made under section 5 of the *Pensions Act 1990*, which was amended by section 44 of the *Social Welfare Law Reform and Pensions Act 2006* to expressly state that regulations made under the *Pensions Act*

1990 may be used to implement EC legislation.

Commencement date: 24/5/2006

Occupational Pension Schemes (Investment) Regulations 2006

Number: SI 294/2006

Contents note: Revoke and replace SI 593/2005, which was made under section 3 of the *European Communities Act 1972*. These new regulations are made under section 5 of the *Pensions Act 1990*, which was amended by section 44 of the *Social Welfare Law Reform and Pensions Act 2006* to expressly state that regulations made under the *Pensions Act 1990* may be used to implement EC legislation. Set out certain investment rules under directive 2003/41 on the activities and supervision of institutions for occupational retirement provision and under provisions of the *Pensions Act 1990* inserted by sections 33 and 36 of the *Social Welfare and Pensions Act 2005*.

Commencement date: 24/5/2006

Occupational Pension Schemes (Trustee) Regulations 2006

Number: SI 293/2006

Contents note: Revoke and replace SI 594/2005, which was made under section 3 of the *European Communities Act 1972*. These new regulations are made under section 5 of the *Pensions Act 1990*, which was amended by section 44 of the *Social Welfare Law Reform and Pensions Act 2006* to expressly state that regulations made under the *Pensions Act 1990* may be used to implement EC legislation. Make provision in relation to qualifications and experience requirements for trustees of pension schemes, in accordance with article 9 of directive 2003/41 on the activities and supervision of institutions for occupational retire-

ment provision, and under section 59A of the *Pensions Act 1990* inserted by section 34 of the *Social Welfare and Pensions Act 2005*.

Commencement date: 24/5/2006

Personal Injuries Assessment Board (Fees) (Amendment) Regulations 2006

Number: SI 264/2006

Contents note: Make an amendment to the charges the Personal Injuries Assessment Board may make on claimants and respondents in respect of the processing by the board of applications under section 11 of the *Personal Injuries Assessment Board Act 2003*.

Commencement date: 1/6/2006

Registration of Deeds and Title Act 2006 (Commencement) Order 2006

Number: SI 271/2006

Contents note: Appoints 26/5/2006 as the commencement date for ss1, 2, 3, 5, 6, 50 (except paragraph (e)), 52 (except paragraphs (b) and (d)), 58, 59, 60, 63, 65, 68, 69 and 70 of the act.

Safety, Health and Welfare at Work (Work at Height) Regulations 2006

Number: SI 318/2006

Contents note: Implement the provisions of directive 2001/45

relating to the use of work equipment when carrying out work at a height. Set out specific requirements for organisation, planning and risk assessment of work at height, avoidance of risks from work at height, selection of work equipment for work at height and inspection of work equipment, fragile surfaces and falling objects.

Commencement date: 21/6/2006

Leg-implemented: Dir 2001/45

Social Welfare Law Reform and Pensions Act 2006 (Part 3) (Commencement) Order 2006

Number: SI 291/2006

Contents note: Appoints 24/5/2006 as the commencement date for sections 38, 41, 43 and 44 (insofar as it relates to items 1, 2, 3, 4, 5, 7, 8, 9 and 10 of schedule 8 of the *Social Welfare Law Reform and Pensions Act 2006*).

Rules of the Superior Courts (Taxi Regulation) 2006

Number: SI 315/2006

Contents note: Insert a new order 91A, 'Taxi Regulation Act 2003', into the *Rules of the Superior Courts 1986* (SI 15/1986) to provide for applications and appeals under section 36 of the *Taxi Regulation Act 2006*.

Commencement date: Provisions relating to section 35(7) of the *Taxi Regulation Act 2003* will come into operation on the commencement of section 35(7); 19/6/2006 for all other provisions

Social Welfare Law Reform and Pensions Act 2006 (Sections 4(4), 4(5), 31 and 33) (Commencement) Order 2006

Number: SI 246/2006

Contents note: Appoints 8/5/2006 as the commencement date for sections 31 and 33 of the *Social Welfare Law Reform and Pensions Act 2006*; appoints 28/7/2006 as the commencement date for sections 4(4) and 4(5) and items 8, 9, 10, 11, 12, 13 and 14 of schedule 1 of the *Social Welfare Law Reform and Pensions Act 2006*.

Social Welfare Law Reform and Pensions Act 2006 (Section 39 (insofar as it inserts section 3B into the Pensions Act 1990)) (Commencement) Order 2006

Number: SI 169/2006

Contents note: Appoints 12/4/2006 as the commencement date for section 39 of the *Social Welfare Law Reform and Pensions Act 2006*, insofar as it

inserts section 3B into the *Pensions Act 1990*. Section 3B relates to the proceedings that the Pensions Board may bring for a summary offence under the *Pensions Act 1990* and provides that certain documentary evidence submitted in a prosecution is now admissible without the need for the officer of the Pensions Board to attend the court proceedings.

Taxi Regulation Act 2003 (Section 36(2A) to (4)) (Commencement) Order 2006

Number: SI 265/2006

Contents note: Appoints 25/5/2006 as the commencement date for subsections (2A), (3), (3A) and (4) of section 36 of the *Taxi Regulation Act 2003*, as amended by section 36 of the *Road Traffic Act 2004*.

Waste Management (End-of-Life Vehicles) Regulations 2006

Number: SI 282/2006

Contents note: Implement the provisions of directive 2000/53 on end-of-life vehicles. Prescribe a national system for the collection, treatment and recovery of vehicles discarded as waste.

Commencement date: 8/6/2006

Leg-implemented: Dir 2000/53 **G**

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CRIMINAL LAW

Delay

Sexual offences – constitutional law – judicial review – order of prohibition – psychologist's evidence – European Convention on Human Rights Act 2003.

The applicant sought an order of prohibition of his prosecution on 120 counts of rape and indecent assault against his sisters, occurring between 1971 and 1981, alleging both delay in making the complaint against the applicant and prosecutorial delay.

De Valera J made the order of prohibition, holding that the complainants had been free for a period of 18 years to make complaints and they had freely chosen not to do. There was unexplained and excessive prosecutorial delay, in violation of article 6(1) of the *European Convention on Human Rights*.

W(M) v DPP, High Court, Mr Justice de Valera, 11/1/2006 [FL12363]

Detention

Whether person entitled to expect that punishment would be imposed by same district judge before whom he entered plea of guilty – whether applicant's detention unlawful – Constitution of Ireland, article 40.

The applicant submitted that his detention was unlawful. The applicant pleaded guilty and, having considered matters, District Judge Brophy directed that the Probation and Welfare Service prepare a report. When the case next appeared at the District Court, District Judge Fitzpatrick was sitting. The applicant submitted that it was appropriate that the matter be

put back to a date on which District Judge Brophy could dispose of the matter. However, District Judge Fitzpatrick refused and, having heard facts in relation to the offences and a plea in mitigation, which included the probation report, the judge imposed a term of imprisonment.

Peart J refused the relief sought, holding that the District Court had jurisdiction to dispose of the matter once the report was available. Once fair procedures were observed by way of the facts being outlined to the sitting judge and the appropriate and necessary opportunity to be heard in mitigation being afforded to the applicant and his legal team, there was no obstacle to the matter being disposed of by District Judge Fitzpatrick. The detention of the applicant was made within jurisdiction and was lawful.

O'Keeffe v Governor of St Patrick's Institution, High Court, Mr Justice Peart, 13/12/2005 [FL12295]

Extradition

Delay – correspondence – Extradition Act 1965 – whether it would not be fair to deliver the applicant up, having regard to the lapse of time since the commission of the offence and whether the offence specified in the warrant corresponded with an offence in this jurisdiction.

On the same date as the making of an order for the surrender of the plaintiff to the appropriate police authority in Britain, the plaintiff issued a special summons in the High Court seeking an order for his release pursuant to section 50 of the 1965 act, on the grounds that, by reason of

the lapse of time since the commission of the offence and other exceptional circumstances, it would be unjust, oppressive or invidious to deliver him up and/or that the offence specified in the warrant, namely that between 1996 and 1999 he conspired with another named person "dishonestly to obtain money transfers from the Department for Education and Employment by deception, by allegedly falsely representing that certain organisations would provide training for service industries", did not correspond with any offence under the law of this state.

Peart J refused the relief sought by the plaintiff, holding that:

- 1) The appropriate period for determining the lapse of time was from the earliest date for the commission of the offence up to the date of the issuing of the special summons. In the circumstances, the lapse of time in the present case was not sufficient to merit the release of the plaintiff.
- 2) The acts alleged in the warrant would, if done in this state on the date on which the warrant was produced to the assistant commissioner for endorsement, have given rise to an offence of conspiracy to defraud.

Egan v O'Toole, High Court, Mr Justice Peart, 13/12/2005 [FL12277]

Fair procedures

Complainant delay – whether inordinate and inexcusable – right to trial with due expedition – whether adequate explanation given for delay in making complaint – whether real risk of unfair trial.

The applicant was granted leave to restrain his trial by way of judicial review on three counts of rape, two counts of indecent assault and one count of unlawful carnal knowledge, on the basis of the inordinate delay in the institution of the proceedings. The offences were alleged to have occurred during a period between 1985 and 1992 against three of his cousins. The complainants did not make their complaints until 2002 due, among other things, to abuse they had suffered from an uncle and another cousin.

Clarke J granted limited relief sought by the applicant, holding that the court had to first examine whether there had been a long delay and then consider the adequacy of any explanation offered for such delay, and that the court had to be satisfied that the actions of the accused, on the assumption of the truth of the allegations, had contributed in a material way to the overall psychological inhibition in respect of any complainant making the complaint. The court then had to consider whether, notwithstanding that the complainant had delayed in complaining due to dominion exercised by the accused, the accused would no longer be able to have a trial in accordance with fair procedures. From the evidence, it was not possible to conclude that the applicant was responsible for the circumstances leading to the first complainant's delay in making the complaint and there was a presumption that there would be some prejudice to the applicant as a result of the delay. No sufficient explanation had been given for the delay in respect of

the first complainant but there had in respect of the other two complainants.

C(T) v DPP, High Court, Mr Justice Clarke, 16/12/2005 [FL12248]

Sexual offences

Whether the 2001 act was unconstitutional, having regard to the retrospective nature of certain of its provisions – Sex Offenders Act 2001.

The applicant, who had pleaded guilty to certain sexual offences, claimed that certain provisions of the 2001 act were unconstitutional. Specifically, the applicant claimed that the act was retrospective to the extent that it imposed certain reporting obligations on persons, such as himself, who had been convicted of specified sexual offences, irrespective of whether the offence was committed prior to or subsequent to the coming into force of the 2001 act, and therefore the act was in breach of articles 15.5 and 38.1 of the Constitution and article 7.1 of the *European Convention on Human Rights*.

Clarke J dismissed the application, holding that the substance of the challenge that the applicant brought in relation to the 2001 act was the subject of a comprehensive and recent adjudication by this court in *Enright v Ireland and the Attorney General* ([2003] 2 IR 321), which held that the 2001 act was not unconstitutional, as the registration requirement did not constitute a penalty. The plaintiff failed to establish any reasons/grounds for departing from that decision.

H(P) v Ireland, the Attorney General and the DPP, High Court, Mr Justice Clarke, 16/2/2006 [FL12356]

FAMILY LAW

Wrongful removal

Custody – Hague Convention – *change of residence* – *laws of*

Michigan – Child Abduction and Enforcement of Custody Orders Act 1991.

The applicant father sought an order for the return of children to their place of habitual residence, Michigan, USA, alleging that they had been wrongfully brought to Ireland without his consent. The respondent alleged that she had sole custody of the children under the laws of Michigan.

Finlay Geoghegan J held that the proceedings would be adjourned to permit the applicant to seek a further affidavit in Michigan to establish his rights to custody under Michigan law, pursuant to article 8(f) of the *Hague Convention*.

D(T) v P(A-M), High Court, Miss Justice Finlay Geoghegan, 8/3/2006 [FL12331]

Wrongful retention

Hague Convention – *consent* – *habitual residence* – *acquiescence* – Child Abduction and Enforcement of Court Orders Act 1991.

The applicant sought an order for the return of his children to the USA, where the children were born and where they had been habitually resident until they left the USA. The children were brought to the jurisdiction with his consent for the purposes of a vacation.

Finlay Geoghegan J made an order for a return of the children to the State of Massachusetts, holding that the children had not lost their habitual residence. The applicant had not acquiesced to the children remaining in the jurisdiction. No defence of grave risk of harm had been made out by the respondent.

R(S) v R(MM), High Court, Miss Justice Finlay Geoghegan, 25/1/2006 [FL12306]

Practice and procedure

Costs – *Hague Convention* – *whether court should exercise special discretion* – *unsuccessful outcome of access proceedings* – *suc-*

cessful interim applications – *Rules of the Superior Courts, order 99, rule 1(3)* – *Civil Legal Aid Act 1995, s33*.

The applicant was unsuccessful in an application for the return of his children to Northern Ireland. The applicant made applications for access, pursuant to the *Hague Convention*. The respondent applied for costs pursuant to order 99, rule 1 of the *Rules of the Superior Courts*. The applicant asked, in the circumstances where he had brought certain successful interim applications as to access, that the court ought to have exercised its special discretion pursuant to order 99, rule 1 of the *Rules of the Superior Courts*.

Finlay Geoghegan J (*ex tempore*) allowed an order in favour of the respondent, holding that, in view of the nature of the proceedings, the importance of the children, the failure of the applicant ultimately in the proceedings, and the expenses incurred by the respondent, costs were to follow.

L(F) v L(C), High Court, Miss Justice Finlay Geoghegan, 10/2/2006 [FL12300]

FREEDOM OF INFORMATION

Access to documents

Request for copies of internal documents – *whether the documentation requested was within the control of the appellant and ought to be furnished to the requestor* – *Freedom of Information Acts 1997 to 2003*.

The appellant sought an order discharging the order made by the respondent, whereby the respondent determined that a named individual, who had sought access to internal documentation compiled and presented by Waterford City Enterprise Board Limited to its Evaluation Committee, concerning a grant application

made by the individual, was entitled to access that documentation on the basis that the records were under the control of the appellant. The appellant had previously refused the request for access to the records on the grounds that they related to the day-to-day operational matters of the board and were not held by the appellant.

Murphy J allowed the appeal, holding that the appellant did not control the board and the information requested was not in the possession of the appellant. Consequently, the records sought were not information that was under the control of the appellant and the decision directing the appellant to grant access to the records ought to be discharged.

Minister for Enterprise, Trade and Employment v The Information Commissioner, High Court, Mr Justice Murphy, 25/1/2006 [FL12273]

PROPERTY

Solicitor's lien

Whether the defendant was entitled to retain the title deeds to the plaintiff's property by reason of the plaintiff's failure to discharge the defendant's fees for professional services rendered to the plaintiff.

The plaintiff sought an order compelling the delivery by the defendant to the plaintiff of title deeds to the plaintiff's property. The defendant had acted as solicitor for the plaintiff in relation to the re-mortgaging of her property and for that purpose obtained the title deeds from the mortgagee. The defendant claimed that he was entitled to hold onto the deeds by way of solicitor's lien in respect of fees due and owing to him for services rendered to the plaintiff in his capacity as her solicitor.

Dunne J ruled in favour of the plaintiff, holding that, as a lien arises by operation of law,

the lien in this case could only have arisen during the currency of the mortgage. Accordingly, no lien could have come into existence by operation of law when the dispute arose between the parties regarding payment of fees, by reason of the fact that the defendant then held the title deeds subject to an express trust in favour of the mortgagee.

Conroy v Mc Ardle, High Court, Judge Dunne, 16/12/2005 [FL12330]

ROAD TRAFFIC

Drink driving

Case stated – whether correct to authorise presence of engineer at testing and servicing of intoxilyser – whether correct to hear case when inspection sought and not carried out – Road Traffic Acts 1961-1994.

The applicant had sought an order compelling the prosecution to disclose documents relating to an intoxilyser machine and an order for inspection of the machine, in addition to an order authorising the presence of an engineer at the next servicing and testing of the machine. The case stated posed the question as to whether the district judge was correct in authorising the presence of the engineer and whether it would be correct to hear the charges where no inspection was carried out.

O'Neill J held that the district judge was entitled to make the order where the prosecution had failed to raise any objections.

DPP v Moore, High Court, Mr Justice O'Neill, 5/5/2006 [FL12342]

TORT

Professional negligence

Causation – whether defendant negligent – whether plaintiff suffered loss as a result.

The plaintiff brought proceedings against the defendant, who was a solicitor, claiming damages for professional negligence, breach of duty and breach of contract. The trial judge (O'Neill J) held that the defendant had been guilty of negligence, but further held that the plaintiff had not suffered any loss as a result. The plaintiff appealed against the dismissal of her claim and the defendant, in turn, challenged the finding of negligence.

The Supreme Court (Hardiman, Geoghegan and Kearns JJ) dismissed the plaintiff's appeal, holding that the defendant was not negligent, in breach of duty or in breach of contract. The trial judge also correctly decided the issue of causation.

O'Carroll v Diamond, Supreme Court, 12/4/2005 [FL10550]

Liability

Nuisance – rules in Rylands v Fletcher – claim for contribution – failure to mitigate loss – Civil Liability Act 1961, s21 – Derelict Sites Act 1990.

A fire occurred in an adjoining terraced residence that resulted in a hole in the roof of one property, which caused damage to the adjoining residence. The plaintiffs instituted proceedings in negligence, nuisance and under the rule in *Rylands v Fletcher*. The defendants alleged that the plaintiffs had failed to mitigate their loss.

Finlay Geoghegan J held that the defendants were liable in negligence and nuisance for the damage to the premises resulting from their failure to abate the nuisance and for the damage caused by water ingress to the party wall and for failing to carry out regular inspections of their property. The defendants were concurrent wrongdoers pursuant to s11 of the *Civil Liability Act 1961*. A joint contribution was to be made of 50% from the first and third

defendants and 50% from the second-named defendant. Judgment in the sum of €530,000 was made against each defendant.

Larkin v Joosub and Dublin City County, High Court, Miss Justice Finlay Geoghegan, 23/2/2006 [FL12307]

Duty of care

Negligence – scope of liability for negligent misstatement – insurance company – proximity – whether special relationship creating duty of care – whether plaintiffs sufficiently proximate so as to be persons reasonably within contemplation of defendant as being likely to be affected by its acts or omissions – whether personal reliance on statement necessary for recovery of damages – whether plaintiffs entitled to damages.

The first plaintiff had obtained life cover from the second defendant to protect loan repayments to Hill Samuel bankers. The premiums were paid by direct debit from an account with the first defendant. Due to an error, one of the premium payments was not made, as a result of which the second defendant contended that the plaintiffs' policy lapsed. Hill Samuel had been aware of the error with the direct debit and made enquiries at the time to the second defendant to ensure that the monies due on that premium instalment had been paid by some alternative method. Hill Samuel had been assured by

the second defendant that the premium payment for that particular month had been paid by an alternative method.

The Supreme Court allowed the appeal, holding that the proximity test in respect of a negligent misstatement included persons in a limited and identifiable class when the maker of the statement could reasonably expect, in the context of a particular inquiry, that reliance would be placed thereon by persons to act or not to act in a particular manner in relation to that transaction. There was a special relationship between the plaintiffs and the second defendant sufficient to create a duty of care on the defendant for the accuracy of its statement, even though the statement was not made directly to the plaintiffs but to a person identified with them. Moreover, the plaintiffs were, vis-à-vis the person giving the information, proximate neighbours who could foreseeably be damaged by the inaccuracy of the information.

Wildgust v Bank of Ireland, Supreme Court, 22/3/2006 [FL12284] **G**

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News from the EU and International Affairs Committee

Edited by TP Kennedy, Director of Education, Law Society of Ireland

Brussels II bis: its impact in Ireland (part 2)

Brussels II bis was given effect in Ireland by regulations entitled the *European Communities (Judgments in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005*. The regulations came into force on 1 March 2005. Article 2 covers matters of interpretation, while article 3 establishes the Minister for Justice, Equality and Law Reform as the central authority for Ireland for the purposes of *Brussels II bis*. Under article 4 of the regulations, applications for the recognition or non-recognition of a judgment or for a declaration of enforceability of a judgment are made in the Irish High Court. Article 5 provides that a declaration of enforceability of a judgment on the exercise of parental responsibility has the same force and effect for all purposes as if it were an order of the District Court. Of particular importance is article 7, which provides that certain Irish statutory provisions do not have effect where *Brussels II bis* applies. (These provisions are section 5 of the *Domicile and Recognition Of Foreign Divorces Act 1986*, section 31(4) of the *Judicial Separation and Family Law Reform Act 1989*, sections 29 and 39(1) of the *Family Law Act 1995* and section 39(1) of the *Family Law (Divorce) Act 1996*.) Article 8 amends the *Child Abduction and Enforcement of Custody Orders Act 1991* to take account of *Brussels II bis*.

YNR v MN, Ireland and the Attorney General

Brussels II bis is about jurisdiction and not about ancillary financial relief. That said, the reality is that choice of jurisdiction may well determine how the ancillary financial issues are disposed of, as can be seen from the Irish High Court case of *YNR v MN, Ireland and the Attorney General* (unreported, High Court, O'Higgins J, 3 June 2005). This case concerned a French couple who married in France in June 1978 and moved to Ireland in 1998. The applicant returned to France in 2002. Shortly thereafter, on 22 November 2002, the respondent filed for divorce in France. On 23 December 2002, the French court fixed a hearing date for 4 February 2003. On 23 December 2002, the applicant instituted family proceedings in the Irish High Court. On 4 February 2003, when the hearing came before the French court, the applicant contested the jurisdiction of the French court to hear the case. However, the applicant did not appeal the French court's 25 March 2003 ruling that it had jurisdiction to hear the proceedings. In fact, in the French proceedings, the applicant counter-claimed for divorce on the grounds of fault and sought a variety of financial orders. Meanwhile, the respondent, by notice of motion dated 13 October 2003, brought an application to the Irish High Court seeking a declaration

that the High Court had no jurisdiction due to the French court having seisin of the case.

The applicant challenged, among other things, the constitutionality of *Brussels II*, contending that the "main seat of the marriage is within this jurisdiction", such that the divorce petition should not proceed in France. Furthermore, it was submitted that *Brussels II bis* was invalid having regard to the Irish Constitution, in that Irish law places a high status on marriage and will only allow a dissolution of marriage where proper financial provision has been put in place for the parties. It was also contended that, even if *Brussels II* were constitutionally permissible, the French court did not have the jurisdiction to determine the property rights of the parties.

The High Court rejected the contention that *Brussels II* was in any way less valid or in any way improperly brought into force in Ireland. O'Higgins J held that *Brussels II* was part of Irish law and was constitutional as it arose out of the 'yes' vote in the *Amsterdam Treaty*:

"In my view, the adoption of *Brussels II* and *Brussels IIA* was pursuant to a mandate given by the people of Ireland, who voted on article 29.4.5 and article 29.4.6 of the Constitution. I cannot agree that the provisions of the *Brussels II/IIA Regulations* are in some way less valid than the divorce provisions in the

[Irish] Constitution because they were as a result of an enabling constitutional amendment, whereas the divorce provisions of the Constitution were enacted by direct referendum."

The judge concluded that the High Court had no jurisdiction in the matter, in that, under *Brussels II*, the court to which the application is first brought must hear the case. As the French court was the court to which this case was first brought, it had the right to hear the case and determine the issues:

"The *Brussels II Regulation* is part of Irish law. It specifically allows for a choice of jurisdiction in some circumstances, including those which are applicable in the case of the respondent. Under the regulations, he was entitled to bring proceedings in the jurisdiction of the French courts. By so doing, there were indeed consequences for the applicant which may well be different than those following a judicial separation under Irish law. However, in my view, there is nothing in law to support the contention that because the seat of the marriage was in Ireland, the respondent was precluded from exercising the options specifically given to him under the *Brussels II Regulation*. A choice of jurisdiction was available to him and he was legally entitled to exercise that choice to seek divorce in France."

O'Higgins J rejected the contention that the conse-



quence of adopting *Brussels II* was to restrict the proper provision imperative in article 41.3.2 of the Irish Constitution. The applicant argued that the French court had no jurisdiction concerning the property rights of the parties insofar as they related to lands, bank accounts and other property in Ireland. O'Higgins J, declining the applicant's request to intervene in this matter, stated: "It would be unwarranted and irresponsible of this court to act on the assumption that the French courts will act other than in any way permitted by the relevant legislation, and it is clear that the Irish courts have no role in the supervision of the French courts in doing their legitimate business ... it is clear that the French courts have jurisdiction in this case and that it is appropriate for this court to declare ... that it has no jurisdiction in this matter."

DT v FL

Another relevant and instructive judgment is *DT v FL* (unreported, High Court,

McKechnie J, 22 February 2006). Both the applicant and the respondent had a domicile of origin in Ireland. They were married in Ireland on 30 August 1980. There were three children of the marriage. In 1987, they moved to the Netherlands to enable the respondent to take up employment with a Dutch company. In 1992, differences arose between the parties and the applicant and her children moved back to Ireland. In March 1994, the respondent instituted divorce proceedings in the Netherlands. The applicant, who did not resist the divorce proceedings, sought maintenance for herself and the children. On 12 September 1994, a divorce was granted on the basis of the respondent's residence in the Netherlands for more than 12 months. A maintenance order was also made in favour of the applicant.

In 2000, the applicant sought a decree of judicial separation in Ireland. The respondent submitted that the divorce, obtained in 1994 under Dutch law, was valid on

the basis, among other things, that he was domiciled in the Netherlands at the time of the divorce. However, the High Court rejected this argument. Morris J, applying the test set out in *Re Joyce; Corbet v Fagan* ([1946] IR 277), held that, in order to discharge the onus of proving that he had relinquished his domicile of origin and acquired a domicile of choice in the Netherlands, it was not sufficient for the respondent to adduce evidence of prolonged actual residence in another country. While such evidence was important, it had to be supplemented by other facts and circumstances, indicative of intention to choose the Netherlands as his permanent home. On the facts, Morris J was prepared to accept that the respondent was content with working in the Netherlands and that he was happy to remain there for the purposes of his work. However, he stated that he could not foresee that the respondent would remain in the Netherlands if he were

without employment. Morris J went on to state that he was not satisfied that the respondent had formulated any intention of abandoning Ireland as his domicile of origin. In this regard, Morris J stated that the only evidence that was consistent with this intention was the sale of the family home and the cancelling of membership of clubs. When weighted against the evidence that the respondent returned to Ireland for his summer holidays, that he visited his family in Ireland on a number of occasions, and that he had arranged for his wife to return to Ireland when difficulties arose in the marriage, Morris J considered that it was clear that the respondent had never abandoned his domicile of origin.

The respondent appealed to the Supreme Court. In a unanimous decision delivered by Keane CJ on 26 November 2003, the respondent's appeal was dismissed and the order of the High Court was affirmed.

In January 2004, the respondent commenced a further High Court challenge to the applicant's entitlement to seek a decree of judicial separation in Ireland. He argued that the maintenance element of the 1994 Dutch order was entitled to recognition and enforcement under *Brussels I*. This required the Irish court to apply to the Irish judicial separation proceedings the *lis alibi* provisions of that regulation, in that the 1994 order in dealing with maintenance, covered relief identical to which the applicant was seeking in the Irish judicial separation proceedings. Moreover, the respondent pleaded the transitional and *lis pendens* provisions of *Brussels II*.

On the legal position of the 1994 maintenance order,



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McKechnie J placed reliance on *Hoffman v Krieg* (case 145/86 [1988] ECR 645), where a German judgment awarding maintenance was held to be clearly irreconcilable with a subsequent Dutch divorce, in that the respondent tried to enforce the maintenance order in the courts of the Netherlands. McKechnie J, relying on the defence of 'irreconcilability', as set out in *Hoffman*, held the basis upon which the maintenance judgment was issued was irreconcilable with the aforementioned decision of the Supreme Court. The recognition and enforcement of the 1994 maintenance order could only take place where both parties were divorced in Ireland. That was not the case, in that the conclusion reached by the Supreme Court was to the effect that the parties remained legally married in Ireland. Therefore, McKechnie J held that the maintenance aspect of the 1994 order was not capable of enforcement, as to "enforce the maintenance order would be directly in conflict with the decision of the Supreme Court".

The High Court also held that the 1994 decree of divorce did not come within *Brussels II* or *Brussels II bis*. On the *lis pendens* provisions, McKechnie J stated that there must be in existence proceedings that are concurrent before the *lis pendens* rules can apply. As that was not the position in the instant case, the provisions of *lis alibi pendens* had no application.

EM & Others v VC & Others

In *EM & Others v VC & Others* (unreported, High Court, O'Higgins J, 27 May 2004), the applicants were the children of the marriage between DM and FM. This

marriage was dissolved by the Irish High Court and DM later married the first-named respondent. On DM's death, the applicants sought a declaration that the marriage between DM and the first-named respondent was void and/or voidable.

A preliminary issue for consideration was whether or not the provisions of *Brussels II* applied. O'Higgins J, relying on article 2 of *Brussels II*, stated that the only parties having *locus standi* in relation to civil proceedings were spouses. The judge held that the reference to joint applications in article 2 implied joint application by the spouses as distinct from a spouse and third party. O'Higgins J stated:

"There is no provision in the *Brussels II* regulation which confers jurisdiction in civil proceedings like the granting of an annulment where one of the parties is dead. Article 2 refers to territory where the spouses are habitually resident, where the spouses were last habitually resident insofar as one of them still resides there. The article does not contemplate annulment jurisdiction under the *Brussels II Convention* in circumstances where the spouses or either of them is dead."

Service

On the same day as the original *Brussels II* was adopted (29 May 2000), the EU also adopted Council Regulation 1348/2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters. Preamble 15 of *Brussels II bis* provides that Council Regulation 1348/2000 (hereafter the *Service Regulation*) is to apply to the service of all documents in proceedings instituted under *Brussels II bis*. The *Service Regulation* was introduced to complement *Brussels II* and provide guidance

on which state is first seised with divorce jurisdiction. One must now serve in accordance with the *Service Regulation*.

Articles 2 and 3 of the *Service Regulation* oblige member states to establish transmitting and receiving agencies responsible for serving documents and central bodies to provide information to transmitting agencies and resolve any service difficulties. The county registrars are the designated 'transmitting agencies' in Ireland. The central body in Ireland is the Master of the High Court, and communications in English or Irish may be effected by post or by fax to the Central Office of the High Court. Articles 4 to 9 deal with procedure for the service of documents. Article 7(2) of the *Service Regulation* is of particular importance, in that it requires the service agency to effect all steps for service of the proceedings as soon as possible.

The time limits and the priority given to the court that is first seised are core features of *Brussels II bis*. In Ireland, section 5 of the *Judicial Separation and Family Law Reform Act 1989*, section 6 of the *Family Law (Divorce) Act 1996* and section 20 of the *Guardianship of Infants Act 1964* set out the duties of the solicitor acting for either applicant or respondent in relation to advising the client of the alternatives to litigation. Solicitors for both applicant and respondent must file a certificate with the originating document confirming that they have fulfilled their duties under the foregoing provisions. It is arguable that *Brussels II bis* reduces the time for investigation of the suitability of alternatives to litigation, in that the respondent may be about to institute proceedings before a foreign

court under the regulation. A relevant and instructive case in this regard is *Chorley v Chorley* ([2005] EWCA Civ 68; [2005] 1 WLR 1469). In that case, a *requête*, issued by the husband in France, which initiated the conciliation process leading to a French divorce, was held to be the first manifest step in the divorce process. Thorpe LJ, providing the leading judgment in the Court of Appeal stated:

"If this regulation and particularly article 11 of this regulation are to achieve the objectives that all member states intended during the course of the lengthy negotiation of the text, then manifestly it is essential that the filing of the *requête* in France be held to be the first manifest step. If the Cour de Cassation were to reach the conclusion that as a matter of proper characterisation only the issue of the assignation amounted to an initiation, then it would seem to me imperative that France amend its internal proceedings to ensure that the first manifest step, even if it only be a step towards a conciliation process, constitutes initiation."

Impending developments

There are currently four separate European Commission initiatives in the family law area: the *European Enforcement Order*, the draft regulation on maintenance, the *Green Paper on Applicable Law in Divorce Matters (Rome III)*, and a proposed green paper on property rights arising out of the matrimonial relationship and other unions (to be published in June 2006).

Rome III

In March 2005, the EU Commission presented a *Green Paper on Applicable Law and Jurisdiction in Divorce*



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This Diploma is primarily aimed at Solicitors, Barristers and Trainees but may also appeal to suitably qualified non-solicitors (non-solicitors should submit a cover letter and CV for approval).

Please note priority for places will be given to members.

Lecturers

Lecturers are leading practitioners and consultants in this area and include solicitors, barristers and representatives from IBEC, The Equality Authority and CIPD.

For a complete timetable and application form please visit the Law Society's website www.lawsociety.ie and click on the Diploma Programme on the home page
OR contact a member of the Diploma Team – diplomateam@lawsociety.ie

Matters (Rome III), which highlighted a number of shortcomings of the current system. According to the green paper, the shortcomings of this system include the lack of certainty and flexibility, insufficient party autonomy, risk of results that do not correspond to the legitimate expectations of the citizens, risk of difficulties for community citizens living in a third state and the 'rush to court'.

The green paper puts forward suggestions to overcome current difficulties. One suggestion made, for example, is that parties should be able to choose the law under which their divorce will proceed, irrespective of the court where the divorce is heard.

I believe there should be a hierarchy of connecting factors governing jurisdiction on divorce, legal separation and marriage annulment instead of the current free for all. A hierarchy between the jurisdictional criteria would improve certainty, which is as important in family law as other areas of the law.

Maintenance

In April 2004, the commission published a green paper on the questions arising in the recovery of maintenance claims, as part of a public consultation on this difficult issue. A 'legislative package'

emerged that reflected the results of the consultation process. One of the key recommendations was the removal of the *exequatur* procedure. It also included proposals permitting "precise identification of a debtor's assets in the territory of the member states" so that mutual recognition could occur in an environment that enhances cooperation between member states' courts. Measures for the harmonisation of conflict-of-law rules were also included in the legislative package.

The draft maintenance regulation emerging from the green paper shall apply in full from 1 January 2009. Under the draft maintenance regulation, which Ireland has opted into, Irish courts are to be given powers to order the freezing of bank accounts of spouses or of ex-spouses living in other EU member states, who have failed to pay maintenance due. Further, under the proposal, the spouse or ex-spouse required to pay maintenance will have 20 days to challenge a court order. As with other European Commission initiatives, a court decision in one member state shall be recognised and enforceable in another member state without any possibility of recognition being challenged. The draft regulation

will allow a maintenance creditor to obtain easily, quickly and generally free of charge an enforceable order capable of recognition and enforcement in the EU without any obstacles.

Equitable balance

The greatly extended scope of the expression 'parental responsibility' in *Brussels II bis* is to be welcomed, as is the limited availability of the principle of *forum non conveniens*. *Brussels II bis* is likely to give greater certainty intra-Europe in children matters. For instance, forum disputes in parental responsibility matters between member states are now less likely, given the clear hierarchical basis for jurisdiction and the application of the *lis pendens* rule. The practice guide for the application of *Brussels II bis*, published by the European Commission in consultation with the European Judicial Network, is admirable. This guide, although not mandatory, has proven to be a useful *vade mecum*. It will be of considerable help in ensuring uniformity in the application of *Brussels II bis*. In summary, *Brussels II bis* is likely to increase transfrontier judicial co-operation and represents an equitable balance between placing a premium on ease of access to the

courts of other member states at the expense of whether the court with first jurisdiction is the most appropriate venue for the parties' case.

One unfortunate matter is that a comprehensive family law regulation has not been negotiated to cover all aspects of child and matrimonial jurisdiction. For example, under *Brussels II bis*, divorce and finances can be dealt with in different member states, which can cause unnecessary costs and delay. *Brussels II bis* is therefore unlikely to achieve the uniformity realised by the original *Brussels Convention*. This is, in part, due to the fact that the conditions that heralded the success of the original *Brussels Convention* are no longer present. Indeed, reaching agreement in the future will be more difficult, in that a number of features of the family law systems in the newer member states do not appear to be compatible with the family law systems of the original member states. It will now require consensus among 24, possibly 25, European member states. **G**

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



Dublin Solicitors Bar Association ANNUAL CONFERENCE

The DSBA conference in Rome will take place from Tuesday 5 September until Saturday 9 September 2006. The Westin Excelsior in Rome in September provides the perfect combination of superior accommodation, star quality destination and optimum time of year to ensure a memorable event.

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A limited number of places are still available.

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 in substitution for the original land certificate issued in respect of the lands specified in the schedule, which original land certificate is 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 7 July 2006)

Regd owner: Samuel Jacob; folio: 3464F; lands: Clonmullen and barony of Forth; **Co Carlow**

Regd owner: Marie Plunkett, Townparks, Ballyhaise, Co Cavan; folio: 8380; lands: Townparks; area: 4.3268 hectares; **Co Cavan**

Regd owner: Martin Ellis, Old Bridge Road, Corbeagh, Cootehill, Co

Cavan; folio: 6892; lands: Magheranure; area: 0.2385 hectares; **Co Cavan**

Regd owner: Mary Fitzpatrick, Turfad, Mountain Lodge, Cootehill, Co Cavan; folio: 13588; lands: Turfad; area: 28.2041 hectares; **Co Cavan**

Regd owner: Joseph Casey and Maureen Casey; folio: 23882F; lands: townland of Murrooghtoohy North and barony of Burren; area: (1) 0.0630 hectares, (2) 0.2060 hectares, (3) 0.0610 hectares; **Co Clare**

Regd owner: Donie Kelly and Mary Freaney; folio: 31243F; lands: townland of Sixmilebridge and barony of Bunratty Lower; **Co Clare**

Regd owner: Brendan Larkin and Teresa Larkin; folio: 22292; lands: townland of Einagh and barony of Ibrickan; area: 16.9970 hectares; **Co Clare**

Regd owner: John Martin O'Brien; folio: 2207; lands: townland of Ballyvannan and barony of Tulla Upper; area: 14.6591 hectares, 0.1922 hectares, 0.0910 hectares; **Co Clare**

Regd owner: Anthony E Donlan; folio: 8971F; lands: townland of Feeard and barony of Moyarta; area: 0.8020 hectares; **Co Clare**

Regd owner: George Scales; folio: 16542; lands: townland of Cahermaclanchy and barony of Corcomroe; area: 5.0054 hectares, 2.5343 hectares, 34.1200 hectares (one undivided 20th part); **Co Clare**

Regd owner: Michael Dillon; folio: 12078; lands: townland of Cloontra and barony of Tulla Lower; area: 9.7124 hectares; **Co Clare**

Regd owner: Owen McCaul and Eileen McCaul; folio: 32225; lands: plot of ground being part of the townland of (1) Ballyviniter, (2) Ballyvorisheen in the barony of Fermoy and county of Cork; **Co Cork**

Regd owner: Timothy and Margaret Leader; folio: 32923; lands: plot of ground being part of the townland of Glenleigh in the barony of Muskerry West and county of Cork; **Co Cork**

Regd owner: Kevin O'Byrne; folio: 26156F; lands: plot of ground being part of the townland of Ballynakilla (ED Bear) in the barony of Bear and county of Cork; **Co Cork**

Regd owner: Neil Kelleher; folio: 29228F; lands: plot of ground being part of the townland of

Brinny in the barony of Kinalea and county of Cork; **Co Cork**

Regd owner: William Fahy; folio: 49029; lands: plot of ground being part of the townland of Ballycotton in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Annie Doogan, Ballyness, Falcarragh, Co Donegal; folio: 26418; lands: Falcarragh; area: 0.0420 hectares; **Co Donegal**

Regd owner: Cecilia McClean, Derryreel, Falcarragh, Co Donegal; folio: 12; lands: Derryreel; area: 5.4633 hectares; **Co Donegal**

Regd owner: James McGinn and Irene McGinn, c/o Sheridan and Company, Solicitors, Lower Main Street, Letterkenny, Co Donegal; folio: 37209F; lands: Lehardan; area: 0.5140 hectares; **Co Donegal**

Regd owner: John P Bryan; folio: DN23572F; lands: property situate in the townland of Burrow and barony of Nethercross; **Co Dublin**

Regd owner: Michael Kelly and Maureen Kelly; folio: DN19802L; lands: property situate in the townland of Kingstown and barony of Rathdown; **Co Dublin**

Regd owner: Patricia Lenehan; folio: DN16125; lands: property situate in the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: Philip G Harris and Geraldine Harris; folio: DN472L; lands: property known as no 85 Home Farm Road, situate on the north side of the said road and on the east side of Bantry Road in the parish of Clonturk, district of Drumcondra; **Co Dublin**

Regd owner: John Kealy; folio: DN91575L; lands: an apartment known as 103, level 2, block A/B in the parish of St Michan's and the district of North Central; **Co Dublin**

Regd owner: Wilhelmina Culhane; folio: DN3969L; lands: property known as 64 Seapark Drive, situate on the south side of Seapark Drive in the parish and district of Clontarf; **Co Dublin**

Regd owner: Patrick Mulroy; folio: 28LSD; lands: property known as no 46 St Ignatius Road, situate in the parish of St George, North Central district; **Co Dublin**

Regd owner: Cornelius Anthony McCarthy and Helen Mary McCarthy; folio: DN17619; lands: property situate in the townland of Dundrum and barony of Rathdown; **Co Dublin**

Regd owner: Thomas Nulty and Kathleen Nulty; folio: DN76864F; lands: property situate in the townland of Schollarstown and barony of Uppercross; **Co Dublin**

Regd owner: Fergus and Sheila Cooney; folio: DN5800; lands: property situate in the townland of Johnstown and barony of Rathdown; **Co Dublin**

Regd owner: Patrick Clarke; folio: DN9362L; lands: property situate in the townland of Windmill Lands and barony of Nethercross; **Co Dublin**

Regd owner: Maura Lundberg and John Lundberg; folio: DN28228L; lands: property situate on the east side of Watermeadow Park in the townland of Tallaght; **Co Dublin**

Regd owner: Roderick Martin O'Brien; folio: DN39269F; lands: property situate in the townland of Burrow and barony of Nethercross, and property situate in the townland of Portraine and barony of Nethercross; **Co Dublin**

Regd owner: Denis McSweeney; folio: DN2932L; lands: property being part of the townland of Santry and barony of Coolock; **Co Dublin**

Regd owner: Thomas Hughes (deceased); folio: 28405; lands: townland of Lissaniska (Tiaquin By) and barony of Tiaquin; area: 17.6060 hectares; **Co Galway**

Regd owner: William Kelly and Barbara Kelly; folio: 29915F; lands: townland of Ballymoneen West and barony of Galway; **Co Galway**

Regd owner: Thomas McGuinness; folio: 26461; lands: townland of (1) Corraabaun (Kilconnell By), (2) Derrynamanagh and barony of (1) and (2) Kilconnell; area: (1) 5.1091 hectares, (2) 1.2165 hectares; **Co Galway**

Regd owner: Paul Clancy; folio: 70271F; lands: townland of Rahoon and barony of Galway; **Co Galway**

Regd owner: William and Rhona Giles; folio: 3061F; lands: townland of Muing West and Cloonalour and barony of Trughanacmy; **Co Kerry**

Regd owner: Shirley Copeland; folio: 22937 Co Kerry; lands: townland of Cloghaneanode and barony of Corkaguiny; **Co Kerry**

Regd owner: Bridget Croke and Dolores Daly; folio: 458F; lands: townland of Dromhale and barony of Maguihy; **Co Kerry**

Regd owner: Shannon Free Airport; folio: 30272; lands: townland of

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Kilcolgan Lower and barony of Iraghticonnor; **Co Kerry**
 Regd owner: Denis J Reen, Sean O'Connor, Denis O'Dowd, Sean Kelly, Donal O'Nialain; folio: 29118F; lands: townland of Shanakill and parish of Tralee; **Co Kerry**
 Regd owner: Michael Aylward; folio: 11959F; lands: Kilmakevoge and barony of Ida; **Co Kilkenny**
 Regd owner: Richard Brennan and Mary Brennan; folio: 7897F; lands: Knockanaddoge and barony of Fassadinin; **Co Kilkenny**
 Regd owner: Thomas McGovern, Drumarigna, Ballinamore, Co Leitrim; folio: 2375F; lands: Drumarigna, Lisroughty, Leganamer, Leganamer, Drumarigna, and Leganamer; area: 4.3503 hectares, 0.5414 hectares, 0.5362 hectares, 0.2784 hectares, 4.3503 hectares and 0.0214 hectares; **Co Leitrim**
 Regd owner: William Powell Harris; folio: 10491F (parts 3017 and 21427); lands: townland of Fairyfield Glebe and Fanstown and barony of Kilmallock and Coshlea; **Co Limerick**
 Regd owner: Bernadette McGrath; folio: 6937; lands: townland of Ballinvana and barony of Coshlea; **Co Limerick**
 Regd owner: Mary Sheehy; folio: 2762F; lands: townland of Churchtown and parish of Glenquin; **Co Limerick**
 Regd owner: Mary Bridget O'Reilly; folio: 4258L; lands: townland of Tooreen and parish of Coshma; **Co Limerick**
 Regd owner: John Flynn, Newtownforbes, Co Longford; folio: 4543; lands: Currygranny; area: 10.8076 hectares; **Co Longford**
 Regd owner: John Miley, Derrylough, Kenagh, Co Longford; folio: 7167; lands: Derrylough; area: 1.6643 hectares; **Co Longford**
 Regd owner: Dan Kelly, Greenhall, Newtowncashel, Co Longford; folio: 3137F; lands: Greenhall; area: 5.5138 hectares; **Co Longford**
 Regd owner: Elizabeth F Evans-Tipping, Bellurgan Park, Ravensdale, Dundalk, Co Louth; folio: 22; lands: Bellurgan; area: 3.8496 hectares; **Co Louth**
 Regd owner: Irene Walsh (deceased); folio: 8853F; lands: townland of Drum (ED Knock South) and barony of Costello; area: 0.1561 hectares; **Co Mayo**
 Regd owner: Meath County Council, County Hall, Navan, Co Meath; folio: 2204F; lands: Donacarny;

LAW SOCIETY Gazette

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €126 (incl VAT at 21%)
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HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

All notices must be paid for prior to publication. **CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for August/September Gazette: 18 August 2006. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

Co Meath

Regd owner: Fergus and Gena Meegan, 7 Park Drive, Grange Rath, Dublin Road, Drogheda, Co Louth; folio: 40625F; lands: Colp West; **Co Meath**

Regd owner: Zuger Limited, First Floor, 14/15 Parliament Street, Dublin 2; folio: 8817F; lands: Cookstown; area: 0.3217 hectares; **Co Meath**

Regd owner: John McGoldrick; folio: 26185; lands: Strokestown; area: 18.3084 hectares; **Co Meath**

Regd owner: Patrick Boylan, Drumboat, Inniskeen, Co Monaghan; folio: 16407; lands: Carrickykelly; area: 3.6522 hectares; **Co Monaghan**

Regd owner: John McQuaid, Aghallisabeagh, Scotstown, Co Monaghan; folio: 2398; lands: Aghallisabeagh; area: 3.6168 hectares; **Co Monaghan**

Regd owner: David Edgar Noel Greer, Drumleck North, Castleblayney, Co Monaghan; folio: 10461; lands: Oram; area: 3.8167 hectares; **Co Monaghan**

Regd owner: Sean Mullen, Mullyera, Tydavnet, Co Monaghan; folio: 11368F; lands: Mullyera; area: 0.273 hectares; **Co Monaghan**

Regd owner: Peter Marron and Celia Marron and Bridget Loughlin, Latinalbany, Carrickmacross, Co Monaghan; folio: 16192; lands: Latinalbany, Corrybrackan; area: 0.7208 hectares, 1.8818 hectares and 4.4827 hectares; **Co Monaghan**

Regd owner: Joseph Dunne (deceased); folio: 7632; lands: Aghanvilla and barony of Philipstown; **Co Offaly**

Regd owner: Richard Quinn (deceased) and Nuala Quinn; folio: 7151; lands: townland of Ballagherreen and barony of Costello; area: 0.0385 hectares; **Co Roscommon**

Regd owner: Paul Halford, Hugh Regan and Michael Regan; folio: 9951F; lands: townland of Mockmoynne and barony of Boyle; **Co Roscommon**

Regd owner: Thomas P Devine; folio: 25691; lands: townland of Ardkeen and barony of Ardkeen; area: (1) 2.3755 hectares, (2) 1.6466 hectares, (3) 1.5280 hectares, (4) 1.9299 hectares; **Co Roscommon**

Regd owner: James Giblin (Junior); folio: 1446F; lands: townland of (1) to (8) Montiagh and barony of (1) to (8) Leyny; area: (1) 2.8453 hectares, (2) 0.3666 hectares, (3) 3.7239 hectares, (4) 0.9028 hectares, (5) 5.1496 hectares, (6) 4.8663 hectares, (7) 0.4933 hectares, (8) 2.8266 hectares; **Co Sligo**

Regd owner: Arthur Pettipiece; folio: 9346; lands: townland of Clonacurra and barony of Tirerrill; area: 13.5974 hectares; **Co Sligo**

Regd owner: Eileen Brennan and James Anthony Brennan; folio: 1176 and 1192; lands: townland of Clogher and barony of Kilnamanagh Lower; **Co Tipperary**

Regd owner: Sean and Brigid Mary Fogarty; folio: 25371 and 25372; lands: townland of Moyneard and barony of Eliogarty; **Co Tipperary**

Regd owner: Robert Mantion; folio:

19405F; lands: townland of Moyneard and Garranroe and barony of Eliogarty; **Co Tipperary**

Regd owner: Michael and Mary Stapleton; folio: 13559F; lands: townland of Windmill and barony of Middlethird; **Co Tipperary**

Regd owner: David Whittle; folio: 8877F; lands: plot of ground situate in the parish of St John's Without, Division D, in the county borough of Waterford and county of Waterford; **Co Waterford**

Regd owner: James N Monahan and Ruth Monahan; folio: 3245; lands: plot of ground being part of the townland of Crooke in the barony of Gaultiere and county of Waterford; **Co Waterford**

Regd owner: Terri Hennessy; folio: 9297; lands: plot of ground being part of the townland of (1) Rathanny, (2) and (3) Carrigeen, (4) Ballyvohalane, in the barony of Decies without Drum and county of Waterford; **Co Waterford**

Regd owner: Edmond Flynn; folio: 9505; lands: plot of ground being part of the townland of Castlecraddock in the barony of Middlethird and county of Waterford; **Co Waterford**

Regd owner: John Caulfield, Leecarrow, Knockcrookery, Co Roscommon; folio: 9326F, 1429F; lands: Grange South; area: 0.1214 hectares (folio 9326F); **Co Westmeath**

Regd owner: Mary McManus, Moate, Co Westmeath; folio: 3848; lands: Curraghbrack, Drinmore, Brittas and Drinmore; area: 27.1418 hectares, 38.2074

hectares, 1.9728 hectares and 7.9622 hectares; **Co Westmeath**
 Regd owner: Michael Macken, Carrickobrien, Athlone, Co Westmeath; folio: 5481; lands: Cornamagh; area: 3.9355 hectares; **Co Westmeath**

Regd owner: Joseph Bartley, Ranaghan, Collinstown, Co Westmeath; folio: 13559; lands: Ranaghan; area: 12.3809 hectares and 0.607 hectares; **Co Westmeath**

Regd owner: Francis Burke; folio: 9048F; lands: Medophall and barony of Scarawalsh; **Co Wexford**

Regd owner: Daniel Deasy (deceased); folio: 2260F; lands: Ballaghblake and barony of Shelamliere East; **Co Wexford**

Regd owner: Patrick Coakley; folio: 6078; lands: Killann and barony of Bantry; **Co Wexford**

Regd owner: Susan Braddell Smith and Hermione Ruddell; folio: 13939; lands: Ballyshanock and barony of Scarawalsh; **Co Wexford**

Regd owner: John Doyle; folio: 3207; lands: Corbally and barony of Gorey; **Co Wexford**

Regd owner: Akai Investments Limited; folio: 7066F; lands: townland of Kilbride and barony of Arklow; **Co Wicklow**

Regd owner: Thomas Fallon; folio: 24344F; lands: townland of Lamberton and barony of Arklow; **Co Wicklow**

WILLS

Cullen, Kathleen (deceased), late of Robinstown (otherwise Rathangan), Duncormac, Co Wexford; date of death: 4 November 2005. Would any person with any knowledge of a will executed by the above-named deceased, who died on 4 November 2005 at Wexford General Hospital, please contact Feargal White of Coughlan White & Partners, Main Street, Newbridge, in the county of Kildare; tel: 045 433 4332, fax: 045 433 096, email: info@coughlansolicitors.ie

D'Arcy, (otherwise Darcy) James John (deceased), late of 9

Heidleberg, Roebuck Road, Dublin 14, and formerly of the city of Oshawa, Canada. Would any person having knowledge of a will made by the above-named deceased, who died on 27 April 2006 at Saint Vincent's Hospital, Elm Park, Dublin 4, please contact Cusack McTiernan, Solicitors, 6 Fitzwilliam Place, Dublin 2; tel: 01 676 2833; ref: PC

Foley, Kathleen (otherwise Catherine) (deceased), late of Glen West, Kilmacthomas, Co Waterford. Would any person having knowledge of the whereabouts of a will dated 22 February 1995, executed by the above-named deceased, who died on 15 September 2004, please contact T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford; tel: 051 874 366, fax: 051 870 390

McHugh, Michael (deceased), late of 33 The Rise, Glasnevin, Dublin 9. Would any person having any knowledge of any will, and in particular a will made 30 September 2003 by the above-named deceased, who died on 16 December 2003, please contact

Gallagher Shatter, Solicitors, 4 Upper Ely Place, Dublin 2; tel: 01 661 0317, fax: 01 661 1685

Punch, Stefan (deceased), late of Kilroan, Glanmire, Co Cork, who died on 29 August 2003. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, please contact JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, fax: 021 427 3704, email: info@jwod.ie

MISCELLANEOUS

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

London solicitors will be pleased to advise on UK matters and undertake



Law Society of Ireland

Autumn 2006

DIPLOMA PROGRAMME ANNOUNCED

In addition to its **NEW Diploma in Employment Law**, which will commence on Thursday 5 October 2006, the Law Society is please to announce the following courses:

<i>Certificate in Trust and Estate Planning</i>	Saturday 9 September 2006
<i>Finance Law</i>	Tuesday 19 September 2006
<i>Commercial Conveyancing</i>	Saturday 4 November 2006
<i>Diploma in Property Tax (CORK)</i>	November/December 2006
<i>Legal French</i>	September/October 2006
<i>Legal German (certificate)</i>	September/October 2006
<i>Spanish Law (certificate)</i>	November 2006

For further information and application forms, please access the diploma section on the homepage of the Law Society's website or email us giving details of your name, address and area of interest.

Email: diplomateam@lawsociety.ie. **Tel:** 01 672 4802. **Fax:** 01 672 4890. **Website:** www.lawsociety.ie

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, email: arobbins@parfitts.co.uk

Grand Canal Docks – offices available. Solicitor with 1,500 square feet has approximately 750 square feet available for office-share arrangement in new Grand Canal Docks area. The unit faces waterfront with natural light. Available space includes two offices and shared use of open plan area for up to two full-size desk units with chairs, under-table pedestals etc. The offices are modern and built to the latest specifications with a phone system and internet connections already in place. Contact Donal on 087 230 8408

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967*: notice requiring information from a

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over ground first and
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**Enq. F. Doyle
086 2579628.**

person receiving rent (section 7(2)) (see note A). To: Reps Minnie Catherine Burton, Duckett Estate, Mason Hayes & Curran, Solicitors, 6 Fitzwilliam Street, Dublin 2

- 1) Description of land in respect of which rent is received (note B): the parcel of land with buildings thereon situate at and known as 14 Wellington Street and 1 to 4 Cahill's Lane in the parish of Saint Mary's, town and borough of Clonmel, barony of Iffa and Offa East and county of Tipperary.

- 2) Particulars of lease, the lessor under which cannot be found or ascertained (note C): lease dated 1 December 1944 between Minnie Catherine Burton and Mary Hogan for a term of 99 years from 29 September 1943 to an apportioned rent of five pints per year.

Take notice that the Very Reverend Matthew Cunningham PP and Paul Morris, being the persons entitled to acquire the fee simple in the above land under the above act, require you to give, within one month after the service of this notice on you, the following information:

- i) The name and address of the person to whom the rent under the lease referred to in paragraph 2 is paid by you.
- ii) The nature of the reversion vested in the person entitled to the immediate lessor's interest (note D).
- iii) The name and address of the person entitled to any superior interest and the nature of the interest.

Date: 7 July 2006

Signed: Paul Morris (solicitor for the applicant), Henry Shannon & Co, Kickham Arch, Davis Road, Clonmel, Co Tipperary

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and in the matter of a notice of intention to acquire the fee simple (section 4): an application by Allied Irish Banks plc

Take notice that any person having any interest in the freehold estate or any superior interest in the following premises: all that and those the property now known as AIB Bank, Main Street, Borrisokane, Co Tipperary, being the property comprised in and demised by (a) an indenture of lease dated 2 May 1842 and made between Thomas Towers of the one part and Joseph Laverite of the other part for a term of 999 years from 2 May 1863, subject to the payment of a yearly rent of £5, and (b) an indenture of lease dated 24 December 1907 and made between Gerard Higginbotham, Herbert Dell Littlewood Clarke, William Alexander Gardener, John Rowland Cattle, George Frederick Cattle, Edward Arthur Clarke and Edwin Kennedy Hilton of the one part and the Munster and Leinster Banking Company Limited of the other part for a term of 99 years from 1 May 1907, subject to the payment of a yearly rent of £2.

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

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Take notice that Allied Irish Banks plc intends to apply to the county registrar of the county of Tipperary for the acquisition of the freehold interest in the aforesaid property. Any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

And further take notice that, in default of any such notice being received, Allied Irish Banks plc intends to proceed with the application before the county registrar for the county of Tipperary for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertainable.

Date: 7 July 2006

Signed: Joynt & Crawford (solicitors for the applicant), 8 Anglesea Street, Dublin 2

In the matter of the Landlord and Tenants Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Kevin Ryan

Take notice that any person having an interest in the freehold estate of the following property: all that and those that piece or parcel of ground with dwelling house and premises erected thereon and formerly known as no 33 South Circular Road, Portobello, situate in the parish of St Peter and city of Dublin and which said premises are now known as no 61 South Circular Road, Portobello.

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

In default of any such notice being received, the applicant, Kevin Ryan, 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 Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 7 July 2006

Signed: George C McGrath (solicitor for the applicant), 11 Clanwilliam Terrace, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005: an application by Michael Kennedy of Church Street, Kinnity, Birr, Co Offaly

All that and those the property more particularly described in a certain indenture of lease dated 9 May 1994 and made between Marguerite Cecile Elizabeth Alexander of Marina Yarmouth, Isle of Wight, married woman, and Maud Mary Gertrude Bernard of Castle Bernard, Kinnity, in the county of Offaly, spinster (lessors), and P and H Egan Limited of Tullamore in the county (lessees), which said property is more particularly delineated on the map referred to therein and thereon endorsed and surrounded by a red verge line e and known as number 1 Church Street, Kinnity, and described as being "bounded on the north by William Peavoy's premises and on the west by Church Street, townland of Lismooney, barony of Ballybritt and county of Offaly".

Take notice that any person having any interest in the freehold estate or any superior leasehold estate in the following property: number 1, Church Street, Kinnity, Birr, in the county of Offaly, the said freehold of the property, the subject matter of this application was initially held from the Bernard Estate, formerly of Kinnity Castle, Kinnity, Birr, Co Offaly. Take notice that the said Michael Kennedy has submitted an application that the county registrar for the county of Offaly for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the

date of this notice.

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

Date: 7 July 2006

Signed: Thomas W Enright (solicitor for the applicant), Birr, Co Offaly

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1978, as amended, and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: Karl Scully and Margaret Scully (applicants); unknown and unascertained persons, being the successors in title to the interest of Anne Twamley

Notice of application: 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 premises at 49 North Strand Road, Dublin 3, in the parish of St Thomas, in the county of the city of Dublin, which said premises now consist of office premises known as number 49 North Strand Road, Dublin 3, being the property comprised in folio 70351L Co Dublin, held under an indenture of lease dated 20 November 1953 and made between Anne Twamley of the one part and James McKay of the other part for a term of 215 years from 1 June 1953, subject to the yearly rent of £10 thereby reserved and the covenants and conditions therein contained.

Take notice that the applicants, Karl Scully and Margaret Scully, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any person 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, Karl Scully and Margaret Scully intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin 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: 7 July 2006

Signed: Maguire McClafferty (solicitors for the applicants), 8 Ontario Terrace, Portobello Bridge, Dublin 6

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1978, as amended, and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: Karl Scully and Margaret Scully (applicants); unknown and unascertained persons, being the successors in title to the interest of William Rice Meredith, Harriett Sherwood, Emily Sherwood, Elisa Sherwood, Marianne Atkinson, Louisa Johnson and Susan Butler

Notice of application: 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 premises formerly known as Bayview House, North

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Strand Road, Dublin 3, in the parish of St Thomas in the county of the city of Dublin, which said premises now consist of office premises known as number 49A North Strand Road, Dublin 3, being the property more particularly shown edged red on the map attached to an indenture of assignment dated 12 April 1990 made between Patrick O'Donnell of the one part and Workstations Limited of the other part, held under an indenture of lease dated 5 September 1868 and made between William Rice Meredith, Harriett Sherwood, Emily Sherwood, Elisa Sherwood, Marianne Atkinson, Louisa Johnson and Susan Butler of the one part and George Russell Price of the other part, for a term of 300 years from 5 September 1868, subject to the yearly rent of £36 thereby reserved and the covenants and conditions therein contained.

Take notice that the applicants, Karl Scully and Margaret Scully, being the persons entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, intend to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any person 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, Karl Scully and Margaret Scully intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin 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: 7 July 2006

Signed: Maguire McClafferty (solicitors for the applicants), 8 Ontario Terrace, Portobello Bridge, Dublin 6

In the matter of the *Landlord and Tenants Acts 1967-1994* and in the matter of the *Landlord and Tenant (Grounds Rents) (No 2) Act 1978*: an application by John and Kathleen Campbell

Take notice that any person having an interest in the freehold estate or any intervening estate in the property

RECRUITMENT NOTICE

The *Employment Equality Acts 1998 and 2004* prohibit discrimination in employment on nine grounds, which are: gender, marital status, family status, religion, membership of the Traveller Community, disability, sexual orientation, race and age.

Recruitment is a key area in terms of access to employment. As such, the *Law Society Gazette* seeks to ensure that recruitment competitions do not discourage applications from applicants on any of the above nine grounds.

There is generally a clear correlation between years of experience and age. Imposing a maximum limit on years of experience might reasonably be understood to discriminate against older employees. As a result, advertisements for positions that set maximum limits in relation to the number

of years of post-qualification experience (PQE) sought might reasonably be understood to indicate an intention to discriminate on the ground of age, contrary to section 10 of the acts.

The *Law Society Gazette* therefore will not accept recruitment advertising that could reasonably be understood to include an intention to discriminate on any of the above nine grounds, including the setting of upper limits on PQE.

To ensure that there is no breach of this code, we have contacted all of our recruitment advertisers, making them aware of the need to comply with the employment equality legislation. **No selection or recruitment advertising will be published in the *Gazette* that includes references to maximum limits on years of experience.**

RECRUITMENT

Solicitor required for busy West of Ireland practice. Experience desirable but not essential. Enquiries with curriculum vitae to Edward Fitzgerald & Son, Solicitors, Main Street, Ballinrobe, Co Mayo

Solicitor required for rural general practice; probate and litigation in particular. West Limerick area. Please reply to **box no 60/06**

Solicitor available for part-time position with four years' PQE in general practice, particular experience in residential conveyancing. Dublin area. Please contact: 086 841 1062

Solicitor seeks locum position in Dublin area. Has two years' PQE in general practice and criminal defence. Also has 25 years' experience in the civil service. Computer literate. Tel: 01 668 6901

John McGale Kelly & Company of 26 John Street, Omagh, Co Tyrone, Northern Ireland, require a solicitor with 2/3 years' conveyancing experience for cross-border practice. € negotiable. Contact: 048 822 43621 or email: Aidan.Kelly@btconnect.com

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Solicitor with some clientele: wishing to establish general practice in Dublin 2, offered office on reasonable terms. Reply to **box no 62/06**

Solicitor required for conveyancing and probate. General practice in Killarney, Co Kerry. The position offers an opportunity for career development. Reply to **box no 61/06**

Legal secretary required for general practice in Dublin 8, minimum two years' experience in conveyancing. Reply to **box no 63/06**

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Mid sized progressive practice in Wexford looking to recruit a solicitor for a varied litigation position. Role encompasses PI, Family Law and Commercial Litigation. Ideally around 3 years experience required for this busy practice. Excellent salary and benefits including 25 days holidays per year.
- **Construction Lawyer – Top Tier firm. Dublin. €85,000+**
Construction lawyer with experience in both contentious and non-contentious construction law, skilled at advising private developers and public sector bodies in all elements of construction law. Must be familiar with FIDIC type contracts and public procurement procedures. Min of four years experience with genuine career development opportunities with this highly reputable firm.
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Candidate with particular experience in property based commercial lending within the banking law sector required for this leading firm in Dublin. Candidate will have experience of structure and tax based lending transactions and in advising lenders. Must have impressive track record in this field. Excellent career advancement opportunities within this firm.
- **General Practice Solicitor – Carlow. € Negotiable**
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- **Investment Funds Lawyer. Dublin. €70,000+**
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- **Conveyancing Solicitor. Donegal. € Variable.**
Highly regarded firm in Donegal has an opening for a solicitor with any level of experience mainly in Conveyancing. Experience in family law and probate would be an added advantage but not deemed necessary.

In House Roles

- **In House Legal Advisor. Dublin South. €55,000+**
International Investments Management Company in Dublin city centre is looking to recruit a lawyer with around two years experience to begin as Legal Advisor. A background in Corporate/Commercial law is necessary with experience of funds and asset management an added advantage. Excellent location.
- **In House Solicitor. Dublin South. €55,000+**
Life Assurance Company in South Dublin are seeking a solicitor with circa two years experience to work in their Legal Department. This role is mainly litigation based with a strong focus on general support to the legal department. Excellent salary and benefits.
- **In House Legal Manager. Dublin West. €90,000+**
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Readymix plc

General Counsel

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The Person

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- A full driving licence.
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Desirable

- Knowledge of legal systems in NI, GB and Isle of Man

Applications should be made in writing to:-

Ms Helen Bennett, Human Resources Director, Readymix plc, Block A1, East Point Business Park, Dublin 3. email: Helen.Bennett@cemex.com

Closing date for receipt of applications is close of business on Friday, 21st July 2006

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Pablo Picasso, *Villa in California*,
Cannes, France 1938 (detail)
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TO €100K

Our client, a prestigious practice require a solicitor to join its Banking team. You will have experience in general corporate banking, securitization and structured finance issues in a large or leading mid tier firm. Excellent career opportunities for the right candidate.

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€NEG

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€30-40K

Our client is searching for an experienced Legal Executive in conveyancing/commercial for its Dublin City Centre office.

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€NEG

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Appointment of Ordinary Judge of the District Court

Notice is hereby given that applications are invited from practising barristers and solicitors who are eligible for appointment to the Office of Ordinary Judge of the District Court for a vacancy that is due to arise in the District Court.

Those eligible for appointment and who wish to be considered should apply in writing to the Secretary, Judicial Appointments Advisory Board, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7, for a copy of the relevant application form.

Applicants whose applications are currently on file need not reapply for this pending vacancy.

The closing date for receipt of completed application forms, in relation to this advertisement, is 5p.m. on Friday 28th July, 2006.

It should be noted that The Standards in Public Office Act, 2001 prohibits the Board from recommending a person for judicial office unless the person has furnished to the Board a relevant tax clearance certificate (TC4) that was issued to the person not more than 18 months before the date of a recommendation.

Applicants may, at the discretion of the Board, be required to attend for interview.

Canvassing is prohibited.

Dated the 6th July, 2006.

Brendan Ryan BL
Secretary
Judicial Appointments Advisory Board

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Leading law firm requires experienced Capital Markets Lawyers to join their established team. Working directly with partners you will have good client facing skills and the ability to market the practice. Excellent salary and career prospects. (ref 173571)

Commercial Property 3 yrs+ PQE Dublin

Solicitors required for this established and expanding team within leading law firm. You will have a broad knowledge and experience of commercial property including large developments. Ideally you will have at least 3 years PQE in a similar environment. (ref 167272)

Corporate NQ+ London £55k+

Opportunity to join this top 10 UK law firm in their corporate department. Working in a collegiate environment on high calibre M&A and equity capital markets transactions this is an outstanding opportunity to progress your career within a leading team. Fantastic salary and benefits package. (ref 57416)

Corporate 3 yr+ PQE Dublin

Prestigious niche practice requires two Associate Corporate Solicitors to join their expanding practice. Working on a wide variety of high quality work for an outstanding client list, you will have a minimum of 3 years PQE gained in a similar environment in the UK, Ireland or other leading jurisdiction (ref 163271)

Financial Services 3 yrs+ PQE Dublin

Prestigious law firm requires lawyers to join one of Ireland's leading Financial Services teams. Achieving a wide range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref 153542)

Funds All PQE Dublin

Opportunity to join one of Ireland's leading law firms in their renowned funds team with an enviable client portfolio. Ideally you will have experience in a similar environment, but enthusiastic candidates from other practice areas will be considered. (ref 153543)

Funds NQ+ London £40k+ Fantastic

Our client a top tier UK practice is looking to recruit experienced investment fund lawyers to join their expanding practice. You will have some relevant experience from within a leading corporate practice and a solid academic background. Fantastic salary and benefits package offered. (ref 57422)

IP 3 yrs+ PQE Dublin

Prestigious top tier Irish law firm seeks an IP solicitor to work within their ITP practice. Covering a broad range of non-contentious and/or contentious IP work you will have at least 3 years experience in a similar environment. (ref 153544)

Pensions 3 yrs+ London £100k+

Opportunity to join this substantial London based pensions practice within one of the UK's leading law firms. Relevant hands on transactional experience essential. Outstanding blue chip client list and collegiate working environment. (ref 57421)

Securities 2 yrs+ London £100k+

Leading UK law firm is looking to recruit experienced lawyers to join their US securities practice. Operating within a jurisdictional team handling cross border offerings you will have at least 2 years mainstream experience and a desire to succeed. (ref 57423)

Dublin General Practice & Paral

General Practice

3 years + PQE Dublin city centre

This general practice law firm require an assistant solicitor to join their busy and expanding team. The ideal candidate will have at least 3 years PQE and will have experience of conveyancing and litigation. This firm offers excellent prospects with salary and benefits commensurate with experience. (ref 167271)

General Practice 2 years + PQE Dublin 2

Specialist niche practice requires an assistant solicitor for their Dublin 2 office. The ideal candidate will have 2 years PQE and will have extensive experience of conveyancing and probate work. This is an excellent opportunity to join a specialised team at a well respected firm. (ref 153545)

General Practice (Locum) NQ+ Dublin 2

Locum solicitor required to cover maternity at Dublin city centre general practice. Experience of conveyancing and probate is essential and newly qualified candidates will be considered. There is also the possibility of a permanent position for the successful candidate. (ref 167272)

General Practice NQ+ Dublin city centre

An assistant solicitor is required by our client in Dublin 8. The role is for commercial conveyancing and consideration will be given to candidates from newly qualified upwards. This is an excellent opportunity to join an established team at a well regarded firm. (ref 153546)

General Practice NQ+ Dublin city centre

Mid tier firm located in Dublin 1 require solicitors with conveyancing and probate experience to join their experienced team. Newly qualified candidates will be considered. Excellent prospects and salary are available to the successful candidate. (ref 163271)

General Practice NQ+ Dublin city centre

General practice solicitor required for busy city centre practice. Newly qualified candidates will be considered. Experience in residential conveyancing essential and ideally experience in litigation also. Excellent prospects and salary will be offered to the right candidate. (ref 163272)

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Litigation 1 year + PQE Dublin City

Excellent opportunity for a 1 year PQE litigation solicitor to join the expanding team of our client in Dublin 7. This role will cover a wide variety of litigation including PI, RTA and Debt Collection work. Excellent prospects for the right candidate. (ref 16324)

Litigation 2 years + PQE North County Dublin

North County Dublin firm requires an experienced solicitor to join their expanding team. The ideal candidate will have at least 2 years PQE and have strong experience in litigation, particularly personal injury. Excellent prospects for the right candidate. (ref 16325)

Residential Conveyancing

1 year + PQE West Dublin

An exciting opportunity has arisen for an assistant solicitor in West Dublin. Candidates will have at least 1 year PQE and interested candidates must have strong experience in residential conveyancing. This is a great opportunity for those candidates keen to see their hard work rewarded. (ref 17191)

Residential Property (Development)

2 years + PQE Dublin 2

One of Ireland's largest law firms require a solicitor to join their residential property development team. Ideally candidates will have at least 2 years PQE and be able to demonstrate experience of all aspects of property development. Excellent salary and benefits are dependent on experience. (ref 16312)

Paralegal - Banking

1 yrs + experience Dublin City

Our client, a top 5 Irish firm are recruiting a paralegal to work in their Banking department. You will work closely with a team of talented solicitors advising both domestic and international clients on all aspects of banking and finance law. Previous experience in a similar position required but training will be offered. (ref 16351/2)

Paralegal - Know How

2 yrs + experience Dublin City

Know how paralegal needed for top law firm. This position will require administration of Know How database, working with lawyers assisting staff with IT queries and conducting research as required. You will need strong IT skills and experience in a similar role. Salary is negotiable. This is a full time position. (ref 16350/2)

General Practice 1 yr + PQE Cork City

This thriving and dynamic firm requires a conveyancing solicitor to join their busy and expanding practice. Experience in residential and commercial property required. Salary is commensurate with experience and local market. (ref 17225/1)

General Practice 1 yr + PQE Donegal

This practice is recruiting for a solicitor with experience in residential conveyancing, wills and probate, and litigation. Solicitors at all levels of PQE are invited to apply. This is an ideal opportunity for someone looking to continue their career in Donegal or for those looking to return home. Salary will be commensurate with experience and local market. (ref 17191/1)

General Practice 2 yrs + PQE Co. Kilkare

Small regional general practice requires an experienced solicitor to join their team. Previous experience in conveyancing and probate essential. This is an excellent opportunity to work in a practice whilst avoiding the commuter traffic to Dublin. Salary dependent on experience. (ref 17225/1)

General Practice 3 yrs + PQE Mayo

Our client is recruiting an assistant solicitor to join their busy regional practice. Previous experience in residential conveyancing, wills and probate, and taxation required. Immediate or imminent start desired. (ref 17191/1)

General Practice 1 yr + PQE Co. Meath

Assistant solicitor required to join this busy practice. Strong residential property experience essential. Candidates must have proven ability to process own files from inception to completion. Some litigation and probate experience desired. This is a growing practice based in Navan. Salary is commensurate with market rate. (ref 16324)

General Practice Assistant Solicitor 1 yr + PQE Waterford

One of Ireland's largest provincial law firms requires an assistant solicitor to cover maternity leave. Initially a one year contract is offered with a permanent contract assured for the right candidate. Previous experience of conveyancing and probate required. Ability to manage own files essential. Salary dependent on experience. (ref 16325/1)

General Practice 3 yrs + PQE Wexford

This busy Wexford town practice is recruiting a litigation specialist. This role provides a varied workload requiring experience of commercial, family and plaintiff personal injury litigation. Our client requires a self-motivated candidate with good client liaison skills. Remuneration commensurate with experience. (ref 16301/1)

General Practice (Locum) 1 yr + PQE

This County Limerick firm is looking for a solicitor to cover a maternity contract to begin immediately. Previous experience in a general practice with an emphasis on residential conveyancing and probate is essential. Salary is commensurate with experience and local market. (ref 17225/1)

Commercial Property (In House) 3 yrs + PQE County Fermanagh

Our client, a domestic success story is currently seeking to recruit a fully qualified solicitor with a minimum of 3 years commercial property experience. The ideal candidate will provide a range of legal services to the commercial property division and will have experience of tax legislation and contract law. (ref 16324/1)

Contracts (In House) 3 yrs + PQE Dublin or London

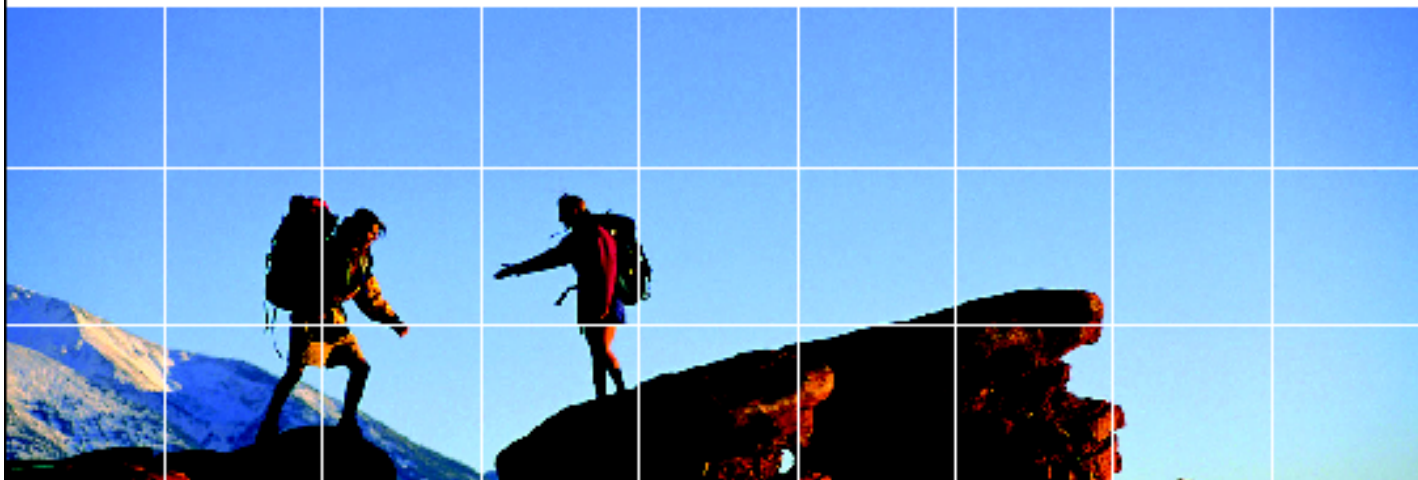
Irish software company are looking for an experienced lawyer to provide legal counsel and contract administration services to the Sales and Services organisation under the supervision of the General Counsel. Excellent financial package and career prospects offered to the successful candidate. (ref 16302/1)

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In-House

Legal Counsel

€55k + Bonus and Benefits

Our client, a leading securities trading organisation, requires an experienced lawyer with at least 5 years' PCE. The role calls for a general counsel who can successfully take on multifaceted legal functions and work with the legal team to direct and monitor widespread legal matters, including corporate and securities transactions, issuing documentation, venture capital and private equity transactions as well as general business matters. This role requires interaction with all levels of management as well as providing practical legal advice. Ref: JO127523

Derivatives Lawyer

€50k + Bonus and Benefits

This significant global treasury division of a large financial services organisation seeks to appoint a senior lawyer with strong banking law and credit derivatives experience. The ideal candidate will have at least 5 years' PCE from a financial services or top law firm environment and will be seeking to join a dynamic in-house team. This is a significant career advancement opportunity and candidates should be ambitious, business-minded and seeking a long-term career in a leading financial services organisation. Ref: JO279630

Commercial Lawyer

€35 - €55k + Bonus and Benefits

Our client, a leading banking and financial services group, seeks to recruit an ambitious lawyer to work in its legal department. The department provides legal advice, direction and solutions to various departments, including lending and securities areas and regulatory and compliance units. The ideal candidate will be a qualified solicitor or barrister with a good knowledge of the law, practice and the regulation of banking as well as an ability to apply this in a business environment. Strong drafting skills are also required. Ref: JO279640

Private Practice

Construction Solicitor

€70k + Bonus

This is an excellent opportunity for a Construction Solicitor with close 2 years' PCE to join a prestigious white practice based in Dublin city centre. The successful candidate will work on the non-contentious aspects of construction law. The successful candidate must possess excellent technical skills and a strong knowledge of construction law. This role offers a great opportunity for career progression within a dynamic company. An exceptional remuneration package is on offer to the successful candidate. Ref: MC0255220

Litigation Solicitor in Wexford

€50k + Bonus

Our client, a leading law firm in Wexford town, seeks to appoint a Litigation Solicitor to its growing practice. The successful candidate will have close 2 years' PCE with experience in commercial litigation, family law and personal injury claims. The candidate will possess strong leadership and organisational skills and an aptitude for client development. You will enjoy a remuneration package with fantastic prospects for career progression. This is an excellent opportunity for a solicitor looking for a new challenge. Ref: MC0255340

IP/IT Solicitor

€50k + Bonus

This well regarded mid-sized Dublin law firm seeks to appoint a solicitor with close 3 years' PCE for their highly regarded IP/IT unit. The successful candidate will work on a mix of IP and IT matters and advise clients on all legal issues concerning copyright, trademarks, designs and patents. A background in biotechnology, medical technology, pharmaceutical sector healthcare is desirable but not a prerequisite. Excellent career progression is available for the right candidate. Ref: MC0255362

If you are interested in three or any other legal opportunities, please send your Curriculum Vitae to Gemma Allen at gemma.allen@robertwalters.com or Tel (01) 633 4111.

www.robertwalters.com

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