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€3.75 June 2006



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On the cover

Vital information is often unknowingly stored in computer applications and files, and it can be invaluable in terms of courtroom evidence

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Volume 100, number 5
Subscriptions: €57



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June 2006

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Editorial secretaries: Catherine Kearney, Valerie Farrell. For professional notice rates (lost land certificates, wills, title deeds, employment, miscellaneous), see page 59.

Commercial advertising: Seán Ó hOisín, 10 Arran Road, Dublin 9; tel: 837 5018, fax: 884 4626, mobile: 086 811 7116, email: sean@lawsociety.ie.

Printing: Turner's Printing Company Ltd, Longford.

Editorial board: Stuart Gilhooly (chairman), Mark McDermott (secretary), Pamela Cassidy, Tom Courtney, Eamonn Hall, Philip Joyce, Michael Kealey, Mary Keane, Patrick J McGonagle, Ken Murphy, Michael V O'Mahony, William Prentice.

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Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.
Email: gazette@lawsociety.ie Law Society website: www.lawsociety.ie



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Society focuses on 'client care'

The last month has been busy. In my last message to you, I informed you about the progress of the *Civil Law (Miscellaneous Provisions) Bill 2006*. The bill has now been published. Subject to a detailed analysis of it, our first impression is that the bill appears to be reasonably fair and balanced.

Council will again review the bill at its July meeting. We hope to have discussions with the minister and his department concerning the complete text of the bill. Only at the conclusion of these discussions will we be able to give a final verdict on it. If you wish to make comment on the bill, please write to us in the Society by 1 July.

It is interesting to observe that reform of the legal profession has now commenced in Denmark and Holland, in addition to England and Wales, Northern Ireland and Scotland.

On 15 May, John O'Malley and his team launched the first Client Focus Seminar before a well-attended group in the Four Seasons Hotel in Dublin. These seminars are intended to help us provide an enhanced service to our clients while informing us how to manage our resources more effectively.

The senior vice-president, director general and I met with the presidents and secretaries of bar associations in Blackhall Place on 9 May. It was a real pleasure to be able to talk with and listen to those present.

The May meeting of the Council took place in Wexford Courthouse for the first time in the Society's history. I would like to thank all those in Wexford for their support and kindness extended to us on that occasion.

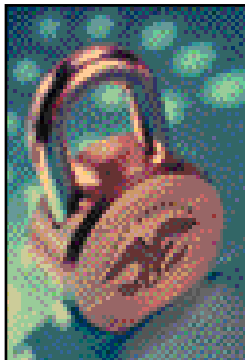
Since I last wrote, the annual conference has taken place in Dubrovnik. The conference topic was 'Conflict Resolution: Peace and Reconciliation'. This was apt, as we were in the Balkans. A visit to Mostar in Bosnia-Herzegovina provided a great learning experience in the futility of armed conflict as a means of resolving political difference. The working session was addressed by people who live and work in the Balkans, including three Irish speakers, and was most interesting.

The Calcutta Run took place on Saturday 27 May. The profession can be very proud of the work undertaken by the solicitors, ably assisted by Law Society executives, who have devised and organised this event. A sum of €1.25 million has been collected for charity by their work over an eight-year period. I hope the profession's support will again be forthcoming this year – it is never too late to make a donation.

Michael G Irvine
President



"The Client Focus Seminars are intended to help us provide an enhanced service to our clients"



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■ WICKLOW

Home...

Wicklow solicitors are looking forward to receiving Law Society President Michael Irvine and director general Ken Murphy. "We have not worked out the details, but it is a significant meeting for us and we are confident that members will attend in good numbers," noted Wicklow Bar Association Secretary Rosemary Gantly.

The association plans a talk on family law by Bronagh O'Hanlon SC on the same occasion. So colleagues can be updated on family law, earn CPD points, and meet socially with each other and the president on the one day.

...and away

Well-tanned Wicklow solicitors are finding it hard to adjust to working life after last month's annual trip, this time to Bilbao in Spain. "The trip was well attended and these trips are becoming an important way for us to get to know each other as colleagues," noted Rosemary Gantly.

■ DUBLIN

Consult a colleague

The helpline for colleagues in difficulties – run by the Dublin Solicitors' Bar Association for almost 20 years – is being re-named 'Consult a Colleague'.

A meeting for volunteers in the free service was held recently. The helpline provides confidential, non-judgemental and discreet advice to colleagues who find themselves in difficulty in their professional or personal lives.

The role of the service will expand to help solicitors in any difficulties encountered with the various regulatory committees of the Law Society. Colleagues



Soup and a sandwich

Brian Gallagher of Gallagher Shatter and Sean McDonnell and Aileen Murry of Sean McDonnell & Co at the recent client-care seminar

who have received training in counselling run the service. The telephone number is 01 284 8484.

First things first

A very successful and well-attended trio of seminars under the theme 'Building a dynamic, profitable practice' has just concluded.

The crowded room heard a thorough analysis of best procedures in running a practice. Topics covered included the practical implications of the legal costs report, suggested methods of time recording and a solicitor's 'tool kit' guide to practice management. The seminars included a critical look at business planning and policies, file and case management, financial management, risk management, how to reduce your PI premium, IT, knowledge management and how to recruit and keep staff.

"This has been by far the most ambitious educational undertaking ever embarked upon by the DSBA and will complement very well our forthcoming launch of CPD online," says association president Brian Gallagher, who paid particular thanks to

organiser Anne Neary and her team. Programmes' director John P O'Malley, who oversaw the seminar, noted that it would combine very well with the Law Society's seminar series on client care being held around the country.

Yes, solicitors do think of others

The Mansion House was the venue for a recent meeting of the DSBA council, and Lord Mayor Catherine Byrne attended.

Brian Gallagher presented her with a substantial DSBA cheque for the Coal Fund. The Lord Mayor spoke movingly of those not touched by our new affluence, noted council member Kevin O'Higgins.

■ TIPPERARY

Court in the act

Members of the judiciary, solicitors, barristers and officials of the Courts Service are expected to attend a reception and gala ball on 16 June to mark the official re-opening of Nenagh Courthouse.

"This is an important day for lawyers and the general public alike, and the newly refurbished building will reflect the importance of the work

conducted within its walls," noted Ronan Kennedy, secretary of the Tipperary Solicitors' Bar Association.

The re-furbished building will house both the Circuit Court and the District Court and has various modern facilities. "We may even hope that the High Court could sit here, particularly now that we have the facilities," said Ronan.

It's another country

Next month will see the launch of a history of the Tipperary Solicitors' Bar Association by retired colleague John Carrigan.

The history of the association and of the practice of law in Tipperary in times past is important to know in itself, suggested Ronan Kennedy. It can also be relevant to practice as we go forward.

■ ROSCOMMON

Fair reward

Scale fees in the District Court "have fallen hopelessly behind", and the Roscommon Bar Association will make representations to the Department of Justice, noted its president, Kieran Madigan. This would be one of the issues of his presidency, but it would also, of course, have to be addressed at national level.

Apart from District Court work, there is also concern among colleagues in Roscommon at the erosion of income in the new civil litigation regime with the role of PIAB. "There is a substantial drop in income and we are by no means convinced that the general public are at all better served in the new climate," he said. **G**

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

New style *Law Clerks Employment Order*: new employee procedures obligation

The periodic *Employment Regulation Order (Law Clerks Joint Labour Committee)* is noticeably different this year. SI no 249 of 2006 was signed on 10 May and came into effect on 19 May.

The new order replaces outdated job descriptions with more current ones:

- The term 'managing clerk' is replaced with 'office manager'.
- 'Conveyancing and cost clerks' are replaced with the category 'law clerk/bookkeeper'.
- The terms 'general law clerk 17 years and over', 'general

law clerk', 'shorthand typist/typist' and 'messenger' are replaced by 'legal secretary' and 'office assistant'.

The previous short work descriptions are replaced by comprehensive lists of functions and responsibilities.

The working week is capped at 38 hours, and overtime is payable thereafter at the rate of 1.5 times the hourly rate, twice the rate on Sundays and public holidays (no change here).

The 2006 order introduces a new obligation in relation to procedures dealing with

bullying, harassment, grievance and discipline:

"Each employer will include, in the conditions of employment, details of the procedure to apply in the event of issues arising in relation to bullying/harassment, grievance and discipline. In this regard the codes of practice contained in SI no 17 of 2002 (bullying in the workplace), SI no 78 of 2002, *Employment Equality Act, 1998 (Code of Practice) (Harassment) Order 2002* and SI no 146 of 2000 (grievance and disciplinary procedures) are to be noted."

The statutory instruments mentioned are available at www.irishstatutebook.ie/front.html.

Previously, the effect of not having such procedures was likely to be fatal to your position as an employer in any employee relations dispute. Now, if any issues arise in your practice in relation to bullying, harassment, grievance and discipline, and you do not have written codes of practice included in your conditions of employment, you will also be in breach of a legal requirement.

■ ONE TO WATCH: NEW LEGISLATION

European Communities (Free Movement of Persons) Regulations 2006, SI no 226 of 2006

These regulations give effect to council directive 2004/38/EC of 29 April 2004 on the right of citizens of the union and their family members to move and reside freely within the member states. They were signed and came into effect on 28 April 2006, just before the 30 April deadline for transposing the directive.

The directive aims to simplify the administrative formalities associated with the exercise of the right of free movement and residence by European Union citizens. The large number of such EU citizens coming to Ireland makes the directive particularly relevant here, but it will also benefit Irish citizens living elsewhere in the EU. The directive consolidates the existing legislative provisions on freedom of movement and also takes into account the case law of the European Court of Justice.

The main changes being introduced by the regulations include:

- Facilitating the admission of EU citizens' partners who are in a durable relationship that is duly attested. The permission granted to such partners for the purposes of admission and residence in the state does not involve the recognition of such partnerships for other purposes.
- Creating a new status of permanent residence for EU citizens and their family members after five years' residence in the state.

The detailed 21-page regulations set out the requirements of the directive and contain forms and information checklists to be used in its application in the various schedules. According to the Department of Justice, the directive replaces and supplements the existing legislative instruments in force on freedom of movement of EU citizens, consisting of nine directives and two regulations. The principle underlying the directive is that union citizens should be able to move between member states with minimal formalities. The directive also serves to:

- Bring together the complex

corpus of existing legislation into a single legislative instrument, establishing a single system applicable to all categories of person (workers, students, economically non-active), and

- Streamline the current legislation, taking into consideration the case law of the European Court of Justice and the provisions of the EU *Charter of Fundamental Rights* regarding family unity and the protection of family life.

Family members

The directive widens the definition of family member. The new definition includes registered partners, if the legislation of the host member state treats registered partners as equivalent to marriage, and in accordance with the conditions laid down in the relevant legislation of the host member state. An innovation in the directive is to provide also for the facilitation of entry and residence of:

- Other family members, where serious health grounds so require, and
- The partner with whom the

union citizen has a durable relationship, duly attested.

The directive also modifies the existing EU provisions by the inclusion of descendants of the registered partner who are under the age of 21 or are dependants, as well as the dependent direct ascendants of the registered partner.

As Irish legislation does not treat registered partnerships as equivalent to marriage, Ireland will not be obliged to recognise registered partners as family members. However, Ireland is obliged to facilitate the entry and residence of the partner with whom the union citizen has a durable relationship, duly attested. In doing so, an extensive examination of the personal circumstances of such relations must be undertaken.

Right of residence for more than three months

The right of residence of EU citizens remains subject to conditions. EU citizens must be either:

- Engaged in economic activity (employed or self-employed), or

Law School leads the way

Over the past six months, students from the Law School have been volunteering as tutors in a number of schools and youth clubs in the Dublin 7 area.

The 'Homework Clubs' programme began after meetings between student development advisor Emma Cooper, home school community liaison (HSCL) for St Paul's CBS, North Brunswick Street, Pat McCormack, and HSCL for St Joseph's Secondary, Stanhope Street, Eithne Moran. A similar after-school club was organised with Liesel Reimer, youth work coordinator for the



Dublin Christian Mission, Chancery Street. Principal of St Paul's CBS, Michael Blanchfield, believes that the

Homework Club has been a real success story for both his school and the Law School. A pastoral element to the programme is also on the cards, where Law School volunteers will be paired with Leaving Cert students. They will act as mentors, offering assistance with exam revision and encouraging them to undertake third-level studies.

This commitment is also evident in the sports day organised for first-year students from St Paul's CBS and children from the Dublin Christian Mission. It takes place on May 29 in Blackhall Place.

■ 'WASTED COSTS' ORDER

The appeal against the 'wasted costs' order of the Master of the High Court, issued on 2 February 2006 (see *Gazette*, March 2006, p7), was heard by the President of the High Court, Mr Justice Finnegan, on 24 and 25 May 2006.

The Law Society was granted leave on 24 February last to be joined as an *amicus curiae* in the appeal. In granting the Society's application, the President of the High Court said he believed that the Society, in making the application to be joined as an *amicus curiae*, was acting "not just in the interests of its members but also in the public interest".

Judgment has been reserved in the matter.

- A person with sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host member state, or
- Enrolled as a student or vocational trainee, or
- A family member of a union citizen in one of the above categories.

The directive does not require member states to issue residence permits to union citizens, but member states may require union citizens to register. Ireland is not introducing such a requirement at this time. Family members of union citizens who are not nationals of an EU member state or a member state of the European Economic Area (EEA) must apply for a residence permit. Non-EEA citizens who are family members of EU citizens and residing in Ireland are currently obliged to register with the Garda National Immigration Bureau.

Subject to certain conditions, the death of the union citizen, his or her departure from the host member state, divorce, annulment of marriage or termination of

partnership will not affect the right of family members who are not nationals of a member state to continue residing in the member state.

Right of permanent residence

One of the main innovations of the directive is that it creates a new right of permanent residence after a five-year period of uninterrupted legal residence for EU nationals and their family members. The right of permanent residence is lost only in the event of more than two successive years' absence from the host member state or in the circumstances set out in the next paragraph.

Restrictions on entry and residence on the grounds of public policy, public security or public health

Union citizens or their family members may be expelled from the host member state on grounds of public policy, public security or public health. However, before making such a decision, the host member state must assess a number of factors, such as how long the individual concerned has

resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member state and the extent of his/her links with the country of origin. The directive limits the scope of expulsion of EU citizens and their family members who have acquired the right of permanent residence, who have resided in the host state for ten years or who are minors.

Non-application to EEA and Swiss nationals

The *Free Movement Directive* is not directly applicable in relation to nationals of the EEA states outside the EU (Norway, Iceland and Liechtenstein) or Switzerland. The new Irish regulations cover only EU nationals at this time. Existing regulations in the area will be repealed only in respect of EU nationals, but will continue to apply in respect of other EEA and Swiss nationals.

Practical implications

At a practical level, the changes introduced are limited, but are of major assistance to non-EU partners of EU citizens. Ireland

currently does not require EU citizens to register with the immigration authorities, and this will continue to be the case. New application forms are being introduced for family members wishing to remain in the state for more than three months and for those union citizens and their family members who wish to apply for permanent residence status.

Family members of union citizens who are citizens of countries outside the EU will continue to be required to register with the gardaí. This is being extended to all family members, including children under 16 years. An improvement being introduced is that a new registration category for family members of union citizens will exempt holders of a card in the new category from a visa requirement on travelling into the state. This will eliminate the current requirement for a re-entry visa in these cases. **G**

Alma Clissmann is the Law Society's parliamentary and law reform executive. Thanks to the Department of Justice for much of this summary.

■ RETIREMENT TRUST SCHEME

Unit prices: 1 May 2006

Managed fund: €5.73077

All-equity fund: €1.32353

Cash fund: €2.64754

Long bond fund: €1.29315

■ EAS PILOT EXTENSION

The Land Registry intends to extend the hours of availability of its electronic access service (EAS) on a three-month pilot scheme in order to assess the demand by the profession for such an extended service. The pilot scheme is in response to a request from the Conveyancing Committee of the Law Society. During the operation of the pilot scheme, it is proposed to make the EAS service available for an extra hour each morning from Monday to Friday (7am-8pm), and to introduce a new Saturday service (7am-12 noon).

The trial period will run from the first Saturday in July until the end of September. No customer or technical support will be available on Saturdays during the pilot scheme. Further information will be posted on the Land Registry website: www.landregistry.ie.

The future provision of extended hours of service will very much depend on the level of take-up by the profession during this pilot period, so solicitors are being encouraged to make use of the extended hours of service.

■ CIVIL & CANON LAW COURSE

A new postgraduate programme – Master of Arts in Civil and Canon Law – is being launched in September 2006 by the School of Law, University of Limerick, and the Department of Theology and Religious Studies, Mary Immaculate College, Limerick.

The programme is designed to meet the needs of those involved in church administration and lawyers and other professionals who advise church bodies. It will provide students with a foundation in canon law and civil law and how they relate to the governance of church organisations.

The human rights lessons of *l’Affaire Dreyfus*

The inspiration and elegance of the inaugural Human Rights Lecture last June by Albie Sachs of the South African Constitutional Court will be a hard act to follow this year. The challenge has been accepted, however, by Justice Michael Kirby of the High Court of Australia (the Australian Supreme Court). He will speak on the ‘Human Rights Lessons of *l’Affaire Dreyfus*’, 100 years after the event, on 29 June in the Presidents’ Hall, Blackhall Place.

Captain Dreyfus was a Jewish officer in the French army, framed for espionage. It took 12 years, five years’ imprisonment on Devil’s Island and two unjustified convictions for the French authorities to back down and admit the miscarriage of justice. The affair split French society and revealed the corruption and self-interest of the right-wing establishment. It resulted in a change of government and led to the separation of church and state in 1905.

Justice Kirby suggested the theme of the lecture. Reading about the affair, he was struck by its relevance to modern human rights law.



Justice Kirby, whose antecedents come from Ireland, is an exceptional judge in the Australian legal system. Frequently in the minority, he brings a generous and liberal approach to his judgments. His own circumstances fostered his feeling for injustice and inhumanity. Growing up, his step-grandfather was threatened, as a communist, by the *Communist Party Case*. As a member of a sexual minority (he is openly gay), he has experienced prejudice and groundless scandal. As a young solicitor, he represented clients for the New South Wales Council for Civil Liberties. The internet is alive with comment

and quotation from his many public speeches. The following is a sample:

“The best lawyers are those who question received wisdom. They are the ones who look beyond the words of texts; question the current legal orthodoxy; keep their minds open to new thoughts; perceive the growing expansion of law beyond local jurisdiction; and are always alert to law’s abiding mission as an instrument of justice. When, at times, we become disheartened by this or that outcome of the law, it is important for us to remember the strengths of our discipline, for they are many. They include an independent judiciary, our traditions of legal education and law reform, and the willingness of members of the legal profession to work *pro bono*.”

The Annual Human Rights lecture is open to the public. It will be held at 6pm on Thursday 29 June 2006 in the Presidents’ Hall, Blackhall Place. Admission is free, and booking is advised (contact Nicola Crampton at 01 672 4961 or email: n.crampton@lawsociety.ie). It will be followed by a wine reception, to which all attending are invited.

New leave law offers parents flexibility

The *Parental Leave (Amendment) Act 2006* has been signed into law following its passage through both houses of the Oireachtas. All provisions

of the act came into force on 18 May 2006.

The new legislation offers improved choice and flexibility to working parents in how

they use their parental leave entitlement. The leave may now be taken in a broken format over a longer period of time. The upper age limit for an eligible child has been increased to eight years, and to 16 years in the case of a child with a disability.

The act also extends the existing *force majeure* leave (emergency leave) arrangements to include people in a close relationship of domestic dependency.

Ladies Solicitors’ Spring Outing

MOUNT JULIET, 17 APRIL 2006

RESULTS. Winner: Damhnait McLaughlin (36) 37 points; 2nd: Mary Morrissey (17) 36; gross: Emer Foley (10) 18; 3rd: Noreen Maguire (25) 35; 4th: Mary Fenelon (36) 35; 5th: Geraldine Lynch-Burke (24) 34; 6th: Mary Mlyotte (34) 33; 1st 9: Jane Matthews (22) 17; 2nd 9: Meave O’Reilly (22) 19; best 36 handicap: Petria McDonnell 22.

LAW conference looks at investment

Dublin was the venue for this year's Lawyers Associated Worldwide (LAW) regional conference, from 11 to 13 May. As many as 65 lawyers from Europe, Africa, the US and the Middle East attended the event, which was held in the Westbury Hotel and sponsored by Dublin firm, Amorys Solicitors.

LAW is an association of more than 80 independent law firms located in over 80 major commercial centres throughout the world, spanning six continents. It recently made international news during the multi-million dollar acquisition of SATO Corporation, when 14 LAW member firms across three continents – Europe, Australia and North America – worked together to complete the



Speakers at the LAW conference were Chairman of the Competition Authority Bill Prasifka (left), Simon Scroope of AIB Corporate Banking, with event co-ordinator Sharon Scally (Amorys Solicitors)

acquisition. The theme of the Dublin conference focused on investment opportunities in

Ireland and the regulatory framework involved. Speakers included William Prasifka,

Chairman of the Competition Authority; Brendan Halpin of the IDA; Simon Scroope, head of new business and corporate strategic services at AIB; John Gulliver, tax partner in Oliver Freaney & Company; and David Renwick, director of Corporate Banking Ireland at AIB.

Membership in LAW allows member firms to service the legal needs of clients who are expanding their operations and relationships into new domestic and foreign markets. Sharon Scally of Amorys says: "As the global economy grows and business borders become less well defined, there is a lot of scope for international legal practice. Today the needs of many clients extend beyond national borders."

The Law Society retirement trust: pensions legislation changes due to the *Finance Act 2006*

The maximum level of tax-relievable personal contributions is being increased for those aged 55 and over, writes pension specialist Alan Casey.

The maximum allowable pension fund for an individual retiring after 7 December 2005 is set at €5 million, or the value of the fund at 7 December 2005, if higher. The limit applies to all pension arrangements. These limits will be indexed each year from 2007 in line with an 'earnings index' to be announced each December by the minister. Any excess fund above the threshold will be taxed at 42% at the time of retirement.

In the budget speech, the minister announced a cap on the maximum tax-free lump sum of €1.25 million. At that stage, no provision was included for this figure to be indexed going forward. The *Finance Act* now states that the tax-free lump sum

| Age | % net relevant earnings |
|---|-------------------------|
| <30 | 15% |
| 30-39 | 20% |
| 40-49 | 25% |
| 50-54 | 30% |
| 55-59 | 35% |
| 60+ | 40% |
| The above rates apply from 1 January 2006 | |

limit will be 25% of the new maximum fund limit (effectively indexing the tax-free lump sum cap).

Starting in 2007, there will be a minimum deemed distribution from all approved retirement funds (ARFs) held by individuals aged 60 or over. In 2007, the deemed distribution will be 1% of the fund value. In 2008, the deemed distribution will be 2% of the fund value and, from 2009 onwards, it will be 3% of the fund value.

In effect, therefore, ARF holders will be obliged to draw down a minimum of 1%, 2% or 3% of the fund each year and pay tax on same.

These changes do not apply to approved minimum retirement funds (AMRFs). If you do not have a guaranteed pension income for life of €12,697 a year, then the first €63,487 of your retirement fund must be invested in an AMRF.

The minister announced that, from 2007, this earnings cap will also be indexed in line with an 'earnings index'. This will create additional tax relief limits for some higher earning individuals.

The minister also announced that certain SSIA investors who are willing to re-invest up to €7,500 into a pension plan on maturity of their SSIA will receive a bonus addition of up to €2,500. This benefit will, however, only be available to

those whose gross income in the year before the SSIA matures was €50,000 or less.

One other change (applicable to life assurance investment policies, unit trusts and offshore funds) is an amendment to the exit tax rules. Previously, the exit tax was only charged when the policy matured, was encashed or was assigned. The exit tax is calculated at 23% of the investment gain. In effect, therefore, individuals could defer the exit tax indefinitely by not encashing the policy.

The act now introduces a new 'chargeable event', in that the exit tax will apply at the end of each eight-year period. The tax so paid will be offset against the tax finally due on the subsequent encashment/maturity of the policy. So while there is no change in the rate of exit tax, there is a change in the timing of the collection of the tax.



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Swiss defend press freedom

Alma Clissmann explores the boundaries between the right to freedom of expression under article 10 of the ECHR and domestic law, argued in *Stoll v Switzerland* and *Dammann v Switzerland*

Swiss journalists gave rise to two judgments that explore the boundaries between domestic law and the right to freedom of expression under article 10 of the *European Convention on Human Rights*. The judgments were issued on 25 April 2006 by the European Court of Human Rights in Strasbourg (applications no 69698/01 and 77551/01).

Stoll v Switzerland

Martin Stoll obtained a confidential document concerning the compensation due to Holocaust victims for unclaimed assets held in Swiss banks, and quoted it in articles published in the Swiss press. He was fined €520 for publishing “official confidential deliberations” under the Swiss criminal code. In addition, the Swiss Press Council found that he had taken comments out of context and had irresponsibly made them appear sensational and shocking.

The ECtHR looked at whether the interference with the applicant’s right to freedom of expression had been “necessary in a democratic society”. It found that he had directly targeted a senior official with diplomatic status who had an important mission. While the confidentiality of diplomatic relations was justified in principle, it could not be protected at any price. The role of the press as critic and watchdog also applied to matters of foreign policy.

The information in his report concerned a matter of public interest, and the public had a legitimate interest in

receiving information about the officials dealing with such a sensitive matter, and their negotiating style and strategy. However, although it was important to protect the work of the diplomatic corps from outside interference, this objective was not so precious that it outweighed the freedom of expression in a democratic society. In relation to the out-of-context quotation of extracts that was censured by the Swiss Press Council, the court recognised that press freedom covered recourse to a degree of exaggeration, or even provocation.

Although the penalty was light, the court was concerned that Mr Stoll had been convicted at all. It held that his conviction could have a ‘chilling’ effect and be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. It found that his conviction had not been reasonably

proportionate to the pursuit of the legitimate aim in question, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press. Three judges of the seven dissented.

Dammann v Switzerland

This case was decided unanimously by the court. In the course of his work as a journalist, Viktor Dammann rang the Zürich public prosecutor’s office and got an administrative assistant there to search a database for criminal records and fax it to him. He did not publish the information or use it, but showed the list to a policeman. The administrative assistant admitted her part, was convicted of breaching an official secret, and lost her job. Mr Dammann was fined €325 for inciting another to disclose an official secret.

Again, the issue before the court was whether the interference with the

applicant’s right to freedom of expression was necessary in a democratic society.

The case involved research and investigation, and that phase of journalism called for the most scrupulous examination on account of the great danger represented by that sort of restriction on the freedom of expression.

While agreeing that the conviction data merited protection, it was in the public domain in case law and newspaper reports. Further, the information was of public interest, because it related to a very spectacular robbery that had been widely reported. Mr Dammann, of course, knew that the information he requested was confidential, but the fault lay largely with the assistant. He had not tricked, threatened or pressurised her into disclosing the information. Further, no damage had been done to the rights of the people on the list. Mr Dammann had himself decided not to use the information.

Although the penalty imposed was light, the court was concerned that he had been convicted at all. It held that the conviction was likely to have a deterrent effect.

Again, it found that his conviction had not been reasonably proportionate to the pursuit of the legitimate aim in question, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press. **G**

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

ARTICLE 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the regulation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Solicitors focus on benefits of 'client

'Client Focus' seminars across the country are encouraging solicitors to take a new approach in their dealings with customers – with an eye to enhancing services. Mark McDermott reports

The Law Society has launched a significant new client-care initiative with a series of 'Client Focus' seminars that are coming to a location near you. Already, solicitors in Dublin, Cork, Limerick and Galway have benefited from the two-and-a-half hour presentation, which features input from the McConnell Group and Limerick-based organisation development experts OMT.

OMT's Sarah Kieran says that the concept of client care is not rocket science, but that it continues to be the most effective business model for the legal services sector. At the Client Focus Seminar on 15 May in Dublin – and at subsequent venues – she has startling news for solicitors. "As many as 68% of clients who leave you do so because they don't believe you care about them," she warned. It was a figure that had everyone sitting bolt upright.

So what is client care all about? Put simply, it's all about focusing on maintaining and enhancing the relationship you have with your clients. The objective is to maximise benefit to both the firm and the client, and the intention is to do so at a profit – "there's nothing wrong with making a profit," Sarah reminded *her* clients.

Why bother?

Why bother with client care? The answer lies in the benefits of building a loyal client base. If you were in the happy situation of being able to welcome 500 new clients to your firm each year, or deal with 100 repeat clients, each with five needs, which would you be more likely to choose? From a numbers perspective, it would appear to



Speakers, members of the Client Care Task Force, and Director General Ken Murphy



Attending the seminar were (from left): Ray Quinn (Raymond Quinn Solicitors), John Glynn (John Glynn & Co), and Anne Neary (Anne Neary Associates)



Martin Ryan and Austin Heffernan network at the Client Focus Seminar

be a no-brainer – until Sarah points out that the needs of repeat clients are much easier to deal with than newer ones. The reason being that you have already built up trust with existing clients and have educated them about what they can realistically expect from you.

The message came out loud and clear that focusing on the needs of your existing clients reduces operating costs, saves time and energy, increases profitability and builds trust, which, in turn, generates new business through word of mouth.

In response to a question about where the low-cost business model fits into the client-care picture, Sarah was blunt. "It doesn't! In business, there are a number of different business strategies you can employ," she added. "The low-cost business model is one that will help to keep your costs as low as possible – where you work on a flat-fee basis – but the people who make this model work for them are few and far between. Proven business theory shows that the most sustainable business model is the client-care model," she stated.

"The aim of client care is to meet and exceed the expectations of your clients – though you have to be realistic about this too," she said. "It's not advisable to meet *every* need of your client, especially if those needs consume valuable time and turn out to be unprofitable for you and your firm. In certain instances, it may be more prudent to turn away such business.

"On this point, it's important to educate your clients so that their expectations of what you can do for them are realistic. It's self-evident to say it, but without your clients, you wouldn't be in business – and it's client-care businesses that survive when things get tough. We have long moved away from the idea that clients are a necessary evil," she continued. "Businesses now realise that clients are people you need to get involved with."

She also had a warning about dealing with clients. "Never, ever view an interaction with a client as a 'once-off'. Every interaction is a gateway to a lifetime of work," she enthused. As an example, she chose a conveyancing transaction. "The

care' at national roadshows

person who buys a house in their 20s will come back to you when they're up-sizing during their 30s and 40s – that's if they've been satisfied with how you dealt with them the first time around. However, if you're going through a completely new batch of clients every year, it's going to cost you a lot in terms of managing them."

Golden rule

Satisfaction with how clients perceive that you deal with them is the golden rule of client care. Tellingly, 68% of clients will not return if they're unhappy about the service they have received from you or your firm. Sarah Kieran told the assembly that clients leave due to the indifference shown to them by those providing legal services. Either the solicitor or people in their firm didn't care about the client and their problems, or they *appeared* not to care. This is an important point. Sarah pointed out that solicitors deal in providing "an emotive service" – a point often forgotten by solicitors.

Of the remainder who will decide to walk, 10% are chronic complainers who will move on anyway. Unusually, only 9% of clients leave their solicitors because they're unhappy about the cost of the service provided. People in this group feel that they have not got what they paid for – another factor that should not be overlooked.

Not a great 'first date'

If all this was very thought-provoking, Margaret Gilsenan of the McConnell Group was equally stimulating.

"Choosing a solicitor is seen by people as something they don't want to do," she said. "Oftentimes, they don't refer to you as 'my solicitor' but rather as 'a solicitor'. Basically, you're not a great 'first date'!"



Client care: "an important new strategy"

On a more positive note, Margaret said that if a solicitor delivered a good service, then clients were more likely to return. "Personal recommendation is very important to people – it's crucial in terms of your profession," she warned. "However, most people won't complain directly to you if they're not happy with you, so you're unlikely to hear that they've left you."

The public perception of solicitors is largely formed by two sources – the media and word of mouth. "Most people tend to tell the bad rather than the good stories about you," she said. However, returning to the dating analogy, she said: "People

who have second or third dates with you see you as expert and trustworthy. They'll say things like: 'My guy is good, friendly, efficient'." Also there's no doubt that people regard solicitors as being well-trained and knowledgeable, "but people are not judging you on these factors", she warned. "It's how 'good' you are. Good solicitors are more courteous, and respectful to their clients and are more inclusive. They share information with clients and show concern. They treat clients as equals, pardon ignorance and seek to educate their clients. They also provide value – this includes a willingness to negotiate fees"

(see panel).

The response to the Client Focus Seminars by those attending has been extremely positive. Chairman of the Client Care Task Force, John O'Malley, encouraged all solicitors to take on board the many aspects discussed. "That way, we can improve our businesses greatly – both for our clients and ourselves – and improve the public perception of the profession. We have to take a serious look at how we deliver our services."

Director General Ken Murphy told Dublin participants: "This client focus initiative is perceived by the Law Society as hugely important. It will have a huge impact if this becomes part of the business model in solicitors' firms across the country. This will not happen overnight, but over time. However, this is something that the Law Society will be following up, long-term."

"This is just the first phase. Once these national seminars are completed, the client-focus model will be rolled out to all firms across the country. Client care will soon become a module in the Law School for trainee solicitors. The hope is that when young solicitors see firms across the country taking this seriously, they will embrace this important new strategy." **G**

WHAT MAKES A GOOD SOLICITOR?

ENGAGES

- Shares information
- Shows concern

- Manages those expectations
- Under-promises and over-delivers

RESPECTS

- Treats clients as equals
- Pardons client ignorance
- Educates clients

PROVIDES VALUE

- Shares some of the pain
- Gets credit where credit is due
- Doesn't shy away from value-based fees!

INFORMS

- Keeps clients informed
- Uses everyday language

It's important that you use all of your resources, establish client focus as your business strategy, and set up a standard 'way of doing things' – especially complaint handling.

ACTS EFFICIENTLY

- Returns calls
- Sets **real** expectations

Is fearr Béarla cliste, ná

The ‘cúpla focal’ would be better served by removing the remaining compulsory elements associated with it, including the proficiency requirement for lawyers, argues Henry Murdoch

There is probably no better example of the difference between law and reality than the way in which the Irish language actually works in practice in the legal system. In law, the Irish language is the national language – and, being the first official language, it ranks higher in the law than English. But the reality is that English dominates.

A litigant has a constitutional right to conduct his case in Irish and to have available the rules of court and acts of the Oireachtas in Irish. The reality is that virtually all acts are enacted in English and, since the mid 1980s, very few have been translated into Irish. There is a commitment in section 7 of the *Official Languages Act 2003* that, from July 2006, the text of acts will be printed and published simultaneously in Irish and English. However, the rules of court and the thousands of statutory instruments are predominantly in English. Again, the reality is that the English language dominates in the law.

Is trom an t-ualach an t-aineaolas

Of course, this reflects the reality of the dominance of English as the spoken and written language of the people of Ireland. Every effort by successive governments to increase the use of the Irish language has failed. Despite the relative success of Irish-speaking schools and the fact that more people now have a



Willean English: central to a definition of Irishness in cultural terms?

knowledge of the Irish language, there are probably less people speaking Irish as their daily language now than there were when we won our independence in 1922.

Many people associate this failure with the compulsory approach taken to the learning of Irish. Up to recently, failing to pass Irish in the Leaving Certificate closed off a huge number of employment and educational opportunities. Even today, failure to pass Irish in the Leaving Certificate bars the person from entry to most Irish universities, even for a degree in a technical area.

It is now appropriate in the new millennium to revisit the whole approach to the Irish language. We are not consistent in our approach to it. We support the concept of an Irish language television station, but turn a blind eye to the fact that it contains a high proportion of English. We require solicitors and barristers to have a particular proficiency in Irish, even when the demand for this

proficiency is not evident on the ground.

Cuir síoda ar ghabhar agus is gabhar i gcónaí é

It is now well-settled law that a requirement for proficiency in Irish for certain employments is not discriminatory or unconstitutional. But is that the way it should be?

Under the *Employment Equality Act 1998*, any requirement for proficiency in the Irish language for certain posts in the public sector does not infringe equality legislation and is not discriminatory (s36(2)(c)). It has been held that a rule that requires teachers in recognised primary schools to have a proficiency in Irish is constitutional: *O'Shiel v Minister for Education* ([1999 HC] 2 ILRM 241 and 2 IR 321).

Also, since 1929, proficiency in Irish is a prerequisite to qualifying as a solicitor or barrister. Solicitors must pass the examination of the Law Society under the *Solicitors Act*

1954, s40(3), and barristers must satisfy the Chief Justice on their competence under s3 of the *Legal Practitioners (Qualification) Act 1929*.

The 1928 bill that proposed the requirement for proficiency in Irish for lawyers was the subject of bitter controversy in the Dáil, with the Law Society being particularly pilloried for its opposition to the measure, which the then president described as “atrocious” and “tyrannical”. Particular contempt was poured on the Law Society’s suggestion that they would support the measure if there was a similar requirement for candidates for election to the Dáil! The Benchers of King’s Inns were acknowledged to have been marginally more co-operative. Perhaps that is the reason for the different provisions regarding barristers, which are perceived as being more benign than those applying to solicitors.

The 1929 act specifies that no person may be admitted to practise as a barrister unless he satisfies the Chief Justice, by such evidence as the Chief Justice prescribes, that he possesses a competent knowledge of the Irish language. Kenneth Ferguson, in his recent book *King’s Inns Barristers: 1868-2004*, lists the 63 overseas King’s Inns students from 17 countries, from Bahrain to Zimbabwe, who have been admitted as barristers since 1952, having so satisfied the Chief Justice. As Ferguson says: “A glance at the text of the [1929] statute would suggest



Gaeilge bhriste?

that the spirit of mercy, in prodigious proportions, must have inspired the evidentiary standards of the Chief Justice.”

Is minic a bhíonn ciúin ciontach

Seriously though, the question must be raised as to why proficiency in Irish is an entry requirement to the legal profession when the demand for this proficiency is not evident on the ground? The Supreme Court has recognised the reality as regards jurors, where it held – in a case conducted in Irish – that there is no requirement for the jury to have the capacity to understand Irish without the assistance of an interpreter: *MacCarthaigh v Éire* ([1999 SC] 1 IR 186).

There is provision for interpreters in the courts and for the translation of any affidavit, summons, petition or notice from English into Irish and from Irish into English (*Rules of the Superior Courts*, order 120). Surely this is an adequate safeguard for the client? In any event, how many

solicitors and barristers currently have the proficiency in Irish that they had on their enrolment or call? I would venture, not many!

And to cap it all, EU lawyers admitted as solicitors in Ireland since 1991 do not have to have one word of Irish. Under EU mutual recognition arrangements, qualified lawyers of EU countries are entitled to be admitted as solicitors in Ireland, having passed a test in certain specified subjects, which do not include the Irish language (*Qualified Lawyers (EC) Regulations 1991* – SI no 85 of 1991). This is a pragmatic approach and reflects reality, but it raises the question as to why we have an Irish language test for Irish people who wish to become solicitors, and not for our fellow Europeans?

Ní tír gan teanga

The reality, of course, in all of this is that we are not a bilingual country, and despite compulsion and other promotional means, we are unlikely ever to be. And what about our lawmakers? The Irish

Language Commissioner, in his first annual report in 2005, had to acknowledge that less than 1% of Dáil and Seanad debates were conducted in Irish.

Conradh na Gaeilge asks us to accept that the Irish language is a vital component of our identity, central to a definition of Irishness in cultural terms. I would suggest that it is now the English language – as we Irish speak it and write it – that is a vital component of our identity, central to a definition of Irishness in cultural terms. Think of George Bernard Shaw, Oscar Wilde, WB Yeats, James Joyce, Samuel Beckett, John B Keane, John McGahern, Seamus Heaney, Dermot Healy, Colm McCann, and John Banville. Need I say more?

The reality on the ground is that the Irish language is not the spoken day-to-day language of the people. In law, Irish is the national and first official language – but this is in theory only, as all the mechanisms, practices and support structures of the law are dominated by English.

It is now time to recognise this reality and remove those compulsory Irish language proficiency requirements that remain, and which provide an unfair barrier to third-level education and to the legal profession. Proficiency in Irish should continue to be a requirement where there is a demonstrated need for such proficiency. The rights of people to litigate in Irish should be protected, as should their ability to deal with state services in the Irish language.

There is genuine goodwill for the Irish language. It is likely that a more liberal approach to it, removing compulsion, would result in a greater interest in the language – as has happened with the Welsh language, which is increasingly associated with a rich cultural identity. **G**

Henry Murdoch is the author of Murdoch's Dictionary of Irish Law, 4th edition (2004), and Murdoch's Irish Legal Companion 2005 on CD-ROM and online at <http://milnet.lendac.ie>.



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Not enough to be the solicitors 'on record'

From: Robert A Bourke, Holmes O'Malley Sexton, Limerick

We recently acted for a client who brought an application for compensation to PIAB. He received a reasonable PIAB award and decided to accept the award.

An acceptance of assessment was sent to PIAB. An order to pay issued and was forwarded to the respondent's insurance company, Quinn Direct.

To my alarm, Quinn Direct sent the cheque for the award to the claimant directly, even though Quinn Direct had corresponded with this firm, which was acting on behalf of



PIAB – alarm call

the claimant and 'on record' with them as the claimant's solicitors. Luckily enough, we

had no undertakings given out to a financial institution in the matter and our client did, in fact, call in to pay our costs.

I raised the issue with Quinn Direct who, by letter dated 4 May 2006, informed me of the following:

"Please note, it is the policy of Quinn Direct Insurance to post all cheques, issued on the basis of an 'order to pay' from PIAB, directly to the claimant. However, we will post these cheques care of the claimant's solicitor if this is requested in writing by that solicitor. A letter must be sent in relation to each individual claim."

It occurs to me that, in relation to all current and future claims with Quinn Direct, that it is not enough to be the solicitors 'on record' to that insurance company, but one must also notify them in writing that any cheques issued on the basis of 'order to pay', that is, accepted PIAB assessment, must be sent to the claimant's solicitor.

I would be grateful if you would kindly bring this to the attention of other solicitors to avoid an assessment cheque going directly to the claimant, even though his/her solicitors may have undertakings given over the proceeds of the claim.



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CONCEALED

Vital information is often stored, unknown to users, in computer applications and files, but it is rarely employed by Irish lawyers in the service of their clients. Andy Harbison logs on

Perhaps the most noticeable recent trend in the US legal arena has been the growth of IT forensics and electronic discovery. What was an underused speciality a few years ago is now a business worth \$2 billion a year and growing at 35% annually. In US courtrooms today, the use of electronic litigation techniques and technologies is considered the norm.

Irish lawyers have been very slow to embrace electronic litigation, even though over 90% of the documents presented in discovery in Irish and British courts are computer generated. To a large extent, this under-use of the new technologies is due to a lack of awareness of the kind of information that exists on computers. Much valuable – often critical – information is stored or embedded in word-processing files, emails and other files. Moreover, much of this data is straightforward to recover, simple to interpret, and powerfully persuasive when presented in court.

Paperless office

Computers, as everyone knows, are superb at collecting and storing information. What is not widely appreciated is just how much surplus and hidden information they collect, and how long they hold onto it. Almost every program run on modern computers – word processors, spreadsheets, email systems, internet browsers and so on – collects large amounts of background data called ‘metadata’. A lot of this metadata is created to help the programs work more efficiently or to provide additional functionality to the user (often beyond the point where even the most dedicated expert would use it). All of this metadata is admissible in court, if properly presented, and much is of immense value.

For instance, inside a typical Microsoft Word document you can find metadata detailing:

- The name of the document’s creator,
- The name of its last editor,
- Its time of creation,
- Its time of last modification,

- Its time of last printing,
- The number of times it was edited,
- The location it was saved in the last ten times (and thereby, usually, who was in possession of it at various stages of drafting),
- The name it was saved with, at each location,
- And even material the user thought they had deleted from the document.

Now consider the fact that, while running, Word will regularly make background copies of any documents being worked on, then save these copies to the computer without the user’s knowledge. The practical upshot of this is that disclosure requests of documents in their electronic form can give you their previous drafts, their editing history, and all their previous owners – even fragments of the older documents upon which it is based. If you opt for old-fashioned paper discovery, you will only get the final draft. As standard procedure, many Irish law firms actually print Word documents and then scan them back into electronic form as a TIF file, losing all this useful information in the process.

The side effect of computers being so very good at storing information is that they are correspondingly bad at deleting when it is no longer needed. The way in which computers store information on their hard drives allows valuable information to accumulate (see panel).

Fatal extraction

So, how difficult is it to get information off the computer? Well, it depends. Extracting files from computers usually requires the involvement of someone with training in evidential data recovery. Doing just about anything to an electronic document will change some of its metadata, which will, in turn, lessen its value as evidence. Even opening a document in Microsoft Word and printing out its contents for conventional discovery will potentially change its contents.

Ideally, to obtain information from any computer, you should call in a forensics specialist to take a

MAIN POINTS

- IT forensics and electronic discovery
- Metadata
- Uses in litigation

WEAPONS



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perfect 'image' copy of the original hard drive and then extract all evidence from the copy. Doing this nowadays is neither time-consuming nor expensive. An additional advantage of taking a copy is that it provides a reliable permanent version of the computer evidence that cannot be deleted or modified.

There are four kinds of computer data commonly introduced in legal cases:

- Active data includes the day-to-day files saved on the computer as part of normal operation: Word files, spreadsheets, and databases, for example. It also includes a great many cache and log files, which can be of immense use.
- Archival material is backed up to tape or other long-term storage. Discovery requests that include material from archive storage have caused a lot of problems in other jurisdictions, largely because recovering data from archive typically costs considerably more than it does from computer hard drives. Fortunately, it can be argued that the sole purpose of archive data is to *be* recovered, so discovery respondents can hardly complain if counter-parties request it.
- Hidden data is deleted data that is still intact and readily recoverable. I have been involved in cases where counter-parties have raised objections to the

use of deleted material, despite the fact that with modern technology it is as readily accessible as active data.

- Forensic data is more of a problem, in that, usually, it can only be recovered by specialists. It is hidden data that may have been degraded over time by the normal operation of the computer. It is often fragmentary and time-consuming to recover. Usually, judges permit forensic discovery of materials only under special circumstances, for example, where a key document is known to have been deleted or where events under contention occurred a long time previously.

Return to sender

If email evidence was presented to a US or Australian court in the manner it is typically presented to Irish courts, it would almost certainly be thrown out. The technique typically used to discover email in Ireland is to go to the email program and print whatever comes up on screen. This overlooks the fact that most email programs only show the user a fragment of the actual email document (computer scientists call this fragment the 'data field'). Emails contain large amounts of metadata about the originator, the path it followed from sender to receiver, time and date information, even blind (bcc) recipients. All of this information is, at the very least, necessary to validate the email and can provide crucial additional evidence.

It should also be considered that the time, date and sender information in the data field (the fragment normally used in Irish courts) can be trivially faked. The modern curse of unsolicited junk emails or 'spam' arises from this unfortunate fact. It is much more difficult to tamper with an email's metadata. Consequently, if an email is presented without its full metadata, it cannot be considered as entirely reliable.

Microsoft's Internet Explorer browser program was originally developed ten years ago, when users typically connected to the internet over slow modem connections. Explorer's designers realised that a typical user will return to the same websites again and

DRIVEN TO DISTRACTION

Hard drives work on the same principle as an old-fashioned library. The files are stored out on the disk, in the same way books are stored on the library shelves. The computer keeps track of its files by means of an index-card system (called a file table) analogous to that used in libraries. When a new file is created – 'put on the library shelves' – a new entry is created in the index so the computer can keep track of it. If a user needs to read the contents of the file, the computer looks up its details on its 'index card' and goes directly to the correct location on the disk.

Things are done this way because the hard drive is easily the slowest part of a modern computer. The computer's memory carries out operations in billionths of a second; hard drives work in milliseconds, a million times slower. A modern 60 gigabyte hard drive contains the equivalent amount of data as a stack of printed A4 paper

two miles high. Hence, the need for some kind of indexing system.

When files are deleted from hard drives, the computer does not wipe the entire file – or to continue the analogy, remove the book from the library shelf. Instead it makes a note on the file's index card that the file is deleted, then records that the space on the disk occupied by the file is free again for use. It does not, however, do anything to the file itself on the disk. Hard drives are slow, and deleting files fully takes a long time, so the file stays where it is. As long as the file remains on the disk, it can be recovered.

This sort of thing is going on continually in modern computers. For instance, computers will often copy the contents of wide swathes of memory to hard drive (a process called virtual memory). The result of this is that it is entirely normal to find material on the hard drive that the user never even thought they'd saved.



PIC: REX FEATURES

again, and rather than slowly download all the material from the site on each and every visit, it would be easier to store copies of downloaded web pages on users' own computers (in an area called the 'browser cache'). If a user returned to a site they have visited previously, most of the data could be quickly loaded from the user's own disk instead of slowly downloaded over the modem. The only material that needed to be downloaded would be that which had changed on the site since the last visit. Browser cache areas still exist on the vast majority of computers in use in Ireland. In other words, if a computer has been used to visit any website in the past, it is probable that some or all of that website's contents are still stored on the computer somewhere.

This means that a user's webmails, their internet searches and their browsing habits can all be quickly recovered from the computer. This is of immense potential value in litigation. I have assisted in a number of cases in Ireland that turned on recovered Hotmail webmails. In a well-known recent murder case (*DPP v Whelan*), a key part of the prosecution evidence consisted of recovered Google search pages. The murderer had searched for a number of incriminating terms, including 'asphyxiation' and 'sudden death'.

Examining a user's browser cache can give you a very good idea of what was going on in their mind over the previous few months. There are few better ways of establishing *mens rea* than uncovering a user's internet search patterns.

Similarly, Internet Explorer records every web address it visits, information that can remain on the

hard drive for a very long time. This is particularly interesting when you consider that Google and Yahoo search terms are included in these recorded web-addresses. Is there a more reliable way of establishing what someone was thinking three or four years before?

Mind-boggling

The average size of hard drives installed in new computers doubles every 18 months. The amount of data on these hard drives that ends up being printed is under 10%: 70% of emails and 30% of Word documents are never printed. In the face of these statistics, and all the other possibilities that IT forensics raise, it is little short of mind-boggling that Irish lawyers have been so slow to adopt electronic litigation techniques.

Changes made in October 2005 to Britain's *Civil Procedure Rules* (part 31) have set the electronic discovery and presentation of documents on a much surer procedural footing. It is likely that these changes will be reflected in this country in the immediate future.

Whatever your views on electronic litigation, it cannot be denied that its time is nigh. The only question remaining is which lawyers take advantage of these technologies and techniques to their own and their clients' advantage, and which fall victim to being unprepared when IT forensics techniques are employed against their clients. **G**

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UNDER surveillance

Privacy law in Ireland has developed quickly in the past 25 years, but technological development has been even quicker and can seriously compromise our privacy. Denis Kelleher reviews his CCTV footage

There was a time when nobody had a right to privacy in Ireland, as the protagonist of *The Valley of the Squinting Windows* discovered: “The windows would squint at him as he went past through power of the leering faces behind; men would run to the hedges and gaze at him as he went far down the road.”

Ireland is a very different country now. And as Ireland has undergone rapid development, so too has the right to privacy. The privacy of the individual was first enforced as an unenumerated constitutional right by the Irish courts in the 1987 judgment of *Kennedy and Arnold v Ireland*. Following the enactment of the *European Convention on Human Rights Act 2003*, the Irish courts are now bound to pay heed to article 8 of the convention, which explicitly recognises and protects the right to privacy. In addition, a bill on privacy is currently being drafted.

Candid camera

Privacy legislation to be enacted would complement a variety of other statutes that offer protection of the right to privacy. An extremely intrusive breach of another's privacy may amount to a criminal offence. Section 10 of the *Non-Fatal Offences Against the Person Act 1997* creates an offence of harassment, which is defined as occurring where a person “intentionally or recklessly seriously interferes with the other's ... privacy and his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other's ... privacy”.

In April 2003, a landlord who hid miniature cameras in the ceilings of his tenant's bedroom and bathroom was sentenced to a total of 16 months in prison by Galway District Court. He had spied on people he shared his house with over a two to three-year period before one observant tenant noticed the

hidden cameras and made a complaint to gardaí. In all, 49 women and 14 men who had stayed in the rental house over the preceding years were captured on 19 videos and CDs seized by gardaí.

In that case, the cameras were mounted in spaces that individuals would normally have assumed to be private. But CCTV is increasingly common in Irish public spaces. However, Irish use of CCTV lags far behind that of Britain: a London commuter can expect to be caught on camera some 300 times a day, and one London borough provides a CCTV channel whereby locals can tune in and monitor their own streets. The use of CCTV cameras has yet to be substantially assessed by the Irish courts. Certainly, the courts have been willing to direct that CCTV footage be made available to the defence in criminal trials. This has typically been done without comment upon the potential privacy implications of recording images on CCTV systems.

The European Court of Human Rights has given some consideration to the use of CCTV. In *Peck v United Kingdom*, the applicant had been recorded on CCTV attempting to kill himself. The tape was then distributed to various news organisations and shown on the BBC. The court ruled that the distribution of the tape, without obscuring the applicant's identity, was a breach of his human rights. The court did not appear concerned that the public authorities would monitor public spaces with CCTV cameras, but was concerned about the recording and subsequent distribution of CCTV images.

In *Von Hannover v Germany*, the applicant was a member of Monaco's royal family. The court extended her right to a private life to “places that cannot always be described as secluded”. The court was of the view that “private life ... includes a person's physical and psychological integrity”. It would seem

MAIN POINTS

- **Privacy of the individual**
- **Relevant case law**
- **Data protection**



PIC: ALEX SEGRE/REX FEATURES

clear, therefore, that even when a person is walking on the public road, he or she will have a right to privacy. It is true that the Irish courts have been willing to permit the admission of evidence gathered by private detectives in personal injury litigation (for example, see *Shelly Morris v Dublin Bus* or *O'Connor v Dublin Bus*). But the courts expect that a plaintiff who initiates personal injury litigation may be subjected to vigorous investigation by the defendant to enable verification of their claim (see *McGrory v ESB*).

Serve and protect

Data protection also has a function in protecting privacy. However, the object of the *Data Protection Directive*, which is implemented by the *Data Protection Acts 1988-2003*, is not the protection of privacy. Rather, the object of the directive is the development of the internal market. The directive protects privacy, but only to the extent that ensures internal market development. Should the right to privacy of an individual conflict with the needs of the internal market, then, under the directive, it is the right to privacy that will lose. As a result, there is an inherent conflict between the apparent and actual objectives of the directive.

This conflict has an important consequence: complexity. Data protection sets out complex rules for how personal data must be processed. Given this

complexity, data protection works best in highly regulated environments – an example of which is the workplace. Many employers will monitor their employees. Some will monitor to prevent theft or misconduct; others may wish to monitor performance to improve efficiency. But monitoring within the workplace should only be undertaken in a manner that respects employees' right to privacy. Just because a person goes to work does not mean that they abandon all their rights. In this context, it is important that Irish employers should not rely upon procedures developed in other jurisdictions. Irish law is quite different to that in Britain, where employee monitoring may be regulated by statute, or the USA, where certain employers are now monitoring their staff by inserting computer chips under their skin.

Irish and European employment law is already complex. Data protection just adds another level of complexity to the process by which an employer monitors the workplace. Regardless of the provisions of the *Data Protection Acts*, employers would still have to agree a policy with their workers, define what amounts to misconduct or what employees' performance goals are, and then stipulate the penalties for misconduct or how employees are to be encouraged to improve their productivity. Compliance with data protection law places a burden upon employers, but so do a host of other laws.

LOOK IT UP

Cases:

- *Giller v Procopets* [2004] VSC 113
- *Kennedy and Arnold v Ireland* [1988] ILRM 472
- *McGrory v ESB* [2003] 3 IR 407
- *O'Connor v Dublin Bus* [2003] 4 IR 459
- *Peck v United Kingdom* (2003) 36 EHRR 41
- *Shelly Morris v Dublin Bus* [2003] 1 IR 232
- *Von Hannover v Germany* (2005) 40 EHRR 1

Legislation:

- *Data Protection Acts 1988-2003*
- *European Convention on Human Rights Act 2003*
- *Non-Fatal Offences Against the Person Act 1997*

The internet and modern technologies pose a different challenge to data protection than that posed by the workplace. The *Data Protection Directive* was designed to be technologically neutral, so it does not need to be amended as technology changes. And, to some extent, the directive succeeds in this objective. Where the directive fails, however, is that it did not anticipate how the uses of technology would change. Data protection law is designed for a world where computing power is centrally controlled by institutions such as universities, banks and government departments. But computing power can now be found on desktops, laptops and mobile phones. Anyone can process data and they can do so without regard to the complex steps required by data protection. Google, Yahoo, Ask and MSN all offer openly accessible search facilities. Personal data may be processed by entering the name of a friend, colleague or former classmate and conducting an internet search. Before they do so, the searcher should examine whether their search is in compliance with the principles of data protection, the criteria for making data processing legitimate, and the special controls provided for sensitive data. It is doubtful that any do.

“Irish law is quite different to that in the USA, where certain employers are now monitoring their staff by inserting computer chips under their skin.”

So, data protection law is not an ideal tool for protecting privacy. That said, data protection law does provide important protections for Irish and European citizens. For example, data protection allows individuals to check and correct the records that are held on them by banks and credit-rating agencies. This should ensure that identity theft will not become as serious a problem here as it is in the USA, whose citizens do not have equivalent rights.

Data protection also gives individuals control over the purposes for which data is used. It would force Irish courts to come to a very different conclusion to that reached by the Australian courts in *Giller v Procopets*. In that case, the defendant had made a videotape of himself and the plaintiff engaged in sexual activities. He then distributed this tape to the plaintiff's friends, relatives and employer. She sued. The court found that, while harm had been caused to the plaintiff, this damage was not recoverable. If a similar case were to have been brought in Ireland, the plaintiff could have argued that the distribution was a purpose different to that for which the tape had originally been recorded. Alternatively, she might have argued that, as the court had held that the defendant's conduct was “outrageous”, it was therefore unfair. Either of these would have amounted to a breach of the *Data Protection Acts 1988-2003*, for which an Irish court might award damages.

So, while privacy law is still developing, it is already facing new challenges. Although the Irish law of privacy has developed quickly in the past quarter-century, technology's development has been even quicker. Camera phones, searchable databases, spyware and remote sensing devices are available to all at minimal cost. Such technologies can enhance all our lives, but they can also seriously compromise our privacy. **G**

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MAN A

The essay, *Man, I feel like a woman*, by Maebh Harding and Mark Murphy, is this year's winner of the Student Law Reform Prize. It has been abridged by the authors for publication in the *Gazette*



Miriam Rivera, the pre-operative transsexual star of the controversial reality-TV show *There's Something About Miriam*

In 2002, the High Court missed an opportunity to bring Irish jurisprudence on marriage law and human rights in line with other common law jurisdictions and the ECHR. On 9 July 2002, in *Foy v An tArd Chláraitheoir*, McKechnie J ruled that people living with transsexualism were not entitled to rectify their birth certificates to acknowledge their new gender, and, as a result, were not entitled to re-marry in their new identity.

The courts have approached the issue of transsexualism in three ways:

- 'Exclusive' judgments such as *Foy*, *Bellinger v Bellinger* and *Corbett* focus on biological sex at birth, in accordance with the *Corbett* criteria (outlined below). These judgments focus on the causes of transsexualism rather than the effects. They are uncritical of the proposition that transsexualism is a form of mental ill-health and do not allow recognition of the new sex.
- 'Social justice' decisions, such as *Attorney-General v Otabubu Family Court*, *Goodwin* and *I*, reject the *Corbett* approach and determine that surgically affirmed people with transsexualism should be able to marry in their affirmed sex. They are based on a pragmatic acceptance of the existence of people with transsexualism but do not provide any *legitimacy* for people with transsexualism to be allowed change gender.
- 'Inclusive' cases, such as *Re Kevin*, *Estate of Gardiner* and *Re Alex*, place the individual in the sex he/she most resembles and identifies with. They ground the decision in contemporary medical science and connect transsexualism with other intersexual conditions. Any legislative effort should follow this approach.

Ireland finds itself in an increasingly isolated position regarding transsexual marriage rights and in breach of the ECHR. While there are relatively few situations in which it is necessary for a court to

I FEEL LIKE WOMAN

determine someone's sex, the reality is that gender remains a significant determinant of social status. As one's gender is required in applying for many of the benefits of living in the Irish state, an Irish citizen with a history of transsexualism is forced either to admit that they are 'not who they say they are' or face criminal sanctions.

Girls and boys

The only Irish case to address this issue fully was *Foy v An tArd Cbláráitheoir*, which is currently awaiting a second High Court review in light of the *Goodwin* decision. The applicant, although living as a woman for ten years by the time her action came to court, had lived as a man for around 45 years, married, and had children with his wife before undergoing sex affirmation surgery in 1992. Dr Foy sought an order of *certiorari* quashing the refusal of the Registrar of Births, Deaths and Marriages to amend her birth certificate to display her new female gender and name. The registrar had indicated that this could only be granted where an administrative mistake on a birth certificate was required to be rectified, according to the *Registration of Births and Deaths (Ireland) Act 1863*, as amended, and the subsequent 1880 regulations. Alternatively, Dr Foy sought a declaration that this legislative framework was unconstitutional, in that it breached her rights to dignity, privacy, equality and her right to marry.

Interestingly, the 1880 regulations did not dictate any specific guidelines as regards determining sex at birth. To fill the void, the registrar had adopted the policy laid down in *Corbett*.

Ormrod J's reasoning in *Corbett* was based on four points:

- Sex is fixed at birth and cannot be changed by natural development or surgical intervention.
- Gonadal, chromosomal and genital tests at birth determine the sex. Psychological sex is irrelevant.

- In determining a person's sex for the purpose of marriage, the capacity for heterosexual intercourse with their partner is crucial.
- Certainty as to sex is crucial for the law.

Corbett became the leading case on the legal definition of sex in England and Wales and many other countries.

The first cut is the deepest

In *W v W (Nullity: Gender)*, Charles J reconsidered the legal position of intersex people and proposed that, in cases where the *Corbett* factors did not all point in one direction, other factors – such as secondary sexual characteristics – should be considered. By permitting secondary sexual characteristics and psychological factors to be taken into account, Charles J appears to reject the assertion in *Corbett* that sex is fixed at birth and cannot be changed.

Corbett has been extensively criticised by the medical community in the last 30 years. In particular, a new criterion for gender assessment, known as 'brain differentiation', has gained widespread support. However, McKechnie J, after a considered review of the expert scientific evidence before the court, decided that brain differentiation was not yet sufficiently proven to be elevated to the status of the other 'sex indicators'. As a result, the traditional view of gender – as a matter decided irrevocably at birth – would remain.

While the traditional method of determining sex at birth is appropriate and should remain, a certain amount of flexibility regarding intersex individuals should be ensured. Children born of indeterminate sex should be allowed a number of years to decide their gender, in line with current medical practice.

In *Foy*, McKechnie J held that one's birth certificate is a historical, not a transient, document. Its value to society, the court held, is crucial to

MAIN POINTS

- Legal recognition of transsexualism
- Birth certs, marriage and rights of the family
- Approaches in other jurisdictions



PIC: GETTY IMAGES

marriage rights and rights of succession and motherhood, among others. The court, therefore, found it reasonable to have in place a system of registration upon birth, unassailable by the coming to light of a subsequent transsexual condition.

Everything she wants

However, the birth register is assailable as it stands. Adoptees are furnished with a new birth cert at the time of their adoption. Such a system could work for people suffering from transsexualism and is, in fact, the system recently introduced in Britain by the *Gender Recognition Act 2004*. Those with a transsexual history should not be subjected to intrusions on their privacy by the state, semi-state bodies or private enterprises, especially when there

is little corresponding benefit to wider society. Allowing them a second birth certificate, confirming their new gender from the date of complete sex affirmation surgery, would relieve them of having to face such enduring embarrassment.

Those unable to undergo full sex affirmation surgery because of health risks should be able to make an exceptional application in order to have their legal sex reassigned on either a permanent or provisional basis, on the ground of hardship.

Stand by your man

Marriage is the strongest legal bond two private individuals can create. Procreation is not a necessary feature of marriage; it has always been a social relationship. Non-consummation or impotence renders a marriage voidable rather than void. Without the necessity for 'normal' sexual intercourse in marriage, the genito-centric approach of *Corbett* does not seem to be justified.

However, McKechnie J reaffirmed in *Foy* that "marriage as understood by the Constitution, by statute and by case law refers to the union of a biological man with a biological woman". The extension of this rule has been the denial of the right to marry people with a transsexual background.

In *Foy*, the court found no breach of the constitutional right to equality. As no transsexuals could marry, they were all treated the same by the state. As regards the obvious inequality between, say, an affirmed female and a biological female, McKechnie J simply concluded that a difference "unquestionably exists".

Foy also rejects the claim based on the right to

LOOK IT UP

Cases:

- *Attorney-General v Otahuhu Family Court* [1995] 1 NZLR 603
- *Bellinger v Bellinger* [2003] UKHL 21
- *Corbett v Corbett* [1971] P 83
- *Estate of Gardiner*, No 85,030,11 May 2001, Court of Appeals, Kansas
- *Foy v An tArd Chláraitheoir & Ors* [2002] IEHC 116
- *Goodwin v UK* [2002] 2 FCR 577
- *I v UK* [2002] 2 FCR 613
- *Re Alex* [2004] FamCA 297 [2]
- *Re Kevin (validity of marriage of transsexual)* [2001] FamCA 1074
- *Tilson v AG* [1951] IR 1
- *W v W (Nullity: Gender)* [2001] Fam 111

Legislation:

- *Bunreacht na hÉireann*
- *European Convention on Human Rights*
- *Gender Recognition Act 2004* (Britain)
- *Registration of Births and Deaths (Ireland) Act 1863*
- *Status of Children Act 1987*

I DON'T WANNA BE

Transsexualism has been reported since antiquity. It occurs when an individual finds her or himself to be of the opposite sex to that indicated by their own body. People living with transsexualism undergo irreversible sex affirmation treatment on their own initiative because of their compelling need to experience sexual harmony between body and their innate sexual identity (otherwise called neurological, psychological or brain sex).

Transsexualism occurs in up to 2.5% of the population. Many people with transsexualism only affirm their innate sex later in life and may have married and borne children in their first naturally assigned sex. This creates complicated legal issues with regard to marriage rights and the status of children.

Transsexualism itself is a form of an intersexual condition. The

physiology of the human brain is sexually differentiated at birth, just like genitalia, and is fixed and unalterable by the completion of infancy. Medical science traditionally pathologised transsexualism and treated it as a psychological disorder. This outdated view has dominated the law in respect of transsexualism and is epitomised by the English decision of *Corbett v Corbett*. Many transsexual people are not mentally ill and have no sense of unease with their gender. This is not to say that disorders such as 'gender dysphoria' and 'gender identity disorder' do not exist, but rather that they are different to transsexualism.

The disorder model of transsexualism is gradually being overtaken, as many commentators, judges and medical professionals come to the conclusion that the condition of transsexualism is not mere delusion.

marry, as people with a transsexual background could still marry people of their original opposite gender. In *Goodwin*, the ECHR pointed out that this was a disingenuous argument, as the applicant in that case would never wish to marry such a person.

In the case of *Attorney-General v Family Court of Otabubu*, New Zealand family law took a giant leap forward with regard to transsexual rights. Ellis J simply held that post-operative transgender persons were entitled to marry in their new gender.

By refusing to accept the effect of gender re-assignment on marriage, Ireland remains out of step with international developments and finds itself in breach of the *European Convention on Human Rights*.

Irish legislation should allow people to marry based on their sex at the time of marriage. This would not require any change to marital law, but would be the logical progression of the introduction of new gender certificates. That said, the rights of spouses obviously require adequate legal protection. The failure to reveal one's transgender status before marriage would render that marriage voidable at the instance of the other spouse.

Your daughters and your sons

In some jurisdictions, people with transsexualism have only been permitted to correct their legal identity if they agree to divorce their spouse or have not been married. Thus, married people with transsexualism fall victim to a misplaced homophobia. The withholding of the right to an accurate legal identity from a person of transsexual background because that person desires to continue to honour a marriage has nothing to say about the sexuality of that couple at the time of marriage, and is inhumane and against public policy that seeks to ensure the stability of the family.

As outlined in the New Zealand case of *Otabubu*, the validity of an existing marriage simply makes sense if, at the time of the marriage, both parties were of opposite sexes.

In *Foy*, McKechnie J argued that changing the applicant's birth certificate might render Dr Foy's

marriage with Mrs Foy a nullity, and render his two daughters legally fatherless as well as non-marital. The constitutional rights of the family under articles 41 and 42 thus militated against Dr Foy's claim.

In German legislation, a successful transsexual remains the father or mother of any children born or adopted before the decision is made final, and lines of inheritance due to sex are not affected. In any event, if Irish law adheres to the principle of spousal equality in parenting (*Tilson v AG*), then perhaps parental gender is less relevant than one might think.

If the suggestions of this article were followed, children of the marriage would still be constitutionally protected, as the marriage would still be valid. If the marriage were declared null because of the concealment of the transsexual condition, the constitutional status of the children would be protected by the *Status of Children Act 1987*, s46(i) and s46(iv), in relation to voidable marriages. A parent with a transsexual history would still be the legal guardian of the children.

It is clear that the reasoning in *Foy* needs to be re-examined in light of international jurisprudence. By persisting with the approach that sex is fixed and unchangeable at birth, the courts exclude and further marginalise the transsexual community.

Two loving individuals are currently prohibited under Irish law from entering into marriage if the sex of one is the result of a surgical operation designed to correct what is medically recognised as an accident of birth. Simple legislation giving legal identity to affirmed gender can represent a recognition on the part of the state that transsexualism is another dimension of human sexual identity and welcome into the community a minority that has been marginalised for far too long. **G**

Maebh Harding is an LLM candidate at UCD and Mark Murphy is a BL candidate at the King's Inns. (Clarus Press is preparing to publish the best Student Law Reform Prize essays later this year.)

"The failure to reveal one's transgender status before marriage would render that marriage voidable at the instance of the other spouse"

Pearl of the

Dubrovnik, Croatia, was the venue for the 2006 Law Society annual conference. Visits to Mostar in Bosnia-Herzegovina and to Montenegro opened our minds to the big issues facing the countries of the former Yugoslavia – where Irish citizens are playing a vital role in restoring peace and reconciliation. Mark McDermott reports

Staring out over a tranquil Adriatic Sea, with Dubrovnik at our feet, it beggared belief that this jewel of a mediaeval city had been at the brunt of heavy military action between October 1991 and May 1992. During that period, the city was blockaded by the Yugoslav National Army and attacked by Serbian Montenegrin forces, with 50,000 people trapped behind its walls. Electricity and communications were cut, with citizens taking to the basements for shelter. Some 43 people were killed, 70% of houses took direct hits and over 500 historic buildings were damaged.

There's little of that damage evident today – though gleaming new roof tiles and scaffolding (both inside and outside churches and other historic buildings) tell their own tale. Staring out over the city and the sea from the roof-top terrace of the Grand Villa Argentina Hotel, delegates at the annual conference could be forgiven for asking why they were attending a conference whose title was 'Conflict Resolution: Peace and Reconciliation'. Surely conflict was now behind Dubrovnik, Croatia and the countries of the former Yugoslavia?

Raw memory

Well, yes and no. A day-long visit to Mostar in Bosnia-Herzegovina left delegates in no doubt that, while the guns are now quiet, the war is still a very raw memory for many. During the three-hour journey from Dubrovnik to Mostar – which took us through three border checkpoints as we meandered between countries – the tour-bus guide continuously inserted references to the war in her commentary. The closer we got to Mostar, the more evident were the scars of war. It all became much more real during lunchtime.

At the Ero Hotel, the only hostelry to stay open during the entire war, Alex Rhotert of the EU's Monitoring Mission gave us his overview of the past, its influence on the present, and where the city and country is now headed. The famous 'Old Bridge' in Mostar was destroyed in 1993 by the Croats during fierce fighting with the Bosniaks, after they had driven off the Bosnian Serbs. Now rebuilt, it is a symbol of how the reconciliation process has been

moving forward – ever so slowly.

The period between 1999 to 2003 proved to be a watershed for the city. EU High Representative Wolfgang Petritsch acted swiftly to remove – countrywide – corrupt local politicians, civil servants and mayors. In accordance with annex 7 of the *General Framework Agreement for Peace* (GFAP), Petritsch imposed 'property laws' that were the first, important steps in encouraging the return of Bosnia-Herzegovina refugees.

The judicial system gave the people the practical means to repossess their lost or occupied property. By 2003, more than 97% of lost property had been repossessed, a major success story for the EU-sponsored initiative. However, political and administrative unification hit stalemate. As a result, in 2004, the new High Representative, Paddy Ashdown, abolished the six separate and highly corrupt city municipalities. He also stood down the seven mayors and their deputy mayors, seven municipal councils and more than 200 councillors. Their responsibilities were transferred to the Central Zone and its city administration, and the statute for a united city was imposed.

Since those heady days, things have been moving as slowly as the city's Neretva river. Reconstruction that started in 2005 has now stalled in 2006. Budgets have not been discussed, never mind agreed. As a result, municipal workers face not being paid their wages. Various city institutions are still ethnically divided, including cultural centres, fire stations, cleaning departments and waste collection services – there are almost two of everything! Even the city's puppet theatres are segregated! Serious issues are not being resolved and some Bosniak hardliners have returned. Alex Rhotert is warning about the 'return of the hawks'. Let's hope that sense prevails.

Deep insight

If got to see with our own eyes the physical impact of the war on Mostar, the business session the following day gave us deep insights to the legal difficulties that pertain when attempting to re-establish the rule of law in war-damaged nations. Director of Legal Services in the Irish Defence Forces, Colonel William A Nott, gave a fascinating

MAIN POINTS

- The scars of war
- Mostar's uneasy peace
- Judicial reform

Adriatic



insight into international humanitarian law and its place in the Balkans conflict, as well as the struggle to maintain human rights during armed conflict.

His colleague, Captain Niall O'Hara, is military advisor to various political advisors in the EU Force (EUFOR) HQ in Bosnia-Herzegovina. Niall, who was also a platoon commander in the 91st Infantry Battalion in Liberia, spoke about the role of EUFOR, its objectives and the practical and operational difficulties. Nations contributing to EUFOR include 22 EU states and 11 non-EU countries. He emphasised that EUFOR's mission is to "maintain a safe and secure environment" and to ensure continued compliance with the *General Framework Agreement for Peace*. This military force of the EU also actively supports the operations of other agencies in Bosnia-Herzegovina.

When asked about how strong support is, on the ground, for wanted war criminals, especially Radovan Karadzic, he replied: "Well, within the republic here, we have mixed views. I would say that the younger generation couldn't really care less about Radovan Karadzic. Recent independent surveys actually express the opinion that it is irrelevant whether or not they are caught. I'm certain, however, that the older generation would protect them in the republic of Serbia.

"In relation to Karadzic, if you had asked me the day before Slobodan Milosevic died, I would have said that we were very close to getting him. When Milosevic died it created a lot of doubt in Serbian minds ... I believe from what I know that he would now be in jail. We recently released a statement that we do not know if he is in Bosnia currently. He is certainly well supported and it will take a little longer to get Karadzic. But again our operations are there to target his support network. If we can target his support network which we are doing again, we will reduce the time before Karadzic is captured."

Vetting judges

We heard another Irish voice in Cork solicitor, Lynn Sheehan, who started work as a lawyer at the Independent Judicial Commission (IJC) in Bosnia-Herzegovina in 2004. Recently appointed as one of two international members of the High Judicial and Prosecutorial Council (HJPC) of Bosnia-Herzegovina, she now works as a legal advisor to the secretariat that supports the council's work. Lynn shared the podium with another HJPC lawyer, Arben Murtezic. Both spoke about the role of the council, whose responsibilities include the appointment of judges and prosecutors, adjudicating on disciplinary proceedings, reform of the administration of courts and prosecutors' offices, and seeking increased



Speakers at the Dubrovnik conference were (from top) Colonel William Nott, Captain Niall O'Hara, Lynn Sheehan and Arben Murtezic

Land Certificates and Certificates of Charge

The Registration of Deeds and Titles Act 2006 has now been passed by the Oireachtas and signed by the President. The Minister for Justice, Equality and Law Reform will shortly make an order providing for the commencement of various provisions including the establishment of the Property Registration Authority. Pursuant to section 73 of the Act the Authority will cease to issue, or re-issue, land certificates or certificates of charge. The date that such provision will come into effect will be published shortly on our website.

For a period of 3 years after commencement production of an existing certificate to the Authority shall be required for the registration of a dealing with the property whose ownership it certifies, in accordance with existing requirements. On completion of the application the certificate will be cancelled and no replacement issued.

At the expiration of the 3 year period, referred to above, all remaining land certificates and certificates of charge, not already cancelled, shall cease to have any force or effect.

During the 3 year period the following interim provisions shall apply where a person claims to hold a lien on registered land or a registered charge through deposit or possession of a land certificate or certificate of charge:

- a holder of such a lien may apply to the Authority for registration of the lien in such manner as the authority may determine;
- the application shall be on notice by the applicant to the registered owner of the land or charge and be accompanied by the certificate concerned;
- the lien is deemed, for the purpose of section 69 of the Registration of Title Act 1964, to be a burden which may be registered as affecting registered land;
- the Authority shall register the lien without charging any fee.

The Authority shall conduct an advertising campaign to ensure, in so far as is practicable, that all affected persons are put on notice of these provisions. Notwithstanding the foregoing, the Act provides for application to Court for compensation, in certain limited circumstances, by a holder of a lien who suffers loss by reason of not having applied to the Authority for registration of the lien as a burden within the time period.

Visit landregistry.ie
or landdirect.ie for latest information



Land Registry
Clárlann na Talún

FOCUS ON CROATIA

In the 1st century BC, the Romans conquer Croatia and establish the provinces of Dalmatia and Pannonia. The Roman emperor Diocletian completes his palace at Split in 305 AD. Ninety years later, the Roman Empire is divided in two – East and West – creating a boundary between the Catholic and Orthodox rites, along the border of modern-day Croatia and Serbia.

In the 7th century, Slav tribes from Poland and Ukraine migrate to the Balkans. A group known as Croats settles in Slavonia and Dalmatia.

Dubrovnik was founded by joining two small towns: Laus, a town on a small island off the southern Dalmatian coast, and Dubrava, a settlement of Slavic immigrants at the foot of the forested Srd hill. According to a popular myth presented through the legendary *Chronicle of the Priest of Duklja* from 1171-1196, Dubrovnik was raised by King Bella, son of King Caslav of Klonimir of the House of Vlastimir.

By the 14th century, Venice is a powerful city state and controls most of Dalmatia, except for Dubrovnik, which becomes the republic of Ragusa. In 1527, Croatia passes to the Hapsburg (Austro-Hungarian) dynasty. Constant battles ensue between the Hapsburg and Ottoman forces. Serbs are encouraged to settle in the Krajina region to form a defensive army against the Ottoman Turks.

In 1667, an earthquake destroys most of Dubrovnik. In 1815, the

Congress of Vienna awards Dalmatia to the Hapsburg Empire, uniting Croatia under Austro-Hungarian rule.

Following World War I and the collapse of the Hapsburg monarchy, Croatia enters the Kingdom of Serbs, Croats and Slovenes in 1918. This is later renamed Yugoslavia. During the period of World War II, German and Italian forces occupy Croatia and carry out atrocities against ethnic Serbs. Tito organises partisan resistance throughout Yugoslavia with the help of Allied forces.

From 1945-1980, Tito re-establishes Yugoslavia as a Communist state, with Croatia as one of six separate republics. In 1990, multiparty elections give victory to Franjo Tudman, a Croatian nationalist.

In 1991, Croatia declares independence from Yugoslavia. Croatian Serbs establish the Republic of the Serbian Krajina at Knin, driving many Croats from their villages with the help of the Yugoslav army. The first use of the term 'ethnic cleansing' dates from this time. War breaks out, with the sieges of Dubrovnik and Vukovar. In 1992, Croatia is recognised by the European Union and the UN. Three years later, 'Operation Storm' evicts rebel Serbs from the Krajina region, leading to a mass exodus of refugees into Serbia and Bosnia. The *Erdut Agreement* ends the war with Serbia. In 2005, Croatia begins provisional entry talks with the European Union.



Scars of war – a bullet-riddled building in Main Street, Mostar

large',” said Lynn.

The re-appointment process also helped to introduce some independence into the judiciary. Prior to the war, judges and prosecutors largely remained in the area to which they had originally been appointed. They thus became entrenched in the political and social structures of these areas. “This made it quite difficult for them to be independent,” said Lynn, “so the IJC moved them around the country, which introduced independence into the process. It also helped in terms of making sure that the admittance of judges and prosecutors represented the ethnicity of the general population in those areas.”

There was another effect – the number of judges was reduced by about one quarter, while other court personnel decreased in number by about 40%.

budgets for these offices.

Arben was a breath of fresh air. He spoke about the war first-hand, the difficulties of studying for his law degree during the war years in the Law Faculty in Sarajevo, and the Zagreb airlift when that city was under siege “for longer than any other city in history – more than 100 days longer than Leningrad”, he informed us.

Lynn spoke about the controversial re-appointment process that every judge and prosecutor in the country had to comply with after the war – all 1,200 of them had to re-apply for their positions in an open competition. Each one was vetted in relation to their actions during the war, especially in relation to property violations. “One of the key goals was to encourage newcomers into the judiciary. The IJC succeeded in its aims, in that about 20% of the new judges and prosecutors were found to be ‘applicants at

History’s radar

How will the world judge the sad days of the 1990s in the former Yugoslavia? There’s no doubt that the concentration camps, the rape camps and the mass graves will rate significantly on European history’s radar.

This visit gave us all a reason to be very grateful for the relative stability of our own country, despite the political log-jam that continues to slow up progress north of our border. We’re quite a bit further along the road to peace and reconciliation than our fellow Europeans in Croatia and Bosnia-Herzegovina. Looking at the magnificent gem that is Dubrovnik, however, you realise that maybe this beautiful part of the world has a head start on us in other ways – a head start that began well before the Romans put down roots in the ‘Pearl of the Adriatic’. Long may it shine. **G**

DIRECTOR'S

CUT

In the second of two articles on the restriction of company directors, Brian Conroy further examines the provisions of section 150 of the Company Law Enforcement Act 2001

The *Company Law Enforcement Act 2001* contained express provisions dealing with *locus standi* and costs. Recent case law has brought clarity to several other procedural aspects of the s150 jurisdiction – among them the scope of the s150 jurisdiction, the principles governing delay in applying for the relief, the power to grant relief from a restriction order, and the extra-territorial application of the provision.

Locus standi

There were no *locus standi* provisions in s150 as originally drafted. Although it was clear from the outset that a liquidator had standing to bring an s150 application, the capacity of other people to take restriction proceedings remained a live issue. In *Re Steamline Ltd*, Shanley J decided that aggrieved creditors of the insolvent company did have *locus standi* to bring an application, on the basis that there was no standing requirement in the act and that the provision should be interpreted broadly so as to promote the remedy of restriction.

The new s150(4A) inserted by the 2001 act expressly grants liquidators, receivers and the newly created office of the Director of Corporate Enforcement (DCE) *locus standi* to bring a restriction application. Refusing an application by a creditor to be joined as a party in *Re Document Imaging Systems*, Finlay Geoghegan J held that this provision was exhaustive, meaning that the legislature has effectively reversed the *Steamline* decision.

In *Document Imaging*, Finlay Geoghegan J went on to consider whether a creditor or some other party lacking *locus standi* to bring an application might be

joined as a notice party to s150 proceedings in accordance with the provisions of order 15, rule 13 of the *Rules of the Superior Courts* (RSC). He doubted whether a court would have discretion to do this, holding that “even if such a discretion exists ... there would have to be exceptional circumstances” for such a person to be joined. She seemed to envisage that a discretion might operate where the liquidator would otherwise be “precluded from, or prejudiced in, making the application”. But such circumstances are likely to be rare, given that the alternative option of calling on a creditor to provide evidence supporting the application will almost always be available.

‘Costs in investigating the matter’

The 2001 act inserted a new s150(4B) into the 1990 act, which enables a court to award the costs of a successful application and “any costs incurred by the applicant in investigating the matter” against the respondent directors. This goes beyond the default position under order 99 of the RSC, whereby the courts have no discretion to award the costs of investigating a matter, as distinct from the costs involved in bringing that matter to court. In *Re GMT Engineering*, Finlay Geoghegan J held that the new subsection narrowed another aspect of her discretion under order 99 by precluding her from awarding the costs of an *unsuccessful* application against the respondent.

In *Re Tipperary Fresh Foods*, Finlay Geoghegan J ruled that subsection 4B should be interpreted as having retrospective application, on the basis that the general presumption against retrospectivity in respect of applications brought after the date of passing of the

MAIN POINTS

- Restrictions on company directors
- Section 150 of the *Company Law Enforcement Act 2001*
- Relevant case law



PIC: IMAGE SOURCE/REX FEATURES

2001 act had clearly been rebutted. In consequence, the costs of an applicant's investigations can be awarded against the respondents in cases involving liquidations that commenced prior to that date (although not in proceedings issued before the 2001 act came into force).

Delay – 'inordinate and inexcusable'?

The general principles in this area come from the Supreme Court decision in *Primor v Stokes Kennedy Crowley*: a judge must first consider whether a delay in bringing civil proceedings is inordinate and inexcusable, before going on to decide whether it is in the interests of justice for the application to proceed. In *Re Verit Hotel Ltd*, the Supreme Court ruled that a five-year delay from the commencement of a liquidation to bringing restriction proceedings – though inordinate and inexcusable – should not lead to their being struck out, since no prejudice to the respondents had been shown.

Two recent decisions of Finlay Geoghegan J suggest that a delay of a decade or more will be sufficient in itself to have restriction proceedings struck out. Firstly, in an *ex tempore* decision in *Re Knocklofty House Hotel Ltd and Re Eccleshall Ltd*, she struck out two sets of restriction proceedings in respect of liquidations that had commenced 11 years and 12-and-a-half years before the issue of

proceedings, respectively, on the basis of the delay, stating that no additional prejudice needed to be shown. Then in *Re Supreme Oil Ltd*, she struck out proceedings solely on the basis of a 12-year delay.

Delays of that order are unlikely to occur in liquidations begun since the coming into force of the 2001 act, as s56(3) of the act makes it a criminal offence for a liquidator to fail to apply to court within a three- to five-month period from the delivery of his report to the DCE. This opens up the argument raised by the respondents in *Re E-bost Europe*, who suggested that the fact that the time period envisaged under s56 had expired deprived the liquidator of standing to bring a restriction application. Finlay Geoghegan J rejected the argument in relatively short order, holding that the regulatory consequences for the liquidator of a breach of s56(3) did not affect his *locus standi* to bring proceedings.

Shadow directors

Under s149(5) of the 1990 act, shadow directors of insolvent companies – that is, people who dictate the actions of directors without being directors themselves – are expressly mentioned as possible respondents. It appears that *de facto* directors (that is, people who occupy the position of a director without being so called) can also be restricted, since they are included within the definition of a director under s2(1) of the principal

act. This last conclusion is also supported by the decision of O'Neill J in *Re Lynrowan Enterprises*, where he adopted the three-stage test for identifying a *de facto* director set forth in *Re Richborough Furniture Ltd*.

In *Re First Class Toy Traders*, Finlay Geoghegan J agreed with O'Neill J on the principle that a *de facto* director can be restricted, but reconsidered the criteria that should be used in determining whether or not a party is a *de facto* director. Taking into account the criticisms that had been voiced in Britain regarding the *Richborough Furniture* approach to this matter, Finlay Geoghegan J preferred to rely instead on the more flexible approach used in later English decisions. This approach, while referring to a number of different factors, posits that "the crucial issue is whether the individual in question has assumed the status and functions of a company director so as to make himself responsible ... as if he were a *de jure* director".

There does appear to have been one 'wrong turn' in the law regarding shadow and *de facto* directors in the case law prior to the 2001 act. In *Re Gasco Ltd*, McCracken J indicated that one of the respondents, who "effectively ran the company on his own" for a certain period after the two appointed directors had left, could be restricted because he was a shadow director. It seems more likely that this respondent was a *de facto* director falling within the test approved by Finlay Geoghegan J in *First Class Toy Traders*, since, under s27(1) of the *Companies Act 1990*, a shadow director is "a person in accordance with whose directions or instructions the directors of a company are accustomed to act" – not a person who actually manages a company himself.

The distinction between shadow and *de facto* directors may be of some importance to liquidators,

"It seems likely that, in the future, the DCE will be joined in s152 applications on a fairly regular basis"

since the obligation under s56(2) of the 2001 act to apply to court for a restriction order relates only to the "directors of the company" and makes no reference to shadow directors. Finlay Geoghegan J expressly reserved her position on this issue in *Re USIT Group*, but the absence of a specific reference to shadow directors surely means that, when the point has to be decided, the courts will hold that the obligation to apply does not extend to them. Hence, a liquidator is obliged, on pain of criminal penalty, to bring proceedings against a *de facto* director of an insolvent company, but no such obligation exists in respect of a shadow director.

Executive relief

Section 152 of the 1990 act allows the High Court, on application of the restricted person, to grant relief from the restriction order on such terms as it thinks fit, if it thinks it just and equitable to so. Granting full relief from a restriction order in *Robinson v Forrest*, Laffoy J took account of the severe impact of the s150 order on the applicant's capacity to earn a livelihood, as well as of the praiseworthy nature of his actions after the winding-up had commenced. Neither of these issues can be considered by the court in the context of the initial s150 application. Finlay Geoghegan J acknowledged as much in the *360Atlantic* case, where she refused to take account of the prejudice to the respondents in their continuing commercial life at the s150 stage, stating that "the only discretion in the court is where an application is subsequently made under s152".

In *Re CMC Ltd*, Finlay Geoghegan J described s152 as conferring "a very wide discretion". She stressed that it was "in no sense an appeal from the decision making the order of restriction", adding that the court was not limited to the facts put before it at the initial hearing. Accordingly, in contrast with the situation in relation to an s150 application set forth by the same judge in the *Tralee Beef and Lamb* case, Finlay Geoghegan J indicated that she was ready to consider the applicant's actions as director of another company in the context of the s152 application.

The *CMC* case also departs from the case law on s150 applications by laying down a flexible approach to the joining of parties in an application under s152, in that Finlay Geoghegan J agreed to join the DCE as a notice party in accordance with the procedure laid down in order 15, rule 13 of the RSC, despite the absence of any reference to him in s152(4), which provides a list of persons from whom the court can hear evidence on a s152 application. Given that liquidators are unlikely to wish to expose the funds available to creditors by engaging legal representation to contest s152 applications, it seems likely that, in the future, the DCE will be joined in s152 applications on a fairly regular basis. **G**

LOOK IT UP

Cases:

- *360Atlantic* [2004] 4 IR 266
- *Primor v Stokes Kennedy Crowley* [1996] 2 IR 459
- *Re CMC Ltd* (High Court, unreported, 1 November 2005)
- *Re Document Imaging Systems* (High Court, unreported, 22 July 2005)
- *Re E-host Europe* (High Court, unreported, 14 July 2003)
- *Re First Class Toy Traders* (High Court, unreported, *ex tempore*, 9 July 2004)
- *Re Gasco Ltd* (High Court, unreported, 5 February 2001)
- *Re GMT Engineering* (High Court, unreported, 30 July 2004)
- *Re Knocklofty House Hotel Ltd and Re Eccleshall Ltd* (High Court, unreported, 5 April 2005)
- *Re Lynrowan Enterprises* (High Court, unreported, 21 July 2002)
- *Re Richborough Furniture Ltd* [1996] 1 BCLC 507
- *Re Steamline Ltd* (High Court, unreported, 24 June 1998)
- *Re Supreme Oil Ltd* [2005] 1 IR 571
- *Re Tipperary Fresh Foods* [2005] 1 IR 551
- *Re USIT Group* (High Court, unreported, 30 July 2003)
- *Re Verit Hotel Ltd* [2001] 4 IR 550
- *Robinson v Forrest* [1999] 1 IR 426
- *Tralee Beef and Lamb* (High Court, unreported, 20 July 2004)

Legislation:

- *Companies Act 1990*
- *Company Law Enforcement Act 2001*
- *Rules of the Superior Courts*

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PIC: GETTY IMAGES

Bringing it all BACK HOME

The 1930s in Ireland was a period of respite for its citizens, following the cataclysms of World War I, the 1916 Rising, the Civil War and its fall-out. An air of normality started creeping back into daily living, as seen through the pages of the *Gazette*

September 1931 marked a watershed for members of the Incorporated Law Society. After a period of nine years and five months, the *Gazette* was finally able to report that the Society would be moving out of its 'temporary accommodation' in 45 Kildare Street to its new premises – Solicitors Buildings in the Four Courts. The exile had resulted from the occupation of the Four Courts by anti-treaty forces in April 1922 and its subsequent burning on 28 June the same year.

The move was referred to during the half-yearly general meeting in December, when the president, Alexander D Orr, addressed the meeting:

"Gentlemen, on rising to move the adoption of the Report which is in your hands, I am glad to have the opportunity of welcoming you to our new home. Our new premises are, as you see, on a site adjoining the site upon which our old premises stood, but they have this great advantage over the old premises that they are self-contained. I have no hesitation in saying that these new premises will adequately fulfil their

(Above): 1933 – 'un-German' books are burned at the Opernplatz in Berlin and in other German university towns during a campaign "against the un-German spirit", following the Nazis coming to power

purpose and are fitting headquarters for our profession. In addition to this fine Hall we have a most dignified Council Chamber, and excellent Library, accommodation for our Secretary and his staff, and a Lecture and Examination Hall for our apprentices. These premises are a credit to the architectural skill of Mr Byrne, principal Architect of the Board of Works, who designed them, to his assistants, and to Messrs. Alex. Hull & Co., the builders; and we also owe a debt of gratitude to Mr. R. Caulfeild [sic] Orpen, R.H.A., who, as our Architect, looked after our interests, and to our Secretary, Mr. Wakely, who from the time that the rebuilding of the Four Courts commenced has spared no effort in assuring that our premises would be all that they should be, and whose efforts have been crowned with success" (*Gazette*, December 1931, p27).

Times were different then, with phones and phone lines a relative rarity. The new accommodation boasted two telephones for the use of members and their assistants. These were situated in the entrance hall. "Calls can be made from members' offices, on either of these telephones to the Society's caretaker, who will, if so requested, write the name of the calling member on the telephone call board, which is in the entrance porch" (*Gazette*, November 1931, p22).

Eucharistic Congress

The Eucharistic Congress was a significant national event in 1932. It receives a mention in the June issue of the *Gazette* the same year. The president, Laurence J Ryan, spoke of his involvement in enabling the highest courts of the land to shut for a full week in order to facilitate attendance at the

congress's ceremonies.

"As a member of the Rule Making Authority of the High Court I assented to a draft rule to enable the Supreme Court and High Court to close in connection with the Congress Ceremonies from Monday, the 20th June, to Monday, the 27th June, both days inclusive. Since the meeting of the Rule Making Committee the Chief Justice was kind enough to intimate to me that the Government intend to deal with the matter by legislation" (*Gazette*, June 1932, p8).

Despite the great changes that Ireland was experiencing at this time in its history, the Council still had time to discuss the relatively mundane matter of – ink.

"The attention of the Council has been drawn to the question of the lasting quality of the inks now frequently used for the engrossment of deeds on parchment. The blue-black inks used at present for everyday writing on paper would appear to be unsuitable for use on parchment.

"An original Deed, engrossed on parchment within the last 12 years, recently produced in Court proceedings, had become practically entirely illegible owing to the nature of the ink which had been used, and which had almost completely faded out. On the other hand, deeds are frequently in use written in parchment more than a century ago with the writing still jet black and perfectly legible. As a result of enquiry the Council has been informed that an indelible ink guaranteed to be fade proof, acid proof and water proof can be procured at Law stationers. The Council consider that this matter is one worthy of the attention of the Profession" (*Gazette*, March 1933, p41).

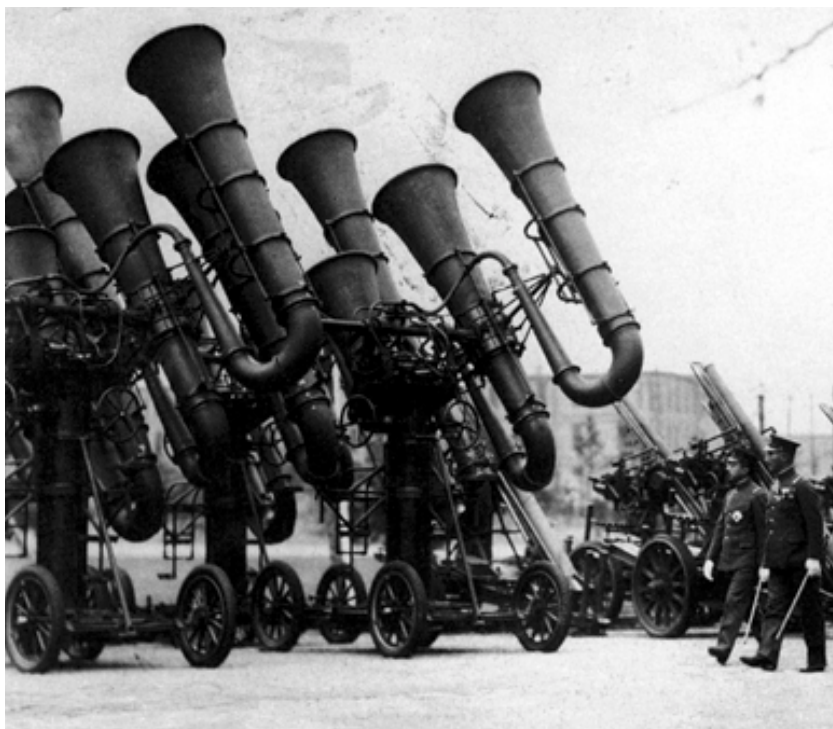
Reason to crow

The Society was justly proud of any of its members who were elevated to high legal or political stations. In June 1933, the *Gazette* had reason to crow:

"The important post of Minister for Justice in the present Government has been filled by the appointment of Mr Patrick J Rutledge, a Solicitor who had a large practice in the County of Mayo, and who was Auditor to the Solicitors' Apprentices' Debating Society in the year 1916-17. We can congratulate ourselves that a member of our Profession was called on to occupy this important position. It is also pleasing to note that Mr Daniel J Browne, Solicitor, of Tralee, has been recently appointed Secretary to the Department of Justice. Mr Browne was a distinguished member of our Profession and obtained a Gold Medal at the Final Examination in 1917.

"It is a matter of great satisfaction to us that these two most important offices should be filled by members of our Profession, and we trust that the Government, in making other appointments, will continue to consider the claims of our Profession" (*Gazette*, June 1933, p7).

1932: giant Japanese ear trumpets, designed to alert listeners to approaching enemy aircraft. No, seriously!



Examinations in the Irish language caused a furore within the legal profession in the early '30s. In the *Gazette*, November 1933, the 'First Examination' in Irish for those wishing to train as solicitors was advertised:

"A 'First Examination' in Irish for intending Solicitors' Apprentices under the Legal Practitioners (Qualification) Act, 1929, will be held on the 8th December, 1933, in the Solicitors' Buildings, Four Courts, Dublin.

"Notice of intention to attend, and fee one guinea, should be lodged before 1st December" (*Gazette*, November 1933, p23).

The *Legal Practitioners (Qualification) Act 1929*, applied to every intending apprentice who was under the age of 15 years on 1 October 1929. Following the 'First Examination' in Irish, which had to be conducted by the Society under the act, apprentices then had to sit for a 'Second Examination' before being admitted as solicitors.

"For this second examination every apprentice must possess a competent knowledge of the Irish Language, and this knowledge, as defined by the Act, means such a degree of oral and written proficiency in the use of the language as is sufficient to enable a practitioner efficiently to receive instructions, to advise clients, to examine witnesses, and to follow proceedings in the Irish Language ... It would appear to us, after consultation with our Examiner in Irish, Mr Thomas P Waller, that apprentices will have to maintain a continuous study of the Irish Language from the time they pass their first examination in Irish, and cannot rely on being able to pass the test by merely working at the subject a few months before they sit for same" (*Gazette*, December 1933, p29).

Dublin Circuit Courts

During his half-yearly address on 27 November, the president, Mr W Gordon Bradley, took umbrage with the arrears in civil business at Dublin's Circuit Court. He would surely have been pleased to note that, in 2006, up to ten judges can be assigned in Dublin.

"Following the suggestions which I made in my address at the Half-yearly Meeting that two Circuit Court Judges should be continually available to transact the civil business of the Dublin Circuit Courts, the Council wrote to the Department of Justice bringing this matter under their notice, and on 9th November a reply was received from the Department stating that, while the Minister was aware that the civil business in the Dublin Circuit Court is in arrear [sic], he was not satisfied that such business was sufficient to occupy the time of two Judges, and that he hoped shortly, without increasing the total number of Judges, to make arrangements to meet the needs of the Dublin Circuit Court. From enquiries which I have made recently I have ascertained that the number of



The Long Fella in 1937, at what is now Pearse St Station

defended civil actions awaiting trial in the Dublin Circuit Court at the present time is 446. Some of these cases have been set down for trial as far back as March, 1933 ... With due deference to the statements of the Minister, I still am strongly of opinion that there will always be an arrear of work in the Dublin Circuit Courts unless two Judges are continually available to transact the civil business there" (*Gazette*, December 1933, p27).

'Look before you leap'

During his presidency (1935/36), Mr Michael E Knight sounded a note of caution about the numbers entering the profession (*Gazette*, June 1936, p10). Crystal-ball gazing might not have been his forte, though I'm sure he would have been delighted to witness the rude good health of the profession at the beginning of the third millennium.

During his half-yearly general meeting in 1936, he said: "[In April] 45 candidates have qualified as Solicitors, and if you add to this 34 at the October Final, you have 79 new Solicitors qualified within a few months. While I heartily congratulate these successful candidates and wish them every success in life, it seems to me desirable that I should sound a word of warning to parents and guardians who have the responsibility of selecting careers for our young people. It must be remembered that these Solicitors nowadays are qualified only to practice in the Free State, and I think every-day experience shows that there is a danger that if we proceed at the present rate the profession will ere long be overcrowded, and that after a long period of study and considerable outlay the opportunities of earning a livelihood may be sadly lacking. The popular idea that our profession is an easy road to a comfortable living, and in many cases affluence, has long since been exploded, and I would in all good faith say to those who contemplate entering the Solicitors' profession: 'Look before you leap.' G



practice doctor

Got an issue you would like addressed by our panel of practice doctors? Email: practicedoctor@lawsociety.ie

THE LAW AND

THE PROFITS

Budgeting for marketing and business development is often considered either a necessary evil or an unnecessary luxury. Some of the frequent questions that are asked when preparing a marketing budget include:

- How much should we spend on marketing and what should we include?
- Will the spend raise our profile and will we get more business?
- How will this investment impact on the bottom line?
- What are the merits of having a separate budget for this area?

Last year, the Professional Services Marketing Forum's survey of its Irish members (across a number of service sectors) found that the average marketing allocation from respondents ranged from 2-4 % of annual turnover, excluding fee-earner time.

Competition in the legal profession has accelerated the need to pay closer attention to planning the future business of a practice – and proactively communicating the business's core benefits to target audiences.

But before you plan or review your spend, there are some guiding principles to give you better bang for your buck.

Decide on what you want to achieve

The marketing initiatives you undertake should support your business goals for the practice. The more general the aspiration, for example, 'to grow the business', the more likely it will lead to disproportionate spend without meaningful results.

Each activity should be priced to determine how much you are willing to invest to achieve your goals. This will determine the figure that the firm is comfortable with spending and how to decide, from year to year, which activities will give optimum results.

What should you spend it on?

If your budget will only cover one thing, then that should be the assessment of client satisfaction through regular feedback.

Asking clients for their opinions and identifying their needs before you undertake any marketing investment will be a cost-saving exercise. It also means that you have tested your market and can tailor your initiatives with confidence. While it is always important to keep a close eye on competitor activity, your clients are the true benchmark for understanding what works best for your firm.

In conclusion:

- Focus your spend first on looking after your existing clients,
- Keep the firm's name visible,
- Avoid spending money on activities that cannot be measured or accounted for,
- Marketing is an investment – so make sure to do the return on investment like you would any other outlay. **G**

Adrienne Regan is a partner in Regan Lowey, which offers practical marketing advice to professional advisors, including solicitors' practices.



Adrienne Regan: "It is necessary to pay closer attention to planning the future business of a practice"

BUILDING AWARENESS AND GENERATING LEADS

- **Client entertainment/networking:** for example, hosting a wine-tasting evening or networking with an industry association.
- **Seminars on topical issues:** in your practice or clients' premises.
- **Public relations:** launch of a new service line or the opening of a new office.
- **Industry surveys:** on a topical issue to highlight your expertise in a chosen market – for example, construction disputes.
- **Firm announcements:** selective advertisements to flag the value of business transactions with which your firm has been involved (they are noticed!) and personnel appointments.
- **Community involvement:** with a cause that matches the firm's values.
- **Corporate literature:** tailored to your specific market segments.
- **An interactive web presence:** that imparts knowledge and is updated regularly.
- **Sponsorship:** with a sporting body or professional association.
- **Tender preparation:** that addresses the needs of the potential client and emphasises the benefits (and not features) of working with the firm.
- **Advertising:** when the messages are clear in targeted publications.
- **Directory entries:** placing your entry in a directory that will be looked at occasionally.

Law Society Council makes history with first Wexford meeting



Sitting pretty and making history

For the first time in its 154-year history, the Council of the Law Society of Ireland convened a meeting in Wexford town, on Friday 12 May. The meeting took place in County Hall, which was made available by kind permission of the Courts Service, County Registrar Marie Garahy, and with the assistance of Circuit Court Chief Clerk James Hodnett.

On the previous evening,

President of the Law Society Michael Irvine chaired a meeting with the Wexford Solicitors' Association. Members were briefed on a range of issues, including the government's ongoing review of legal costs, the justice minister's plans to establish a legal services ombudsman and the Competition Authority's study of the profession.

The meeting was followed by

a reception in the courthouse, which was attended by local solicitors, politicians and members of the judiciary. Town Mayor Tommy Carr and Wexford Council chairman, Jimmy Curtis, welcomed the president and the Council to Wexford.

For fantastic weather, sheer hospitality and general good fun, Wexford certainly lived up to its motto, *Exemplar Hiberniae*.



Law Society President Michael Irvine confers with the Chairman of Wexford County Council, Jimmy Curtis



View from the top

Society president Michael Irvine and director general Ken Murphy with members of the Wexford Solicitors' Association, Mayor Tommy Carr and Wexford Council chairman Jimmy Curtis



County manager Eddie Breen and former Law Society President Tony Ensor

Conference gala dinner



Table 19 leaves them green!

Table 19 won the 'Damn, I wish I was at that table' award during the gala dinner in Dubrovnik. The party animals are (*front, l to r*): Eva O'Brien, Brid Mimmagh, Kathy Irwin, Dympna Heraty, Padraic Gilligan (Ovation). (*Back, l to r*): Cillian MacDomhnaill, Andrew Cody, Seán Ó hOisín, David Irwin and (behind the camera) Mark McDermott



Smiles all round

Enjoying the gala dinner in the Revelin Fort, Dubrovnik, were (*l to r*): Eamon O'Brien, Hilda Stein, Vicky O'Brien and Stuart Stein



Lord of the rings

Gollum had a rival in Finance and Administration Director Cillian MacDomhnaill, who demonstrates some of the glitzy jewellery on show at the gala dinner – and yes, it was Table 19!



Raising a glass

Celebrating an excellent conference were (*l to r*): Barney O'Beirne, Tom Murphy, Bronagh O'Hanlon, Norville Connolly, Josip, and Eileen O'Gorman



Up the Rebels!

West Cork was ably represented by Judge Con Murphy and his wife Miriam, seen here with John Shaw (*centre*)



Last call for departure

Michael Benson (of Benson & Associates Recruitment Specialists) congratulates Law Society President Michael Irvine on this year's highly successful annual conference in Dubrovnik

books

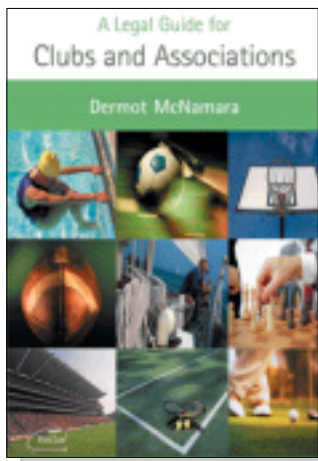


A Legal Guide for Clubs and Associations

Dermot McNamara. FirstLaw (2005), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1-904480-29-2. Price: €58 plus €2 P&P (paperback).

This book fills a very necessary gap in Irish legal literature. Although the law applicable to incorporated associations (particularly companies registered under the *Companies Acts 1963 to 2005*) has been examined, reviewed and opined upon in several books and other publications, the law and practice applicable to the registered company's poor relation, the unincorporated association, has received relatively little attention. Given the multitude of clubs and associations that exist in Ireland and the relative complexity of knowing where to start in understanding the law relating to clubs, this publication is to be welcomed.

Unlike a company registered under the *Companies Acts*, a club or association – being an unincorporated association – has no separate legal existence to its members; its legal existence is the collective existence of its members, all of whom will be liable for their acts and omissions in operating the club. As was stated in the old Irish



case of *Tierney v Tough* ([1914] 1 IR 142), the rights and interests of the members of an unincorporated association are governed exclusively by contracts.

In the preface, Dermot McNamara says that the book is designed to provide legal guidance and assistance to people who are involved in the setting up and management of clubs and associations. In my view, this book undoubtedly achieves this aim. In ten chapters, the book considers how to form a club or association, the

role of the committee, registered clubs, licensing, members' rights, legal liability, employment law, taxation, equality legislation and data protection. Each chapter concludes with a list of key points, a feature that demonstrates the author's commitment to doing what he says his book is designed to do, and which I believe will be of great benefit to general readers.

One particularly useful aspect of this book is the extensive appendices, which contain specimen club rules, specimen objects clauses, a specimen employment contract and a legal checklist. There are also 29 forms that cover a multitude of matters, from a model notice of (and agenda for) a club's annual general meeting, to a model application for club authorisation, to a specimen raffle ticket!

I have no doubt that the book will prove to be of invaluable assistance to anyone involved in clubs. In his preface, Mr McNamara says that the book may provide some assistance to legal practitioners

but that it is for guidance purposes only, since case law is rarely cited (in all, only 14 cases are listed in the list of cases). In this regard, I believe Mr McNamara is being unduly modest, for I have no doubt that every practitioner's first port of call in advising a client on an aspect of the law related to clubs and associations will be this book. It is the case, however, that a practitioner required to advise a client on a particularly intricate matter will be forced to have regard either to specialist Irish textbooks (such as *Cassidy on The Licensing Acts* (2nd ed) on the law of licensing) or English publications on the law of unincorporated associations, such as Warburton's *Unincorporated Associations* (2nd ed, 1992, Sweet & Maxwell).

For anyone involved in participating or advising on the participation in clubs and other unincorporated associations, this book is a must. **G**

Dr Thomas B Courtney is a partner in Arthur Cox.

Road Traffic Offences (second edition)

James V Woods (2005). Price: €180.

First off, let me confess that I am a die-hard fan of the original Woods' *Road Traffic Offences*, and I am alarmed to see that I would first have opened the distinctive green linen cover of that text in 1990. That model was light, easy to handle and, of course, extremely reliable. In fact, something of a sports car in

legal publishing. In size, the new model is more of an SUV. However, the essential qualities of the Woods marque are all present and correct: easy to use, concisely laid out, and impeccably reliable. Like any new model of a good make, there are new features (fixed-charged penalties or point offences) and extras (a whole

section on the prelude to court proceedings).

The real test of a book of this nature, however, is how usable it is in court. This is a text designed to be used in daily practice and not as a backdrop to one's official office portrait. I have to say, having taken this model on the road several times in the last couple of months,

this driver is completely convinced. While the book is now something of a heavyweight, it is a small price to pay for cramming a definitive work into one volume.

The content is right up-to-date at the time of publication, and the chapter layout and division of the book into sections makes it easy to find

and mark what one is looking for in court and at short notice.

The section on conduct of court proceedings has been covered by Mr Woods in other of his publications. However, if you don't have his *District Court Practitioner* already (and even if

you do, because that model is now getting on a bit), his walk-through of the nuts and bolts of criminal prosecutions in chapter 6 is worth the price of admission alone. True, the book now runs to over 1,000 pages, but the added space has given

the author room to include such unexpected gems as the entire 'golden thread' quotation from Sankey J in *Woolmington v DPP* (you would be surprised how often prosecutors need to be reminded of its existence).

In short, this is an

outstanding addition to the Woods brand. Every law office should have a copy of this book. **G**

Patrick J McGonagle is a partner in the Dublin law firm McGonagle.

Litigation Against Schools: Implications for School Management

Dympna Glendenning and William Binchy (eds). FirstLaw (2006), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1-904480-33-0. Price: €39.95 (paperback).

Anyone who practises, studies, or even has a serious interest in the law knows that different areas of law demand that different outcomes be achieved. Those now running Irish schools need, thanks to recent legal developments, to deal with many such areas and to achieve different – and at times seemingly conflicting – outcomes.

These developments include a large volume of statute law, not only dealing specifically with schools, but also with related areas, including health and safety, freedom of information, and equality. Irish and other courts have also given many relevant judicial decisions in new as well as older, more established areas of law. All this has taken place against a background of students and their relatives being more aware of their legal rights. Schools now need to be very aware of



the old maxim that ignorance of the law is no excuse. In order to make reasonable efforts to carry out their legal responsibilities, they need to know what these responsibilities are.

To help school principals and managers navigate around this new country of law, a challenge even for a practising lawyer, Trinity College's School of Law has held annual conferences in the last few years. This book is a

product of these conferences, containing nine chapters by seven authors. Most of the chapters are up-to-date combinations of lectures given at these conferences, and comprehensively cover many topics: William Binchy on the school's duty of care to its pupils, including emerging areas such as the disability, as well as the privacy and autonomy, of students; Neville Cox on how secondary schools can deal with their liability in respect of sports; Dympna Glendenning on the legal demands of minimum education and the common good, school discipline that balances a student's rights with the common good, and the implications of the office of the Ombudsman for Children; Gerry Whyte on equality legislation; Ciaran Craven on bullying and school discipline; Estelle Feldman on the *Freedom of Information Acts*; and Neville Harris on the legal enforcement

of school attendance in England. All are written and presented in a manner quite accessible to a non-specialist.

The editors, in their preface, emphasise that the best advice to those running schools is for them to have the confidence "that the law is ultimately their friend, not their adversary", and they believe that the courts are "striving to deepen the common good by supporting educationalists in their noble vision".

I agree with these sentiments, and, as a lawyer who has written on the same subject and who learned a great deal from attending the conferences held in 2004, I endorse this book as recommended reading for anyone with a serious interest in the legal demands now placed on Irish schools. **G**

Murray Smith is a Dublin-based barrister.



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council report



Report of Law Society Council meeting held on 10 March 2006

Appeal against decision of the Master of the High Court in relation to costs

The Council noted that the President of the High Court had granted the Society's application to be joined as *amicus curiae* in the appeal being taken against the decision of the Master of the High Court. In addition, the President of the High Court had decided that Manus McClafferty, solicitor, who had been nominated by the Master (to represent the plaintiff in the event of an appeal), should be relieved of any involvement in the proceedings and that the case for the Master's order should be argued by the defendant for the solicitor in the originating action.

Civil Law (Miscellaneous Provisions) Bill 2006

The Council discussed the draft Heads of Bill for the *Civil Law (Miscellaneous Provisions) Bill 2006* and identified concerns under three broad headings:

- The cost of the Office of Legal Services Ombudsman, which would have to be borne by the profession,
- The manner in which the Legal Services Ombudsman would oversee entry to the profession, and
- The exact role and powers of the ombudsman.

It was agreed that the Society should communicate its concerns to the minister and should identify specific amendments to the proposals.

In addition, the Council discussed a number of other miscellaneous provisions that the Society proposed to seek in the bill, including amendments

relating to (a) limitation of liability by contract, (b) dormant clients' accounts, (c) a limitation period for challenging transfers or conveyances of property, and (d) the swearing of statutory declarations outside the state.

Purchase of property adjacent to Blackhall Place

The Council noted the responses from the profession in relation to the announcement of the purchase of property adjacent to Blackhall Place and noted that the tenor of the correspondence was overwhelmingly positive.

Independent Law Centres and access to justice

The president reported that, over recent months, meetings had been held with the Community Law Centres, FLAC, the Travellers' Movement Legal Unit and the Immigrant Council of Ireland. An *ad hoc* group had been established to consider the issues of relevance to these groups and a discussion document had been prepared that sought to assess what the Society and the profession could do to assist these organisations. The proposal would be discussed at the May meeting of the Council. In addition, the president noted that he had addressed the issue of the need for increased civil legal aid at the most recent parchment ceremony, and he intended to reiterate this message at every available opportunity.

Competition Authority study

Gerard Griffin reported that representatives of the Society had met the Competition

Authority at its request on the previous Monday, to discuss the issues of dual titles and transfer between the professions of barrister and solicitor. The Society had reiterated its view that there was no economic sense to having a fused profession or for solicitors to effectively act as barristers.

IT survey of the profession

Andrew Cody presented the results of a survey conducted by the Technology Committee that examined IT usage among solicitors. The main reasons for carrying out a survey were to establish the level of knowledge, use and expertise in IT among the profession, to assist the Technology Committee in tailoring seminars over the next few years, to advise the eConveyancing Task Force on the capacity of the profession to embrace e-conveyancing and to assist the Law Society in its electronic dealings with the profession.

Mr Cody reported that the Technology Committee had

been very encouraged by the results of the survey, which established that the picture in terms of the usage of IT within solicitors' offices was very good, with 100% usage of computers for internet, email and word processing. Some firms had a more sophisticated level of IT than others and the committee intended to focus on developing and expanding the knowledge of and use of IT by all firms. The results of the survey will be published in the *Gazette*.

Client Focus Seminars

John P O'Malley reported on a series of eight Client Focus Seminars that are to be conducted throughout the country during May and June, to be followed by a series of workshops in the autumn. Planning for the seminars was at an advanced stage and the initiative would be promoted through the bar associations and would be targeted initially at sole practitioners and managing partners. **G**

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BRIEFING

practice notes



INTERLINKED CONTRACTS AND STAMP DUTY

The Conveyancing Committee would like to advise practitioners of the terms of a letter received from Revenue on the above topic:

"Revenue's view was sought as to whether section 29/53 of the *Stamp Duties Consolidation Act 1999* (SDCA) would apply in the case of specific documentation where there was a combined contract/building agreement for a new house/apartment.

"The documentation provided for a unitary contract for sale/lease of a site and the

construction of a house/apartment on the site in consideration of a composite monetary payment. This contract is given effect to by means of a deed of transfer/lease of the site and the house constructed thereon for a recited consideration of the total amount paid for the site and the house.

"Revenue have confirmed that, in the above circumstances, the deed of transfer/lease can be certified on the basis that section 29/53 of the SDCA does not apply, on the basis that the deed of trans-

fer/lease gives effect to the purchase of a house/apartment on its erection. Accordingly, where relief from stamp duty under section 92 SDCA is applicable, the relief will apply by reference to subsection 1(a)(iii) of section 92 by means of the reduction of the consideration (other than rent) for the sale by 75%.

"Where the house/apartment transaction is structured by means of a contract for the sale/lease of the site coupled with a separate building contract, the provisions of section

29/53 of the SDCA would apply.

"In these circumstances, where relief under section 92 SDCA is applicable, the charge to stamp duty will be based on the greater of (a) the consideration paid in respect of the site or (b) 25% of the aggregate consideration paid for the site and the building of the house/apartment as provided for in subsection (1)(a)(i) or (ii) of section 92."

[Assistant Principal Direct Taxes: Stamp Duty, CAT & CGT]
Conveyancing Committee

RETENTION OF UNITS IN APARTMENT DEVELOPMENT BY DEVELOPER: STAMP DUTY TREATMENT AND PRECEDENT DOCUMENTATION

As a solicitor acting for a developer of an apartment development will occasionally be instructed that the developer wishes to retain one or more units in the development. Typically, this will occur in a situation where the developer is building a block of apartments that it is selling by way of long leases. It contracts in the usual way to transfer the freehold reversion and the common areas to the management company when the last lease is granted.

During the course of development, it decides to retain one or more apartments for itself. As the developer cannot grant a lease to itself in respect of the apartment(s) to be retained, issues arise as to how and when the freehold reversion and the common

areas will be transferred, and as to how the title to the retained unit(s) will be held by the developer and any subsequent purchasers from the developer.

In the past, the practice was for the unsold apartment(s) to be transferred, together with the freehold interest and the common areas, by the developer to the management company and the management company would grant a leaseback of the unsold apartment(s) to the developer. It was Revenue practice in the above circumstances not to pursue a charge to *ad valorem* stamp duty.

The Conveyancing Committee proposed to Revenue a new way of dealing with this matter and a set of precedent documentation was drafted that accompanied the proposal.

Revenue confirmed that the new procedure would not give rise to a charge to *ad valorem* stamp duty in relation to the retained apartments, on the basis that no beneficial interest passes by virtue of any of the instruments executed in connection with the new procedure.

The structure of the new procedure is that the developer grants a lease of the unit it wishes to retain to a nominee, reciting the fact that this lease is being granted in trust for the developer, and in order to facilitate the transfer of the freehold reversion and common areas to the management company, and to enable the legal structure for the apartment block to be put in place. Immediately the lease is granted, the nominee/trustee exe-

cutes a declaration of trust in favour of the developer, the developer transfers the freehold reversion of all the leases, including the one to the nominee/trustee, to the management company and, finally, the nominee/trustee assigns the lessee's interest under the lease of the unit intended to be retained back to the developer.

More detailed particulars of the exchange of correspondence between the committee and Revenue on the stamp-duty treatment of this matter and outlining the new procedure, together with the **precedent documentation**, is available by logging on to the members' area of the Law Society website and clicking in turn on 'Society committees', 'conveyancing', and 'precedent documentation'.

Conveyancing Committee

legislation update



20 April – 18 May 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

Parental Leave Act 2006

Number: 13/2006

Contents note: Makes a number of amendments to the *Parental Leave Act 1998*, including the following: raises the maximum age of the eligible child from five to eight years, and to 16 years in the case of children with disabilities; extends parental leave entitlements to persons acting *in loco parentis* in respect of an eligible child; provides for a statutory entitlement to take the 14 weeks' parental leave in separate blocks of a minimum of six continuous weeks; provides that an employee who falls ill and, as a result, is unable to care for the child may postpone or suspend the parental leave for the duration of the illness; makes further provision in relation to the right to return to work; provides that employees who exercise the right to parental leave are protected from penalisation; and makes provision for statutory codes of practice on the manner in which parental leave and *force majeure* leave might be taken.

Date enacted: 18/5/2006

Commencement date: 18/5/2006

Registration of Deeds and Title Act 2006

Number: 12/2006

Contents note: Provides for

the establishment of 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. Provides a statutory basis for the registration of deeds and titles on computer and for a digital mapping system, with a view to preparing for an electronic conveyancing system. Repeals and re-enacts with amendments the law relating to the registration of deeds and other documents affecting land. Amends the law relating to the registration of title to land and amends sections 16 (restrictions on right to acquire fee simple) and 28 (effect of acquisition of fee simple on covenants) of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*.

Date enacted: 7/5/2006

Commencement date: 7/5/2006 for sections 76 and 77 (amendment of sections 16 and 28, respectively, of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*); commencement order(s) to be made for all other sections (per s2 of the act)

SELECTED STATUTORY INSTRUMENTS

An Bord Bia (Amendment)

Act 2004 (Commencement)

Order 2006

Number: SI 105/2006

Contents note: Appoints 28/2/2006 as the commencement date for section 24(a)(ii) of the act. Provides for public access to the register of potato growers and potato packers.

Disability Act 2005 (Code of Practice) (Declaration)

Order 2006

Number: SI 163/2006

Contents note: Declares that the code of practice on accessibility of public services and information provided by public bodies, set out in the schedule to this order, is an approved code of practice for the purposes of the *Disability Act 2005*.

Commencement date: 6/4/2006

Employment Regulation Order (Law Clerks Joint Labour Committee) 2006

Number: SI 249/2006

Contents note: Made by the

Labour Court on the recommendation of the Law Clerks Joint Labour Committee; fixes statutory minimum rates of pay and regulates statutory conditions of employment for certain workers employed in solicitors' offices.

Commencement date: 19/5/2006

European Communities (Compulsory Use of Safety Belts and Child Restraint Systems in Motor Vehicles) Regulations 2006

Number: SI 240/2006

Contents note: Implement directive 91/671/EEC and directive 2003/20/EC and extend the existing requirements in relation to the wearing of safety belts and child-restraint systems in motor vehicles.

Commencement date: 5/5/2006

European Communities (Free Movement of Persons) Regulations 2006

Number: SI 226/2006

Contents note: Give effect to directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the territory of the EU member states.

Commencement date: 28/4/2006

European Communities (Milk Quota) (Amendment) Regulations 2006

Number: SI 189/2006

Contents note: Amend the *European Communities (Milk Quota) Regulations 2000* (SI 94/2000), as amended, by increasing the off-farm income thresholds for partners in milk

District Court (Order 16) Rules 2006

Number: SI 238/2006

Contents note: Amend order 16 of the *District Court Rules 1997* (SI 93/1997) by the deletion of rule 5 (power to arrest without warrant – warrant may still issue), having regard to the judgment in *Aaron Judge v District Judge Scally* ([2005] IEHC 366) (www.baillii.org/ie/cases/IEHC/2005/H366.html).

Commencement date: 1/6/2006

District Court (Safety, Health and Welfare at Work Act 2005) Rules 2006

Number: SI 209/2006

Contents note: Insert a new rule 5 in order 100 of the *District Court Rules 1997* (SI 93/1997) to provide forms of court orders in relation to the *Safety, Health and Welfare at Work Act 2005*.

Commencement date: 22/5/2006

production partnerships, and by amending provisions in relation to family transfers of quota without land. Give further effect to regulation (EC) 1788/2003 and regulation (EC) 595/2004.

Commencement date: 1/4/2006

Finance Act 2005 (Chapter 3 of Part 2) Commencement Order 2006

Number: SI 229/2006

Contents note: Appoints 1/6/2006 as the commencement date for chapter 3 of part 2 of the *Finance Act 2005*. This chapter consolidates and updates the excise law on tobacco products.

Private Security (Complaints Procedures) Regulations 2006

Number: SI 153/2006

Contents note: Prescribe procedures in relation to the processing of complaints under section 39 of the *Private Security Services Act 2004*.

Commencement date: 29/3/2006

Private Security (Forms, Surrender of Licence and Offence Notification) Regulations 2006

Number: SI 152/2006

Contents note: Prescribe the following: the form of licences and identity cards to be issued under the *Private Security*

Services Act 2004; the form of register of licensees to be established and maintained by the Private Security Authority; procedures in relation to the surrender of expired, revoked or suspended licences and procedures in relation to the surrender of identity cards issued in respect of such licences; and procedures in relation to the notification by licensees of convictions and proceedings pending against licensees.

Commencement date: 29/3/2006

Private Security Services Act 2004 (Commencement) (Sections 29 to 33, 35 and 37 (part)) Order 2006

Number: SI 151/2006

Contents note: Appoints 1/4/2006 as the commencement date for sections 29 to 33 and section 35 of the act. Appoints 1/4/2006 as the commencement date for section 37 of the act for the purposes of its application in

relation to a door supervisor (licensed premises) or a security guard (static) within the meaning of the *Private Security (Licensing and Standards) Regulations 2005* (SI 834/2005).

Railway Safety Act 2005 (Section 5 and Parts 4, 9 and 10) (Commencement) Order 2006

Number: SI 215/2005

Contents note: Appoints 1/5/2006 as the commencement date for section 5 (repeals); part 4 (ss38-50) (safety management systems and safety case), other than section 43; part 9 (ss84-91) (intoxicants and persons working on railway infrastructure) and part 10 (ss92-112) (offences by persons working on railway infrastructure) of the act; appoints 1/9/2006 as the commencement date for section 43 of the act.

Social Welfare Law Reform and Pensions Act 2006


(Sections 5 and 6) (Commencement) Order 2006

Number: SI 205/2006

Contents note: Appoints 1/1/2006 as the commencement date for sections 5 and 6 of the act. These sections provide that income earned by a home childminder, in accordance with section 216C of the *Taxes Consolidation Act 1997*, will be liable for a single self-employment social insurance contribution of €253 per annum.

Social Welfare Law Reform and Pensions Act 2006 (Sections 26 and 27) (Commencement) Order 2006

Number: SI 206/2006

Contents note: Appoints 24/4/2006 as the commencement date for section 26 of the act (technical amendment in relation to orphan's (non-contributory) pension); appoints 29/5/2006 as the commencement date for section 27, insofar as it relates to one-parent family payment (other than where payable in respect of a widow or widower); and appoints 30/5/2006 as the commencement date for section 27, insofar as it relates to one-parent family payment payable in respect of a widow or widower. 

*Prepared by the
Law Society Library*

Rules of the Superior Courts (Proceeds of Crime and Financing of Terrorism) 2006

Number: SI 242/2006

Contents note: Amend order 11, rule 1, and insert a new order 136, 'Proceeds of crime and financing of terrorism', to regulate the procedure in proceedings under the *Proceeds of Crime Acts 1996 and 2005*, the *Criminal Assets Bureau Acts 1996 and 2005*, the *Criminal Justice Act 1994* (as amended) and the *Criminal Justice (Terrorist Offences) Act 2005*, and provide for service out of the jurisdiction in such proceedings.

Commencement date: 5/6/2006



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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Solicitors Disciplinary Tribunal

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

In the matter of Christopher B Walsh, solicitor, carrying on practice under the style and title of Christopher B Walsh Solicitor at 90 Park Drive Avenue, Castleknock, Dublin 15 and Main Street, Tinnahinch, Graigueenamanagh, Co Kilkenny, and in the matter of the *Solicitors Acts*

1954-2002 [4940/DT37/05]
Law Society of Ireland
(applicant)
Christopher B Walsh
(respondent solicitor)

On 10 January 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his prac-

tice as a solicitor in that he had failed to file his accountant's report for the year ended 28 February 2004 with the Society in a timely manner, having only filed same with the Society on 1 June 2005, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (statutory instrument no 421 of 2001).

The tribunal ordered that the respondent solicitor:

- Do stand censured,
- Pay a sum of €1,000 to the compensation fund,
- Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

NOTICE

HIGH COURT NON-JURY LIST: CORK

The High Court will sit in Cork for two weeks commencing on Monday 6 November 2006 to hear non-jury actions. A call-over of the non-jury list will take place in Cork on 15 June 2006.

Where there is the consent of all parties, application can be made at that call-over to have a case moved to the list for hearing in Cork in November. In the event that the case is not dis-

posed of during the November session, the case will not lose its place in the Dublin non-jury list.

Those wishing to have cases moved to the Cork list should

ensure that they are in attendance at the call-over, as otherwise it will be assumed that the case is to remain in the Dublin list.

Litigation Committee

Law Society launches *Diploma in Employment Law*

The Law Society has launched its new *Diploma in Employment Law*. The course starts on 5 October 2006 and runs until 29 March 2007 on Thursday evenings from 6.30pm–9.30pm. The fee is €2,100 and includes all materials and the examination fee. The full CPD group-study requirement (15 hours) can be claimed, and includes management and professional development.

This course is designed to ensure that practitioners are equipped with the latest information on all aspects of employment legislation. This includes employment contract matters, atypical workers, termination of employment, and health and safety. The diploma is also likely to appeal to non-solicitors, such as human resource professionals and training managers.

Other Law Society diploma courses starting in 2006 include:

- Finance law: Tuesday 19 September 2006
- Commercial conveyancing: Saturday 4 November 2006
- Diploma in Property Tax* (Cork): November/December 2006

For further information, 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.

BRIEFING

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News from Ireland's online legal awareness service
Compiled by Flore Bouhey for FirstLaw

COMPANY LAW

Restoration to register

Company struck off register for failure to file returns – application to restore company to register – whether relief should be granted – Companies (Amendment) Act 1982 (no 10), section 12B.

The company was struck off the register in 1999 for failure to file annual returns from 1994 onwards. The petitioner, in his capacity as a member and creditor of the company, applied to have the company restored to the register, pursuant to section 12B(3) of the *Companies (Amendment) Act 1982*. The notice party contended that the petitioner did not have *locus standi* to bring the application and that the sole purpose of the application was to enable the petitioner to prosecute an unmeritorious application pursuant to section 205 of the *Companies Act 1963*.

Laffoy J made an order restoring the company to the register, holding that it would be unjust to make it impossible for the petitioner to pursue the remedies he sought in the section 205 application and that a limited discretion was given to the court in section 12B(5) of the 1982 act, and subsection 6 was not more rigorous than subsection 5 in this respect. In relation to both subsections, the legislative intent was clear, which was to ensure that the striking-off mechanism (as a deterrent against breach of company and tax law) was not devalued, which would be the case if a company could be restored to the register without the breach that gave rise to its

striking-off being remedied.

***In Re New Ad Advertising Co Ltd*, High Court, Ms Justice Laffoy, 14/11/2005 [FL12218]**

Liquidation

Whether a body corporate can be a shadow director for the purposes of an application under s150 of the Companies Act 1990.

The liquidator of Worldport Ireland Limited applied for orders restricting the right of involvement of three entities in limited liability companies within the state, under the provisions of s150 of the *Companies Act 1990*, as amended. One of those entities, a body corporate situated in the USA, whom the liquidator maintained acted as a shadow director of the liquidated company, sought adjudication on two preliminary issues: namely, whether a body corporate could be a shadow director and, further, whether a body corporate, incorporated outside the jurisdiction, could be a shadow director for the purposes of an application for restriction under s150.

O'Leary J answered the two preliminary points in the affirmative, holding that it was clear from the legislation that it was intended that shadow directors were to be considered as a separate entity from directors. A body corporate could be a shadow director both generally and for the purpose of a restriction under s150. Furthermore, a body incorporated outside the state could be a shadow director for the purposes of section 150.

***In the Matter of Worldport Ireland Ltd (In Liquidation)*, High Court, Judge O'Leary, 16/2/2005 [FL12203]**

CONTEMPT OF COURT

Injunction

Civil contempt – committal order – purpose – coercive or punitive – failure to comply with injunction granted by civil court – whether court has jurisdiction to impose on its own motion sanctions on party that has previously been subject of committal order – whether appropriate to do so – period of detention – whether penalty served sufficient.

The plaintiff had obtained statutory authority, pursuant to the *Gas Act 1976*, to construct a gas pipeline through the defendants' lands, in respect of which they had obtained a compulsory purchase order. On 10 January 2005, the defendants prevented the plaintiff's agents from entering the lands to carry out surveys for the construction of the pipeline. The High Court had granted the plaintiff an interlocutory injunction restraining the defendants from continuing to interfere with the entry by the plaintiff onto the lands. The High Court, in June 2005, made an order committing the first to third defendants and two other persons, not party to the proceedings, to prison for failure to comply with the interlocutory injunction. They remained in prison for 94 days. Following the plaintiff's application for the discharge of the injunction, the contemnors were released in September 2005. The High Court then adjourned for argument the issue of whether, having regard to the contempt found against each of the contemnors and their refusal to purge their contempt, it was appropriate that the court should exercise its punitive

powers in respect of any of them.

Finnegan P declined to impose a further penalty on the contemnors, holding that committal for civil contempt was primarily coercive, its object being to ensure that court orders were complied with. However, in cases of serious misconduct, the court had jurisdiction to punish the contemnor. If the punishment was to take the form of imprisonment, then that imprisonment should be for a definite term. Moreover, committal by way of punishment should only be engaged where there had been serious misconduct, and in such circumstances it could be engaged in order to vindicate the authority of the court. In this respect, where the interest of the public in general was engaged or where there was a gross affront to the court, the court had an inherent power to proceed of its own motion to ensure that its orders were not put at nought. In this case, the period of 94 days spent in custody, while coercive in intent, contained a sufficient punitive element.

***Shell Ireland Ltd v McGrath*, High Court, Mr Justice Finnegan, 7/4/2006 [FL12247]**

CONSTITUTIONAL LAW

Privacy

Case stated – evidence – whether accused's constitutional rights breached.

The accused was charged with damage to property. This case stated posed the question whether, if the complainant arranged for continuous video

surveillance of the front of his residence from the upstairs window of a neighbour's house, which resulted in video evidence that also incidentally included adjacent frontage of the accused's dwelling, the evidence obtained breached the accused's constitutional rights.

Pear J answered the questions posed in the negative, holding that the taking of the video footage was not an act that constituted an unconstitutional invasion of the right to privacy.

Atherton v DPP, High Court, Mr Justice Peart, 21/12/2005 [FL12187]

CONTRACT LAW

Property

Vendor and purchaser – practice and procedure – notice to complete served by vendor – whether validly served – whether court has jurisdiction to determine question as to validity of notice to complete on vendor and purchaser summons – Vendor and Purchaser Act 1874, section 9.

The plaintiffs contracted with the defendant for the purchase from them of an apartment. The vendor served a notice to complete on the plaintiffs. The plaintiffs sought a declaration that the notice was invalid, on the basis that the property was not complete at the time it had been served, and further sought an abatement in the purchase price for alleged misrepresentation on the part of the vendor in, among other things, misrepresenting the quality of appurtenances and services available to the property.

Laffoy J dismissed the plaintiff's claim, holding that the court had jurisdiction to determine a question as to the validity of a notice to complete on a vendor and purchaser summons. Section 9 of the *Vendor and Purchaser Act 1874* empowers the court to determine any claim for compensation on a

vendor and purchaser summons. However, the claim for compensation had to arise out of or be connected with the contract. It was not possible to determine whether the notice to complete was effective or not, due to the inadequate nature of the evidence before the court.

Hegarty v Fusano Properties Ltd, High Court, Ms Justice Laffoy, 24/2/2006 [FL12158]

CRIMINAL LAW

Extradition

Delay – European Arrest Warrant Act 2003 – European Convention on Human Rights and Fundamental Freedoms – whether the surrender of the respondent to the British authorities would result in a breach of his constitutional rights and/or convention rights, having regard to the delay in pursuing the matter.

The British authorities sought the surrender of the respondent on foot of a European arrest warrant in order for the respondent to stand trial for a number of offences alleged to have been committed between May 1978 and July 1982. The respondent resisted the application for his surrender on a number of grounds, including, but not limited to, an objection on the basis that his surrender was prohibited by section 37 of the 2003 act, as it would be incompatible with the state's obligations under the convention and the protocols thereto, and, further, that the delay on the part of the authorities in requesting the surrender of the respondent was excessive, unconscionable and inexcusable in all the circumstances, and prejudiced him in his capacity to defend himself.

Pear J refused the application, holding that, notwithstanding the actual prejudice established by the respondent as a result of the delay in seek-

ing his surrender, the lapse of time between the commission of the alleged offences and the application for surrender was such as to give rise to a presumption that the respondent would not receive a fair trial. It would be incompatible with the state's obligations under the convention to return the respondent to the requesting state in the hope that his rights would be vindicated there.

Minister for Justice, Equality and Law Reform v Stapleton, High Court, Mr Justice Peart, 21/2/2006 [FL12237]

Delay

Constitution – right to trial with reasonable expedition – sexual offences – delay in making complaint – dominion – whether delay explicable by reference to alleged crime – whether real risk of unfair trial.

The applicant had been charged with indecent assault against two pupils of his, who were minors at the time of the alleged offences in 1982 and 1984, namely DC and MC. He obtained leave from the High Court to restrain the further prosecution of the charges on the grounds that his constitutionally protected right to a trial with reasonable expedition had been violated on the basis of both complainant and prosecutorial delay. MC provided evidence that he only reported the abuse in 1996, due to the inhibitory effects of it on him up to then. DC reported his alleged abuse in 2002, but provided no explanation for the delay in making his complaint.

Quirke J granted the relief sought in respect of the charges relating to DC but refused the relief sought in respect of the charges relating to MC, holding that the right to an expeditious trial, which derived from article 38.1 of the Constitution and was also protected by article 6 of the *European Convention on Human*

Rights, had a separate existence independent from the right to a fair trial and that the courts would intervene to prohibit the trial of criminal offences on the sole ground of inexplicable or culpable delay on the part of prosecuting authorities in bringing an accused to trial. The first inquiry should be as to what were the reasons for the delay and whether the court was satisfied that the delay in making the complaint was referable to the accused's own action. The applicant's constitutional right to a trial with reasonable expedition for the alleged offences against MC had not been breached by the delay, since it was referable to his own conduct. The period of 16 months that elapsed between the submission of the file to the prosecution solicitor and the return for trial was not excessive and was certainly not culpable.

D(C) v DPP, High Court, Mr Justice Quirke, 15/12/2005 [FL12195]

Evidence

Cross-examination – evidence of disposition – prejudicial questioning – duty of prosecuting counsel – justification for cross-examination – Courts of Justice Act 1924, s29.

This was an appeal pursuant to s29 of the *Courts of Justice Act 1924*. The Court of Criminal Appeal identified points of law of exceptional public importance, but the appeal was disposed of on a narrower issue.

The Supreme Court (Murray CJ; Denham, Hardiman, Fennelly and McCracken JJ) allowed the appeal and declined to order a re-trial, holding that the verdict of the jury should be set aside on the grounds that there were such departures from the standards of proper practice to be observed by counsel for the prosecution as to deny the accused the substance of a fair trial. Cross-examination of the

appellant was used to portray him as one who "fitted the bill" of a paedophile. This was the use of evidence relating to previous misconduct or character, which had been regarded as inadmissible for centuries. It was also unjustified by anything said in the course of the defence case.

O(D) v DPP, Supreme Court, 8/3/2006 [FL12202]

LAND LAW

Mortgage

Judgment mortgage – lis pendens – Registration of Title Act 1964 – whether any interest that the second-named defendant may acquire as a result of family law proceedings in the property in respect of which the judgment mortgage was registered would take priority to the judgment mortgage of the plaintiff.

The plaintiff, who had converted a judgment obtained against the first-named defendant into a judgment mortgage against the interest of that defendant in a property, consisting of the family home that was owned by both defendants, sought a declaration that the amount of the judgment, together with accruing interest, was due and, further, that the judgment mortgage stood well charged over the interest of the first-named defendant in the said lands. However, following the separation of the two defendants, who were previously married, the second-

named defendant instituted family law proceedings, and she contended that any interest in the family home that the court may direct to be transferred to her as a result of the family law proceedings would rank in priority to the judgment mortgage in favour of the plaintiff.

Clarke J adjourned the case until after the conclusion of the family law proceedings, holding that the plaintiff, as a judgment mortgagee, was a volunteer and, accordingly, was bound by a *lis pendens* irrespective of whether it had notice of it and irrespective of whether the *lis pendens* was registered or not. Therefore, any interest that the second-named defendant might acquire as a result of the family law proceedings would rank in priority to the interest of the plaintiff under the judgment mortgage, by virtue of the fact that the family law proceedings were commenced and in being as of the time of the registration of the judgment mortgage affidavit.

ACC Bank Plc v Markham and Casey, High Court, Mr Justice Clarke, 12/12/2005 [FL12191]

LANDLORD AND TENANT

Damages

Lease – covenant – construction – landlord's covenant to repair and compensate for damage caused by

failure to repair – whether breach of covenant.

The plaintiff leased a restaurant premises from the defendants. The defendant was found by the High Court to be liable for the repair of a flat roof over the premises, pursuant to a covenant to repair contained in the lease. Clause 5.4.1 of the lease, however, restricted the liability of the landlord to the tenant for damage caused by the poor order or condition of the premises, provided that it "shall apply only to those parts of the estate the poor order or condition of which would materially affect the carrying on of business in the demised premises". The plaintiff contended that it had met the threshold for the award of damages set out in clause 5.4.1. The defendant denied that the plaintiff had met such threshold.

O'Neill J dismissed the plaintiff's claim for damages for consequent damage caused by the poor repair of the roof, holding that before liability could attach to the defendant under the lease, the plaintiff had to show, on the balance of probabilities, that the poor order or disrepair of the roof materially affected the carrying on of business. In this regard, 'materially' meant in a substantial way. In that respect, the clause was clear from its express terms.

Jiminez v Morrissey, High Court, Mr Justice O'Neill, 31/1/2006 [FL12157]

TORT

Injunction

Passing-off – agreement to sell products in separate market areas – non-compete clause – whether agreement breached – whether passing-off occurred – balance of convenience.

The defendants were accused of passing-off in this jurisdiction goods that were, by agreement, to be sold and distributed by the plaintiff. An injunction was sought to restrain this activity. The defendants distinguished their product by use of the name 'C-Tech' and not using the name used by the plaintiffs, 'Contech'.

Geoghegan J found that the principles laid down in *Miss World Ltd v Miss Ireland Beauty Pageant* ([2004] IR 394) were satisfied, holding that the balance of convenience favoured granting the injunction, notwithstanding that damages would not be an adequate remedy should the plaintiffs lose their case.

Contech Building Products Ltd v Walsb & Others, High Court, Mr Justice Geoghegan, 17/2/2006 [FL12211] G

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

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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

For Irish family law, *Brussels II* came as something of a shock. Its aim of standardising rules relating to the recognition of foreign divorces and family law judgments seemed relatively innocuous. Yet in its detailed workings, *Brussels II* seemed to alter in the most radical fashion the basis on which certain family law judgments, and in particular decrees of divorce, would be recognised. The overriding concern was that the restrictive divorce regime laid down in the Constitution would ultimately be undermined, with the prospect of divorces obtained abroad being more easily recognised in Ireland.

The *Brussels II Regulations* have generally helped the recognition of foreign divorces in Ireland. They have involved important changes to Irish law, both as regards taking jurisdiction and recognising divorces granted in other EU states. As regards recognition, the automatic recognition has alleviated many problems previously encountered by foreign divorcees. Basically, the Registrar of Marriages in Ireland is required to have an attitude of *favor divortii*, and now gives a wider berth to EU member state divorces.

Jurisdiction

The rules governing jurisdiction on divorce, legal separation and marriage annulment in *Brussels II bis* broadly mirror the repealed *Brussels II* provisions.

Article 8(1) of *Brussels II bis* governs the issue of jurisdiction in matters of parental responsibility and is modelled on article



Brussels II bis governs the issue of jurisdiction in matters of parental responsibility

5 of the 1996 *Hague Convention*. It attributes jurisdiction to the state of the child's habitual residence and provides that: "The courts of a member state shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that member state at the time the court is seised."

While alternative grounds of jurisdiction are provided for matrimonial matters, no alternative grounds for jurisdiction are provided in respect of parental responsibility matters, which is a welcome development from an Irish perspective.

Essentially, jurisdiction is to be based on the child's habitual residence at the time the court is seised. There are, however, a number of limited exceptions.

One such exception is to allow jurisdiction in respect of access to a court in the child's former habitual residence for three months following the child's acquisition of a new habitual residence, for the purpose of modifying a judgment

on access rights issued in the former state of habitual residence, provided the holder of the access rights continues to have his or her habitual residence in that state (article 9). The jurisdiction ceases when the judgment in the matrimonial proceedings becomes final, or, where proceedings are still pending at that date, a judgment in the children's proceedings becomes final. A 'final judgment' in the context of children's cases has been held in Ireland to be an order for permanent relocation outside Ireland – see, for example, *Re G (Foreign Contact Order: Enforcement)* ([2003] EWCA Civ 1607; [2004] 1 FLR 378).

For example, where a child moves lawfully from the Netherlands to Ireland, the courts in the Netherlands retain jurisdiction for a three-month period. This jurisdiction is confined, however, to modification of the existing access order. Moreover, it only applies to lawful moves, and only in cases

where a decision on access has been made in advance of the relocation. This provision is conditional upon the person enjoying the benefit of the access order remaining habitually resident in the Netherlands. Jurisdiction under article 9 may be lost if the left-behind parent agrees to participate in proceedings involving the child in Ireland without contesting jurisdiction.

Article 9 appears to be a sensible transitional provision, but seems to be founded on the assumption that a child automatically acquires habitual residence on moving to the new state. What then is the meaning of the term 'habitual residence'? Habitual residence has not been defined in *Brussels II bis*. It has long been argued that there is no need for such a definition and that the words should bear their ordinary and natural meaning and are not a term of art (*CM and OM v Delegacion de Malaga and Others* [1999] 2 IR 363; see Rogerson ICLQ 49 (2000) 86, 87; McClean (Morris) p34 justifying this policy.) In the absence of a definition, habitual residence will be interpreted in a manner similar to that adopted by the ECJ in relation to other community instruments. In *Robin Swaddling v Adjudication Officer* (Case C90/97 [1999] ECR I-1100; see also *Gingi v Secretary of State for Work and Pensions* [2002] 1 CMLR 20), the ECJ held, in considering the applicant's entitlement for social security, that the length of residence in the member state in which payment of the benefit at issue is sought

cannot be regarded as an intrinsic element of the concept of residence. While this interpretation of habitual residence may be distinguished on its facts, and the outcome justified as serving a different purpose, if it were applied to *Brussels II bis* it would signpost a departure from the current interpretation of the word in Ireland. It would result in a person returning to live in Ireland, having been in Sweden, for example, for a number of years, immediately reacquiring an Irish habitual residence upon his/her return.

The term 'habitual residence' has been interpreted in Ireland to mean not only an intention to reside but also to imply a physical presence in the jurisdiction for an appreciable period of time. In *CM and OM v Delegacion de Malaga and Others*, McGuinness J held habitual residence to be a factual concept based on residence for a reasonable length of time, summarising the position as follows: "Having considered the various authorities opened to me by counsel, it seems to me to be settled law in both England and Ireland that 'habitual residence' is not a

term of art, but a matter of fact, to be decided on the evidence in this particular case. It is generally accepted that where a child is residing in the lawful custody of its parent (in the instant case, the mother), its habitual residence will be that of the parent. However, the habitual residence of the child is not governed by the same rigid rules of dependency as apply under the law of domicile, and the actual facts of the case must always be taken into account. Finally, a person, whether a child or an adult, must, for at least some reasonable period of time, be actually present in a country before he or she can be held to be habitually resident there."

It is necessary to refine the last sentence of the foregoing paragraph in the light of the Supreme Court decision in *PAS v AFS* (unreported, 29 November 2004). Fennelly J held that it was possible for a child to be habitually resident in a place where that child has not been. He stated: "I do not say that the place of birth of a child is an irrelevant fact. Clearly, it will be of prime importance in many cases ... I do say, however, that to exclude, in every case, the pos-

sibility of a child being habitually resident in a country where it has never physically been is to introduce an unjustified restriction into the open and flexible notion adopted by the convention."

In *SR v MMR* ([2006] IESC 7), the Supreme Court held that holders of parental responsibility must consent to the acquisition of a new habitual residence other than the joint habitual residence, and one cannot unilaterally make that choice for the other. Denham J stated: "Submissions were made that once the mother had come to Ireland with the two minors, they acquired a new habitual residence. However, absent the father's consent or a court order, the mother may not unilaterally alter the minor's habitual residence."

The dissonance between the ECJ's interpretation of habitual residence and that of the Irish courts makes it impossible to predict how the concept of habitual residence is going to work out in practice as a jurisdictional base.

Child abduction

Under *Brussels II bis*, as is the position under the 1980 *Hague Convention*, the courts in the

state of the child's habitual residence are to have jurisdiction to make rulings on custody and access rights. In *FL v CL* (unreported, High Court, 25 January 2006), Finlay Geoghegan J stated the position as follows: "It [is] important to note that, whilst the court, in exercising a discretion under article 13 [of the 1980 *Hague Convention*] to determine whether or not to make an order for return, may take into account the interests of the child, it does not appear that it is intended to engage in the type of wider welfare inquiry in relation to the future needs of the child which it would do if the application were a dispute in relation to custody or residence between the parents. The court, in determining whether or not to make an order for return under article 13, is not determining such a custody or residence dispute. Article 11 of regulation 2201/2003 retains to the courts of the state of habitual residence of the child, prior to the wrongful removal or retention, the right to decide on a question of custody, notwithstanding an order for non-return."

Article 11(3) of *Brussels II bis* provides that the court shall, unless exceptional circum-

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stances make this impossible, issue its order no later than six weeks after it is seised of the application. This time limit has proven to be "quite unrealistic" (Thorpe LJ in *Re W (Abduction: Domestic Violence)* [2005] 1 FLR 7272).

Defences to recognition of a judgment

A court in one member state shall not recognise any decision that is "manifestly contrary to the public policy" of the member state (article 22(a)). Such a conflict must be extremely profound in order to justify refusal. It is not sufficient, for instance, simply to state that the decision is one that the Irish courts could not make or would not have made. The public policy interest in enforcing foreign judgments of competent EC courts is likely to be so strong that it is difficult to conceive of an example of a decision that would not be enforced.

A relevant and instructive case is *W v W (Foreign Custody Order: Enforcement)* ([2005] EWHC 1811 Fam). This case commenced in Ireland, where McKechnie J, having had the benefit of expert evidence, held that the three children who were the subject matter of the

proceedings should remain in the joint custody of both parents with day-to-day care and control to pass to the mother, although the children moved with their father to England. The father, who continued to live with the children in England, refused to return the children to Ireland. On 30 July 2004, Abbott J, at a hearing in Dublin, held the father to be in breach of the McKechnie J's order and ordered him to return the children forthwith. The father did not appeal the Irish order, but it remained unimplemented. The mother applied to the English courts for recognition and enforcement of the Irish High Court order. The father argued, *inter alia*, that the Irish order should not be recognised on public policy grounds, as it did not take into account the best interests of the child as the "primary" consideration, as required by English law. Singer J rejected this argument stating: "The proposition ... that there are strong and plain welfare grounds for not enforcing the order (which in itself overstates the evidence in the case) applies the wrong test. There is no basis upon which recognition of this order made *after* consideration of detailed evidence, on express

welfare principles, and *after* a lengthy hearing, could possibly be considered to be contrary to public policy. On the contrary, its non-recognition would be contrary to public policy."

The voice of the child in *Brussels II bis*

While *Brussels II bis* established the general right of the child to be heard in family proceedings, child-consultation procedures remain an issue of national law. This is to be regretted, and will result in the child's right to be heard being dependent on the member state in which he or she is habitually resident. The vulnerable position of the migrant child arising out of the divergent child-consultation procedures between the member states needs to be addressed. This would ensure greater uniformity between member states and have a significant impact on honouring not only the terms but also the spirit of article 12 of the 1989 *United Nations Convention on the Rights of the Child*.

In practice, a child is rarely separately represented in Ireland. Where the views of the child are heard, they are normally put forward through the parents or an independent child

expert. In the recent case of *FL v CL*, Finlay Geoghegan J states the position as follows: "Article 11.2 of regulation 2201/2003 obliges this court to ensure that a child is given the opportunity to be heard during the proceedings 'unless this appears inappropriate having regard to his or her age or degree of maturity'. Having regard to the age of each of the children, I am satisfied that it was only appropriate that O [ten years old] should be interviewed in relation to the order for return sought. Further, having regard both to the age and to the degree of maturity of O, I am satisfied that it was appropriate that she be heard in the proceedings by the assessment conducted by Dr B and his report to the court. Further, it would not have been appropriate that O or any of the other children be brought to court or be asked to give evidence either formally or informally."

Moreover, it is very unusual for a judge in Ireland to interview a child. Instead, the judge will tend to rely on an expert who has seen the child. **G**

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

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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 2 June 2006)

Regd owner: Maura Burke; folio: 18316F; lands: Tiknock and barony of Rathvilly; **Co Carlow**
Regd owner: Carlow Urban District Council; folio: 8345; lands: Carlow and barony of Carlow; **Co Carlow**
Regd owner: Sean Galligan, Kilnavara, Cavan, Co Cavan; folio:

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All notices must be paid for prior to publication. **CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for July Gazette: 23 June 2006. For further information, contact Catherine Kearney or Valerie Farrell on tel: 01 672 4828 (fax: 01 672 4877)

25830; lands: Swellan Upper; area: 0.2074 hectares; **Co Cavan**

Regd owner: Alice O'Reilly, Grellagh, Carrickaboy, Co Cavan; folio: 13728; lands: Kellyconnan; area: 5.4658 hectares; **Co Cavan**

Regd owner: Paul Cosgrave and Teresa Cosgrave; folio: 31257F; lands: townland of Ballylughnan and barony of Tulla Lower; area: 0.4630 hectares; **Co Clare**

Regd owner: Thomas Griffin and Sheila Griffin; folio: 23116F; lands: townland of Clonroadmore and barony of Islands; **Co Clare**

Regd owner: Brendan O'Mara; folio: 26172F; lands: townland of Meelick and barony of Bunratty Lower; area: 1.0950 hectares; **Co Clare**

Regd owner: David Hogan and Siobhan Hogan; folio: 4626F; lands: townland of Knockballynameth and barony of Bunratty Lower; **Co Clare**

Regd owner: Lilian Jane Giles; folio: 42346; lands: plot of ground being part of the townland of Tullyneasky East in the barony of Ibane and Barryroe and county of Cork; **Co Cork**

Regd owner: William Hanley; folio: 116010F; lands: plot of ground known as no 2 Lotamore Crescent, Mayfield, in the parish of St Finbar and in the county borough of Cork; **Co Cork**

Regd owner: Iris Steele; folio: 27050; lands: plot of ground being part of the townland of Whiterock in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Denis Flynn; folio: 32979; lands: plot of ground being part of the townland of

Cloghanughera in the barony of Orrery and Kilmore and county of Cork; **Co Cork**

Regd owner: Joseph M Byrne, Croagh, Dunkineely, Co Donegal; folio: 30536; lands: Croagh; area: 6.7381 hectares; **Co Donegal**

Regd owner: Thomas Cannon and Josephine Cannon; folio: DN88900L; lands: an apartment known as 14 First Floor, Chandler's Guild, James Street, in the parish of St James, district of South Central; **Co Dublin**

Regd owner: Alice Downes and George Downes; folio: DN158840F; lands: a plot of ground known as 1 Roseglan Avenue in the parish of Kilbarrack and in the district of Kilbarrack; **Co Dublin**

Regd owner: Denis Healy, 4 Benburb Street, Dublin 7; folio: DN2822; lands: property situate in the townland of Mountseskin and barony of Uppercross; **Co Dublin**

Regd owner: Finbarr Linihan; folio: DN9761L; lands: property situate in the townland of Rathcoole and barony of Newcastle; **Co Dublin**

Regd owner: Noel Philip McDonald and Angela Mary McDonald; folio: DN6212F; lands: a plot of ground situate on the west side of the main road to Enniskerry in the village of Golden Ball in the townland of Kiltiernan and domain and barony of Rathdown; **Co Dublin**

Regd owner: Mary Peavoy and Raymond Peavoy; folio: DN112411F; lands: property known as 66 Kippure Park, Finglas South, in the parish of Finglas, district of Finglas North; **Co Dublin**

Regd owner: Bridie Quinn; folio:

DN745L; lands: property known as 53 Larkfield Gardens, situate on the west side of Larkfield Gardens, in the parish of St Peter, district of Rathmines; **Co Dublin**

Regd owner: Seamus Murphy; folio: DN52512F, DN19613, DN9480 1F; lands: property situate in the townland of Hollywood Great and barony of Balrothery East; **Co Dublin**

Regd owner: Pdraig O'Henain; folio: DN12030L; lands: the property situate to the south of Clonsilla Road in the parish of Clonsilla, town of Blanchardstown; **Co Dublin**

Regd owner: Frances Hogan; folio: DN39921L; lands: property situate in the townland of Corduff and barony of Castleknock; **Co Dublin**

Regd owner: Patrick Connole and Eileen A Connole; folio: 4565F; lands: townland of Gortbeg and barony of Clare; **Co Galway**

Regd owner: Evelyn McDermott; folio: 59747F; lands: townland of (1) and (3) Ballinvoher (ED Donaghpatrick), (2) Ballinvoher (ED Deerpark) and barony of (1), (2) and (3) Clare; area: (1) 6.6010 hectares, (2) 3.0930 hectares, (3) 0.3360 hectares; **Co Galway**

Regd owner: Martin Walshe; folio: 26180F; lands: townland of Killarainy and barony of Moycullen; **Co Galway**

Regd owner: Maurice O'Halloran and Bridget O'Halloran; folio: 8203F; lands: townland of Cloonalour and barony of Trughanacmy; **Co Kerry**

Regd owner: James Walsh; folio: 2507 Co Kerry; lands: townland of

Lacka West and barony of Clanmaurice; **Co Kerry**
 Regd owner: Jonathan Fitzgerald; folio: 33187F; lands: townland of Ballycaneen and barony of Corkaguiny; **Co Kerry**
 Regd owner: Augustine Keenan and Stephanie Keenan; folio: 22777F; lands: Silliot Hill, Kilcullen; **Co Kildare**
 Regd owner: Kildare County Council; folio: 36647F; lands: townland of Kildare and barony of Offaly West; **Co Kildare**
 Regd owner: Aidan Shirley and Robin Skelton; folio: 5980; lands: townland of Naas West and barony of Naas North; **Co Kildare**
 Regd owner: Robert Reid and Jennifer Reid; folio: 6758F; lands: townland of Newtown and barony of North Salt; **Co Kildare**
 Regd owner: Aidan Commings; folio: 20482F; lands: townland of Kingsfurze and barony of Naas North; **Co Kildare**
 Regd owner: Michael Bergin (deceased); folio: 7303; lands: Graiguedrisley and Clonmeen

South and barony of Clandonagh; **Co Laois**
 Regd owner: Hubert Deegan; folio: 4030; lands: Coolroe and barony of Portnahinch; **Co Laois**
 Regd owner: Rosemary Rowley, 34 Ruben Street, Dublin; folio: 3749F; lands: Carrickaport; area: 2.1090 hectares; **Co Leitrim**
 Regd owner: Tom Corcoran; folio: 30038F; lands: parish of St Johns; **Co Limerick**
 Regd owner: John McCormack; folio: 2956F; lands: townland of Pallashill and barony of Coonagh; **Co Limerick**
 Regd owner: Patrick and Jane Regan, Derryoghill, Killashee, Co Longford; folio: 9362; lands: Derryoghill; area: 14.9847 hectares; **Co Longford**
 Regd owner: Hibernian Inns Limited; folio: 7552F; lands: townland of Quignamanger and barony of Tireragh; area: 0.7628 hectares; **Co Mayo**
 Regd owner: Seamus McCaul and Jacqueline McCaul, Mayberry Pines, Tuiterath, Navan, Co Meath; folio: 5602F; lands: Tuiterath; area: 0.2276; **Co Meath**
 Regd owner: Desmond Leslie, Castle Leslie, Glaslough, Co Monaghan; folio: 19660; lands: Tonyhamigan; area: 24.4329 hectares; **Co Monaghan**
 Regd owner: Patrick Briody; folio: 14886; lands: Ballinrahin and barony of Coolestown; **Co Offaly**
 Regd owner: Martin Glennon and Ann Glennon; folio: 20641; lands: townland of Cloonfad East and barony of Castlereagh; area: 0.0638 hectares; **Co Roscommon**
 Regd owner: Mary Kenny; folio: 15267; lands: townland of Carrowdangan and barony of Ballymoe; area: 24 acres, 3 roods, 30 perches; **Co Roscommon**
 Regd owner: Sean Raftery, Valeview, Castlereagh, Co Roscommon; folio: 18410; lands: townland of Lissalway and barony of Castlereagh; area: 13.396 hectares; **Co Roscommon**
 Regd owner: Martin Glennon and Ann Glennon; folio: 15649; lands: townland of Cloonfad East and barony of Castlereagh; area: 0.0809 hectares; **Co Roscommon**
 Regd owner: Brian Reynolds (deceased); folio: 10545; lands: townland of (1) Carrickilla, (2) Cloongasny Beg and barony of (1) and (2) Roscommon; area: (1) 5.9969 hectares, (2) 0.6525 hectares; **Co Roscommon**
 Regd owner: Michael Quinlan; folio: 11152; lands: townland of Athnid More and barony of Eliogarty; **Co**

Tipperary
 Regd owner: Frank Laherty; folio: 9236; lands: townland of Crohane Upper and barony of Slievardagh; **Co Tipperary**
 Regd owner: Daniel A McGrath; folio: 29310; lands: townland of Glenbane and barony of Clanwilliam; **Co Tipperary**
 Regd owner: Ian Bellingham and Sylvia Bellingham; folio: 24887F; lands: plot of ground being part of the townland of Bleantasour in the barony of Decies without Drum and county of Waterford; **Co Waterford**
 Regd owner: Tom and Agnes O'Connor, Four Mile House, Co Roscommon; folio: 5147F; lands: Kilmacuagh; **Co Westmeath**
 Regd owner: Kieran Byrne; folio: 23213; lands: Scarnagh Upper and barony of Gorey; **Co Wexford**
 Regd owner: Margaret Lawless (deceased); folio: 11931; lands: Ballyduff Upper and Coolock More and barony of Ballaghkeen North; **Co Wexford**
 Regd owner: Albert Edward Owtrim (deceased); folio: 16537F and 5169F; lands: Ballyhire and barony of Forth; **Co Wexford**

Kiernan, James (deceased), late of Augharan, Aughavas, Co Leitrim. Would any person having knowledge of a will made by the above-named deceased, who died on 18 February 2006, please contact: Messrs Garrett J Fortune & Co, Solicitors, 11 Church View, Cavan, Co Cavan; tel: 049 436 1233, fax: 049 436 1154, email: infor@gjfortune.ie

Lawless, Myles (deceased), late of 12 Rosemount Court, Dundrum, Dublin 14. Would any person knowing the whereabouts of a will by the above-named deceased please contact John Fahy & Co, Solicitors, 6 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2155, fax: 01 283 3089, email: Fahysolicitors@eircom.net

TITLE DEEDS

In the matter of the Registration of Title Act 1964 and of the application of RN Gillespie Ltd in respect of property in the county of Carlow

County: Carlow; lands at: Bridewell Lane; dealing no: D1999JS002781V. Take notice that RN Gillespie Limited of Bridewell Lane, Co Carlow, has lodged an application for registration on the freehold register free from encumbrances in respect of the above property. The original title documents specified in the schedule hereto are stated to have been lost or mislaid. The application may be inspected at this registry.

The application will be proceeded with unless notice is received in the registry, within one calendar month from the date of publication of this notice, that the original documents of title are in existence. Any such notice should state the grounds on which the documents are held and quote the dealing reference above.

Sean McMahon, Examiner of Titles
 Date: 2 June 2006

Schedule: deed of conveyance dated 30 June 1983 between Hanover Mills Ltd and RN Gillespie Ltd

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1987: notice of intention to acquire fee simple (section 4)

All that and those the premises at Mill House, Main Street, Cappoquin, Co Waterford, held under lease dated 17 February 1914, made between Sir John Keane of the one part and Cappoquin Bacon Factory Limited of the other part for a term of 99

WILLS

Delaney, Raymond (or Ramon) (deceased), late of 58 Rossmore Avenue, Ballyfermot, Dublin 10. Would any person with any knowledge of a will executed by the above-named deceased, who died on 19 April 2006, please contact Finlay & Company, Solicitors, Molyneux House, Bride Street, Dublin 8; tel: 01 475 4270, fax: 01 478 1215

Doherty, Daniel (deceased), late of Coolatee, Ballindrait, Lifford, Co Donegal. Would any person having knowledge of a will executed by the above-named deceased, who died on 25 June 1996, please contact Walter Hegarty of McElhinney McDaid & Hegarty, Solicitors, 48 Clarendon Street, Derry; tel: 048 7137 3365, fax: 048 7126 9946, email: walter@mc-elhinneydcaid.co.uk

Dolan, Patrick (deceased), late of 72 Dolphin Road, Dublin 12. Would any person having knowledge of a will executed by the above-named deceased, who died on 24 September 1982, please contact Ciara Feighery, Oliver Shanley & Co, 62/63 Academy Street, Navan, Co Meath; tel: 046 902 8333, fax: 046 902 9937

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years from 25 March 1913, at the yearly rent of £60.

Take notice that Waterford County Council, being the person entitled under section 3 of the *Landlord and Tenant (Ground Rents) Act 1967*, as amended by the provisions of sections 8-16 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, proposes to purchase the premises described in paragraph 1 hereof.

And further take notice that this application will be made before the county registrar on Monday 3 July at 14.15 at The Courthouse, Catherine Street, Waterford.

Date: 2 June 2006

Signed: Lanigan & Curran (solicitors for the applicant), Dungarvan, Co Waterford

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1987*: an application by Michael Hussey and Bernadette Hussey of 1 Lansdowne Park, Long Mile Road, in the city of Dublin

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as: all that and those the hereditaments and premises formerly known as 1 Lansdowne Park, Drimnagh Road, in the city of Dublin, and now known as 1 Lansdowne Park, Long Mile Road, in the city of Dublin, being portion of the hereditaments and premises comprised in and demised by an indenture of lease dated 7 July 1945 made between Joseph Noonan of the first part and Christopher Nolan of the other part, for the term of 999 years from 1 July 1945 and subject to a yearly rent in the sum of £6 and all of the covenants and conditions contained therein.

Take notice that the applicants, Michael Hussey and Bernadette Hussey, intend to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party or parties

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asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title in the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, Michael Hussey and Bernadette Hussey intend to proceed with the application before 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 to the property are unknown or unascertained.

Date: 2 June 2006

Signed: Townley Kingston (solicitors for the applicant), 23 Mespil Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Brendan Keane and Sharon Keane

Take notice that any person having any interest in the freehold estate of the following property: 118 Roebuck Road, Clonskeagh, Dublin 14.

Take notice that Brendan Keane and Sharon Keane intend to submit an application to the Registrar of Titles for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid properties,



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and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Brendan Keane and Sharon Keane intend to proceed with the application before the Registrar of Titles at the end of 21 days from the date of this notice and will apply to the Registrar of Titles for the county/city of Dublin for vesting on arbitration as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 2 June 2006

Signed: BCM Hanby Wallace (solicitors for the applicant), 88 Harcourt Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Joseph O'Reilly Take notice that any person having an interest in the freehold estate or any superior interest in the property known as 47 Nassau Street in the city of Dublin, being the property comprised in and demised by lease dated 19 August 1899 made between the Right Honourable Geraldine Evelyn, Countess of Miltown, of the one part and one Morris Harris of the other part, for a term of 300 years from 25 March 1899, subject to the yearly rent of £150.

Take notice that the applicant, Joseph O'Reilly, 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 property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said registrar 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 property are unknown and unascertained.

Date: 2 June 2006

Signed: William Fry (solicitors for the applicant), Fitzwilton House, Wilton Place, Dublin 2

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 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

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RECRUITMENT

Assistant solicitor required in conveyancing and probate for medium-sized general practice in North Tipperary. This position will suit a self-motivated solicitor with one to two years' post-qualification experience in conveyancing and probate. The position offers an excellent opportunity for career development. Reply to **box no 50/06**

Co Dublin – litigation and family law solicitor. Fingal – litigation and

family law solicitor required, with two to three years' PQE. Starting July 2006. Dermot McNamara & Co, Main Street, Rush, Co Dublin; DX 213001 Rush. Contact: Dermot McNamara, tel: 01 843 8766, fax: 01 843 8940, email: dermot@dermotmcnamara.ie

Enthusiastic Polish lawyer in Dublin seeks position of trainee legal executive within a law firm similarly interested in assisting the Polish community in Ireland. Please email: tmakiejewski@yahoo.co.uk; tel: 086 202 3665

Solicitor required for probate/conveyancing and related taxation in expanding southeastern town. One to three years' PQE. Please reply to **box no 51/06**

Irish and foreign-experienced solicitor with European languages, returned to Dublin, seeks challenging legal or commercial role based in Dublin dealing in international property/commercial ventures or similar. Reply (to Joseph) by email: internationalalaw@consultant.com

Assistant solicitor required for conveyancing and probate for medium-sized general practice in Sligo. This position will suit a self-motivated solicitor with a minimum of one year's post-qualification experience in conveyancing and probate. The position offers an excellent opportunity for career development. Reply to **box no 52/06**

Solicitor required for young, friendly and expanding general practice. Excellent conditions and prospects, with flexible working arrangements available if required. Please send full CV to Brian Johnston & Co, 79 Park Street, Dundalk, Co Louth, or by email to Johnson@o2.ie

Solicitor and paralegal staff required for busy Galway/Mayo practice. Post-qualification experience desirable but not essential. General practice envisaged. Successful candidate must be motivated. Excellent salary and conditions available on negotiation. Apply in writing to: T Dillon-Leetch & Sons, Solicitors, Ballyhaunis, Co Mayo

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 19 years call, currently practising in England, registered on both the English and Irish Rolls, relocating to Ballina, Co Mayo in August 2006, seeks permanent position within commuting distance of Ballina. CV available upon request. Reply to **box no 53/06**

Solicitors need a change? Do you (or a colleague) need a change? Busy practice 20 miles from Dublin city centre needs a bright, experienced solicitor with two to three years' PQE for conveyancing, probate, capital taxes work. Good communication skills essential. Apply with CV in strictest confidence to Arthur E MacMahon, Poplar Square, Naas, Co Kildare; tel: 045 897 936, fax: 045 897 615, email: ritadoyle@indigo.ie

Solicitor required. Barr & Co Solicitors, 57 Clarendon Street, Derry, BT48 7ER. Republic of Ireland conveyancing experience preferred. Apply by sending your CV to the principal at the above address

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

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A selection of opportunities for June 2006.

Commercial Litigation Solicitor – 3-5 years' exp PP0124

Our client is seeking an experienced Commercial Litigation practitioner to join its practice. Your excellent academic background and first-class experience will uniquely qualify you for this position. You must have exposure to a range of high calibre commercial litigation. Experience in insolvency, restructuring and liquidation matters would also be an advantage. First-rate remuneration package applies.

Sen' Commercial Litigation Solicitor – 6-9 years' exp PP0123

This well-respected firm with a strong international client base is seeking a highly experienced Commercial Litigation practitioner. You will have an excellent academic background and have gained first-class experience with a well-established commercial firm. Experience in a range of high quality commercial litigation including company/shareholder disputes is essential. Exposure to insolvency restructuring and liquidation matters would be an advantage. Some advocacy experience would also be helpful. Excellent career prospects and a first-rate remuneration package.

Commercial Litigation Solicitor – Cork, 2 years'+ exp

Our client, a well-established legal practice based in Cork, is seeking an experienced Commercial Litigation practitioner. You will have gained at least 2 years' post-qualification experience dealing with a range of commercial litigation matters. You will be acting for a strong client base which includes individuals and corporates and will be expected to deal with an interesting and challenging workload. This presents an exceptional career opportunity for the successful candidate.

New Opportunities for Newly Qualifieds – Dublin

If you have a strong academic background and are interested in pursuing your career in one of Ireland's front-running practices then we would be delighted to hear from you.

HQ Conveyancing Solicitor – PP0117

A leading Dublin based law firm is seeking a strong newly qualified solicitor to join its residential conveyancing department. The successful candidate will be a bright, enthusiastic individual with a strong interest in this practice area. This is a great chance to work in a collegiate environment with high quality work.

In-House Counsel – 3-6 years'+ exp HH0012

Our client is a progressive pharmaceutical company which has its headquarters in London. The legal function operates out of Dublin and requires an experienced Corporate/Commercial solicitor. This fast-paced role will suit a dynamic individual with at least 3 years' experience and prior exposure to Life Sciences work would be a distinct advantage. First-rate remuneration and benefits package will apply.

Paralegal, Conveyancing – PP0118

This prominent mid-sized Dublin firm is searching for a legal executive to join its busy conveyancing department. The successful candidate will have at least one year's experience in commercial or residential conveyancing.

For more vacancies, please visit our website or contact Michael Benson bol.solv@benasso.com in strict confidence, at Benson & Associates, Carmichael House, 60 Lower Baggot Street, Dublin 2, Ireland. T+353 (0) 1 670 3997 E mbenson@benasso.com

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Legal Aid Board

Panel of private practitioners for family law divorce and separation cases

The Legal Aid Board invites private solicitors to apply to have their names placed on a panel for family law divorce and separation work.

The Board has had an ad hoc scheme in place for such cases for some time and now wishes to put the scheme on a formal footing. Copies of the application form and the terms and conditions of the scheme are available on the Board's website (www.legalaidboard.ie – Ref no PP1). The terms and conditions include the fee structure that is being put in place. Selection for the panel will be by way of interview and the panel will be in place for a three year period.

The Board is committed to ensuring that its clients get a timely service. The waiting time to see a solicitor at a law centre has dropped dramatically during the last eighteen months. The Board now ensures that every eligible applicant for its services sees a solicitor within a maximum period of four months from the date of their application. The Board regards the involvement of the private practitioner, as part of its service delivery team, as being critical to maintaining this objective.

The Board is also committed to ensuring that its clients get a quality service. As part of that commitment, the Board has issued best practice guidelines for the conduct of separation and divorce cases. General adherence to these guidelines, periodic reporting on case progress, and making files available for periodic review by authorised officers from the Board, all form part of the terms and conditions of the scheme.

The Board would be pleased to receive applications from solicitors with a real commitment to the work.

To apply:

Submit a completed application in the format provided (typed / electronic applications only) to Private Practitioner Centre, 1st Floor, 7-11 Montague Court, Montague Street, Dublin 2, DX 149 or by e.mail to ppc@legalaidboard.ie

Closing date for receipt of applications is: 5.00pm on Friday 30th June 2006.

Short listing may apply on the basis of initial applications and short listed candidates will be required to attend for interview at the candidate's own expense.



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The firm's Banking and Financial Services Department acts for all of Ireland's leading domestic banks and for many leading international financial institutions with a presence in Ireland. Our Banking Group is consistently rated as amongst the best in Ireland by international legal directory European Legal 500 and other journals. We advise on a wide range of transactions including syndicated loans, securities issues, property and project financings, asset financing and the financing of MBOs and LBOs.

This fast-expanding group has a number of opportunities for solicitors with either banking or commercial experience with 0-4 years PQE. Successful candidates will be academically strong, dynamic and ambitious, with a focus on providing the very best service to our global client base.

All applications will be treated in strict confidence. For more information, please see our website www.mop.ie

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E: recruitment@mop.ie

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



IN-HOUSE

Company Secretarial Director Ref: SR16662 to €110,000

Our client is well known multinational financial services company with offices all over the globe. This role is very client focused and requires a proactive individual with strong interpersonal skills. This is a board level role. Experience of managing a team is essential. Candidates must be qualified lawyers or hold the ICSA qualification.

Commercial Lawyer Ref: SR17018 to €90,000

Due to continued expansion, our client, a leading telecoms company, is looking for an assistant counsel to join their team. The role will involve drafting and negotiating a variety of commercial contracts, ensuring compliance in all areas and working with regulators. The ideal candidate will be a qualified solicitor with at least 5 years' ppe. Candidates from in-house and private practice will be considered. Strong interpersonal and influencing skills are required. Excellent package on offer for the right candidate.

Legal Advisor Ref: SR17180 to €75,000

Our client is a multinational plc who currently require a legal manager. Your responsibilities will be to: develop risk management plans for the business, work closely with HR to promote the corporate brand and other company initiatives internally and review and draft contracts as needed. The successful candidate will have at least 4 years' ppe with a background in commercial law. You will have the ability to analyse situations and assess the needs/interests of different stakeholders and suggest problem solving strategies.

In-house Lawyer Ref: AW16762 to €65,000

Global investment firm with one of the largest national in-house legal and compliance teams currently require a corporate lawyer. This is a highly responsible position which involves provision of legal service regarding all regulatory and licensing agreements and commercial arrangements, dealing with international legal regulations and drafting of licence agreements. Ideally candidate will be qualified as a solicitor or barrister with 1-3 years' ppe.

In-house Lawyer Ref: AW17221 to €60,000

Well-renowned consultancy firm with a range of excellent clients both global and domestic currently require an in-house lawyer. This is a specialist firm in the area of investments, pensions and trusts. The role involves the provision of advice to high level clients on all matters pertaining to the above as well as the drafting and reviewing of legal documentation for investments, contracts and agreements. The successful candidate will ideally be 1-3 years' qualified. Excellent client facing skills are essential.

Compliance Officer Ref: AW16331 to €45,000

World leading accountancy firm currently require a compliance officer for their expanding Dublin office. The successful candidate will advise on all compliance issues, interpret and implement policies as dictated by the regulator and provide staff training on regulation issues. A good working knowledge of compliance guidelines and local regulatory rules and 1-3 years' relevant experience is required.

PRIVATE PRACTICE

Partner - Construction Ref: SR16714 to €90,000

Working for a top tier practice in their highly reputed construction department, you will have solid industry experience including dealing with lenders, contractors, developers and ideally a strong contentious background. This is an excellent opportunity to join a high calibre team in a dynamic and fast growing practice area. You will be rewarded with a definite career path and a professional and exciting team to work with.

Tax Ref: SR16718 to €90,000

One of Ireland's leading firms is looking for a qualified lawyer to join their expanding tax department. With at least 3 years' corporate experience you will advise on commercial taxation matters such as structured finance and investment projects, mergers and acquisitions, property and tax litigation. With a strong commercial background, relevant tax experience is preferable. AITF exams would be advantageous.

Banking Lawyer Ref: AW13388 to €65,000

Working with national and international clients, this presents a great opportunity to develop specialist knowledge. Responsibilities include advising on all regulatory issues, dealing with all securitization and structured finance legal queries and provision of legal corporate banking services. 1-2 years' ppe in banking or financial services as well as strong corporate/commercial experience are required. A professional attitude and good communication skills are also sought.

Intellectual Property Ref: SR16713 to €90,000

Due to continued expansion this top 5 law firm are now seeking to add a high calibre lawyer to their well respected IP team. The role will cover litigation and dispute resolution, both in Ireland and overseas. The ideal candidate will have 3-4 years' ppe from a top tier or well respected mid tier firm. Strong academic and technical ability are key for this role. Partnership potential.

Corporate/Commercial Ref: AW16662 to €65,000

One of the top 20 firms with strong corporate/commercial fields and experts in dealing with domestic and international clients, require a lawyer to join their expanding team. The successful candidate will be required to work on high profile and complex cases, M&A, private equity and venture capital transactions. On the commercial side they will be required to draft licensing agreements, contracts and all relevant policies and procedures. Ideally they require a strong individual with 1-3 years' ppe, excellent communication skills and a proven track record in the area.

Company Secretary Ref: AW16144 to €55,000

A company secretarial assistant is required for one of the leading legal practices in Ireland. Working closely with a team, you will be responsible for your own portfolio of clients. Close liaison with the CFO is required and you will ensure all statutory changes are in compliance with IFSRA legislation. The successful candidate will be part or fully ICSA qualified and ideally have 1-3 years' experience in a company secretarial environment.

For more information on these roles, please contact Sarah Randall or Allison Watson on (01) 637 7012 or email sarah@thepanel.com or allison@thepanel.com

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eircom is the principal provider of fixed-line telecommunications services in Ireland, with the most extensive fixed-line telecommunications network in Ireland in terms of both capacity and geographic reach, and other operators rely heavily on its infrastructure. In November 2005, the Company successfully acquired Meteor, the third largest mobile operator in Ireland. eircom is also the country's leading internet service provider.

To manage legal matters in relation to eircom Group's significant property interests, an opportunity has arisen for an experienced commercial property lawyer, with rounded management skills, to head the company's conveyancing/property law unit.

Head of Conveyancing

Reporting to the Chief Solicitor, the successful candidate will manage all legal matters in relation to the purchase, sale and consolidation of titles of eircom Group properties, and will advise the eircom Group on the law relating to property matters.

In addition, responsibilities will include the provision of legal services and support to eircom's property development company, Osprey Property Limited, on all aspects of the development of its property portfolio, including its building development programme and its negotiations of joint venture agreements. The Head of Conveyancing will be responsible for the provision of company secretarial services to Osprey; will conduct and manage litigation in relation to property matters; and will negotiate licensing arrangements with other authorised telecommunications operators.

Leading a small team, the Head of Conveyancing will prepare and implement a strategic plan to meet the property requirements and objectives of the eircom Group, including Osprey. He or she will manage resources to meet the objectives of the conveyancing/property law unit, and will carry out additional tasks as required by the General Counsel and Chief Solicitor.

Candidates should be qualified solicitors with a minimum of six years' post-qualification experience in the area of property law, to include exposure to property development, gained either in private practice or in industry. It will be necessary to be a seasoned negotiator, with experience of complex and substantial commercial property transactions. Prior experience will have included advising senior management and playing a leadership role in a commercial environment. A focus on providing client service of the highest calibre, and excellent leadership, coaching and team skills will be essential to succeed in this critical and challenging role.

Please write, quoting reference number 62156, stating how you meet the requirements of the position and enclosing a curriculum vitae to: Simon Waddington, MERC Partners, 11/12 Rickview Office Park, Clonsilla, Dublin 14
Tel: 01 2066700. Fax: 01 2030550. Email: postmaster@merc.ie

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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.

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Please apply in strictest confidence to the Practice Manager, Dillon Solicitors, 13 Main Street, Dundrum, Dublin 14.

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Commercial Property Solicitor, In House, €35-40K

An excellent opportunity exists for a qualified solicitor with 4 to 5 years Commercial Property experience to work In-House in Farnham. The successful candidate will provide a range of legal services to the Commercial Property Division and have experience of tax legislation and contract law. The role will involve drafting documents and negotiating contracts relating to commercial aspects of the business. Lots of travel involved. 20-25% bonus twice a year.

Construction Solicitor, (Associate Position), €50-60k

An opportunity exists for a solicitor with 2 years PQE for an associate position to join this leading law firm based in Dublin. The role will involve advising on various construction and non construction matters regarding the development, financing, construction and operation of projects across a range of sectors. Excellent opportunity for career development and progression.

Intellectual Property Lawyer, €11k

Our client is searching for a solicitor with 2-3 years PQE to work in our Litigation department, specialising in Intellectual Property. The successful candidate will be advising on construction issues and non construction matters concerning trade marks, patent and copyright.

Corporate Lawyer, €50-65k

A leading law firm is looking for a solicitor 1-3 years PQE to work within their corporate department. The role available will involve working on M&A's, private equity and various capital transactions and joint ventures and will have an overall involvement in general advisory work.

If you are interested in them or any other legal opportunities please contact Monica Palmer, mpalmer@blueprintappointments.com or Gemma.Hughes@blueprintappointments.com
Tel: 00353 1 468 9900, Castle View House, 14-15 Parnament St, Dublin 2, www.blueprintappointments.com

Litigation Solicitor, €11k

An opportunity exists for an assistant solicitor with 2 years PQE. The role will involve working on all insolvency matters, including bankruptcy and liquidation. Experience in insolvency is essential.

Probate and Conveyancing Solicitor, €11k

A leading law firm is searching for a solicitor with 2 years PQE to work in their probate and Conveyancing department. The successful candidate will be handling mostly residential with an element of Commercial work. A competitive salary is being offered for this role.

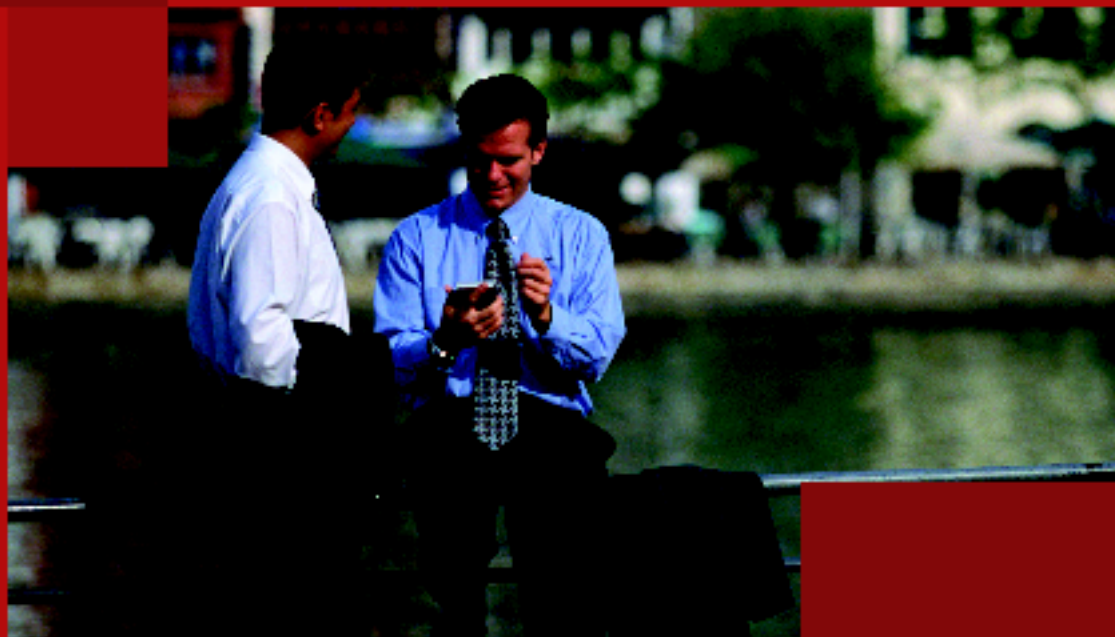
Legal Executive, €30k

Our client is searching for an experienced Legal Executive in litigation/conveyancing for their Dublin South firm. The successful candidate will be responsible for taking client instructions together with preparation of papers and will attend proceedings and assist counsel where necessary.

Legal Secretaries, €11k

A number of permanent and temporary opportunities exist for experienced legal secretaries within the following areas, Conveyancing, Litigation, criminal, Family, Banking Finance and Property. Excellent PC skills and Typing/ Dictaphone typing skills needed. Competitive rates of pay offered.

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Due to our continued success, we are looking to recruit ambitious, bright and enthusiastic lawyers who are keen to expand and complement their existing skills and experience. The role would suit lawyers with solid general corporate or finance backgrounds. Prior securitisation experience is not required. We can offer excellent training and development opportunities along with the support of one of the leading international capital markets practices in the world. Ideally we are looking for 0-5 years' PQE but we would consider applicants from all levels. Excellent academics are essential.

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To submit an application please contact:

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Applicants should please send their details and CV with the name of two referees by email to Owen Foley at owen@misickstanbrook.tc.

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Conveyancing Solicitor

Connaught €50,000 - €55,000

Our client is a busy firm based in Connaught and is currently seeking a solicitor with 3-4 years' post qualified experience. The successful candidate should have a good grounding in all areas of general practice. Your work will concentrate mainly on conveyancing. Great opportunity for progression in this reputable firm. Ref: 24156

General Practice Solicitor

Galway €45,000 - €55,000

A well respected general practice in Galway seeks an experienced solicitor to specialise in all areas of conveyancing, probate, litigation and family law. This role is an exciting opportunity to join an expanding firm. Excellent remuneration package provided. Ref: 24131

Litigation Solicitor

Cork €35,000 - €45,000

Qualified Solicitor needed for a small practice based in Cork. Role will focus on litigation work, specialising in family law. Great opportunity to work alongside a main Partner with responsibility for own files and clients. Ref: 23838

Newly Qualified Solicitor

Munster €35,000 - €45,000

Highly regarded Munster practice looking for a newly qualified solicitor to expand their busy firm. This is an excellent opportunity to gain general practice experience. The ideal candidate will have completed a good apprenticeship with a grounding in the areas of conveyancing, litigation, family, and probate. Ref: 24440

Newly Qualified Solicitor

Munster €35,000 - €45,000

This is an exciting opportunity to join an expanding practice in a newly created role in Munster. Excellent opening to build up relevant post qualified experience in a general practice and potential to work up to partnership level for the right candidate. Ref: 24445

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TSN is a leading and well-established Gibraltar-based law firm with a young and dynamic partnership that has recently completed the acquisition of Denton Wilde Sapte's Gibraltar practice. Due to the firm's recent growth we have openings for solicitors to assist within our corporate, banking and commercial departments.

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Legal Opportunities

In-House

Senior Legal Counsel

Dublin

€80,000 - €95,000

The successful candidate will have 6-7 years' post qualified experience in a top legal practice or investment bank. Ideally you will have strong academic, organisational, interpersonal and drafting skills. Must be capable of working on his or her own initiative. This role offers excellent salary and prospects. Ref: 17009

General Counsel

Dublin

€60,000 - €75,000

Our client is a specialist asset management company and is seeking a General Commercial Solicitor with some banking and securitisation exposure. This is an excellent opportunity for a solicitor with 2-4 years' PQE to make that move to an in-house role or to take their in-house career to the next level. Ref: 23512

Public Sector

Dublin

€50,000 - €65,000

Our client is a dynamic department within the public sector. They are seeking a Commercial Lawyer with 2-5 years' post qualified experience to join a legal team. Ideally you will have some funds experience, but this is not a requirement. This role offers excellent progression, benefits and overall package. Ref: 22990

Junior Banking Lawyer

Dublin

€40,000 - €60,000

This international bank has a fantastic opportunity for a Junior Lawyer (0-3 years' PQE). This in-house role will include training and development opportunities in a lucrative area. Strong candidates will either have some experience in the area of banking or a desire to work with investments and structured deals. Excellent role for a capable and ambitious candidate looking to build their career with a reputable bank in a competitive industry. Ref: 24598

Newly Qualified Solicitor

Dublin

€40,000 - €50,000

This financial services company is looking to appoint a Newly Qualified Solicitor to develop their in-house legal department. This superb role will incorporate the areas of conveyancing, compliance, company law and working with the Unit Trust Department. This is a great opportunity to step into the area of financial services. Ref: 24708

Practice

General Practice Solicitor

Meath

€50,000 - €95,000

Our client is a busy successful and friendly long established legal practice based in Co. Meath. It has an excellent reputation in the legal arena. Due to a growing client portfolio and workload, the Principal is looking to appoint an experienced Conveyancing and Probate Solicitor to join his current team. Ref: 24189

General Practice Solicitor

Dublin South

€65,000 - €85,000

Our client is a boutique law firm based in South Dublin. This firm has a progressive ethos and is committed to providing quality service to its clients. Due to continued growth, the Principal is seeking to hire a solicitor with experience in both residential and commercial property. 5+ years' experience required. Ref: 24559

Competition & Regulatory Lawyer

Dublin

€50,000 - €65,000

Due to the continued success of this firm's competition unit, they are seeking to hire a solicitor with 0-2 years' EU competition experience. Our client has a highly respected practice in competition and EU law and advises state bodies and businesses in relation to their European and domestic requirements. Ref: 23817

Commercial Lawyer

Dublin

€50,000 - €60,000

Our client is a medium sized practice in Dublin City Centre. Due to continued expansion of their commercial department, they are seeking to hire a Commercial Solicitor with 1-3 years' PQE. The ideal candidate would have experience in a number of the following areas: Asset Finance; Banking & Finance; Corporate Tax; EU & Competition; Intellectual Property; Mergers & Acquisitions; Project Finance & PPP and Securitisation. Ref: 17132

Junior IP/IT Solicitor

Dublin

€45,000 - €55,000

This mid-tier firm has a great opportunity for a Junior Solicitor IP/IT department. Must have experience working with IP/IT and have an understanding of general commercial. This is an ideal role for a candidate with a strong interest in a niche area, who is motivated, ambitious and wants to be a part of the development of a department. Ref: 24079

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In-House

Aircraft Finance Lawyer To €100k + Bonus and Benefits

Our client, a leading global aircraft operating lease business, seeks to appoint an in-house counsel for their Dublin operation. You will have 3-5 years' PQE from a general banking background aircraft finance or leasing experience is desirable but not essential. The role will report directly to the CEO and represents an excellent opportunity with a global company.
Ref: JC254990

Funds Lawyer To €90k + Bonus and Benefits

A leading financial services institution seeks to appoint a strong funds lawyer with circa 2-4 years' PQE to join their dynamic legal team. Ideally, you will have some experience in fund administration and general financial services or banking experience. You will also possess exceptional communication and organisational skills.
Ref: JO110903

Investment Funds Lawyer To €75k + Bonus and Benefits

A boutique financial services company seeks a qualified solicitor with 1-2 years' PQE. This role is varied and includes assisting the head of legal with fund launches, documentation and various client legal matters. An exceptional opportunity for a junior or slightly more experienced solicitor with strong funds, banking or corporate experience to move in-house.
Ref: JO110910

Legal Counsel To €100k + Bonus and Benefits

This IFSC Funds Treasury Division has an exciting opening for an in-house counsel. The successful candidate will be a solicitor or barrister with 3-5 years' PQE in a top legal practice or investment bank. You will possess strong academics, excellent organisational, interpersonal and drafting skills. You must also be capable of working on your own initiative.
Ref: JO106088

Conveyancing Lawyer To €70k + Bonus and Benefits

One of the country's leading independent mortgage providers, with a network of offices located throughout the country, seeks to appoint a legal advisor with a minimum of 3 years' PQE. Reporting directly to the CEO, you will act as the company's internal legal adviser and will also provide advice on conveyancing issues to other business areas.
Ref: JC279670

Pensions Lawyer To €70k + Bonus and Benefits

This leading actuarial and pensions consultancy company is currently looking for an in-house lawyer to join their busy team. The ideal candidate will be a qualified solicitor or barrister with circa 1-3 years' PQE. You will already have knowledge of various aspects of pensions law. Experience in financial services compliance would be a distinct advantage.
Ref: JO110921

Interested candidates should forward their Curriculum Vitae to Gerard Allen at gerard.allen@robertwalters.com or call (01) 909 4111.

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Private Practice

Structured Finance Solicitor

€85k + Bonus

Our client, a top Dublin law firm, wishes to appoint a senior associate into its structured finance unit. You will have approximately 4 years' PQE in structured finance and securitisation transactions, including some experience advising on legal issues related to bond packaging. This is a significant career enhancing opportunity for a solicitor with energy and drive.

Ref: MCQ354954

Corporate Solicitor

€75k + Bonus

An excellent opportunity exists for an ambitious corporate lawyer, with circa 3 years' PQE, to join a prestigious practice based in Dublin city centre. You will have excellent technical skills, good knowledge of Irish companies' legislation, strong drafting skills and solid knowledge of IP law. If you are seeking a career working with leading Irish and international companies as well as various public and private sector bodies, this is the role for you.

Ref: MCQ355937

EU and Competition Law Solicitor

€50k + Bonus

Our client, a medium sized law firm, seeks to appoint a solicitor with circa 2 years' PQE in EU and competition law. You will advise a wide range of public and private clients on EU, competition and regional regulation law. This is an opportunity for a solicitor with strong academic and analytical skills to develop a niche in a progressive law firm.

Ref: MCQ3514886

Head of Commercial Property

€80k + Bonus

A specialist law firm based in Dublin requires a solicitor to head its commercial property practice. With circa 3 years' PQE in commercial property you will possess excellent commercial, analytical and drafting skills. This is an excellent opportunity for you to join a growing team in one of Dublin's most prestigious locations.

Ref: MCQ355820

Tax Solicitor

€85k + Bonus

This highly regarded tax group in one of Dublin's top law firms provides comprehensive advice to domestic and international clients in many areas. The group is now seeking to appoint a tax solicitor or barrister with 2-3 years' PQE who will also possess a tax qualification. Excellent career progression is available for the right candidate.

Ref: MCQ355983

PPP Solicitor

€50k + Bonus

A boutique law firm seeks to appoint a PPP solicitor with circa 2 years' PQE to its projects team. You will have experience in projects and privatisation related work as well as experience in energy, oil or gas field developments. This is a highly challenging and rewarding role for someone looking to fast track their career in a small but highly regarded firm.

Ref: MCQ358970

Interested candidates should forward their Curriculum Vitae to Mike Campbell at mike.campbell@robertwalters.com or call (01) 433 4111.

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Dublin Corporate

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Asset Finance 1 yr+ PQE

Prestigious top 5 practice requires an experienced solicitor to join their expanding team. Previous experience advantageous, but not essential as strong candidates from other areas will be considered. Excellent salary and career prospects. (ref: 162542)

Banking 5 yrs+ PQE

Opportunity to join the leading practice in this top tier firm. You will have experience in general corporate banking, securitization and structured finance matters in a large or leading mid tier firm. There are excellent career opportunities for the right candidate. (ref: 152541)

Banking NQ - 3 yrs PQE

Solicitor required to join this expanding practice within one of Ireland's leading law firms. You will have some experience within a corporate environment, with the ability and determination to succeed in this leading practice. (ref: 152543)

Banking & Financial Services (F&L) 3 yrs+ PQE

Exciting opportunity for an experienced lawyer to join this expanding practice within one of Ireland's most prestigious firms. You will have at least 3 years experience in a similar environment and have the ability to assist this busy team. Knowledge of loan how systems advantageous. (ref: 172475)

Capital Markets 1 yr+ PQE

Leading law firm requires experienced Capital Market 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: 172477)

Corporate 3 yrs+ PQE

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: 162207)

Corporate (In House) 3 yrs+ PQE

Outstanding opportunity for an experienced Corporate Solicitor to join this prestigious financial services company. Incorporating a broad range of corporate skills including banking, financial services and drafting, you will have at least 3 years PQE gained in a solid corporate practice. (ref: 162540)

Corporate Tax 3 yrs+ PQE

Prestigious Corporate Tax practice requires solicitors to join their expanding team. Advising on a diverse range of Corporate Tax matters candidates will ideally have experience in a similar environment, but strong candidates from other areas will be considered. AM qualification a distinct advantage. (ref: 152545)

Funds All PQE

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 practices will be considered. (ref: 152546)

Funds Consultant (In House) 5 yrs+ PQE

Senior Funds Solicitor required by this leading investment house to consult on compliance and legal issues involving funds. Candidates should have at least 5 years PQE gained in a leading investment company or law firm. (ref: 162547)

Dublin Commercial

Commercial Litigation 3 yrs+ PQE

Opportunity to join the commercial litigation and dispute resolution practice of this leading domestic practice. Candidates of particular interest will have experience of insurance, intellectual property, insolvency and professional indemnity. (ref: 162548)

Commercial Property 1 yr+ PQE

Leading law firm requires Commercial Property Solicitors with at least 1 year PQE to join their expanding practice. Working directly with partners this client facing role covering all aspects of commercial property including lending, leasing and developments. (ref: 172476)

Commercial Property 5 yrs+ PQE

Senior lawyer required for rapidly expanding practice in this prestigious medium size law firm. Advising a broad client base on issues including commercial leasing, land acquisition and development, funding and security, taxation issues, planning and environmental law. (ref: 152549)

Construction 1 yr+ PQE

Specialist niche construction firm has an opportunity for a lawyer to join their highly regarded team. You will ideally be in the 1 - 5 year bracket and have a strong background in litigation and have an aptitude for contract drafting, advising or research. (ref: 162550)

Employment 2 yrs+ PQE

Experienced solicitor required to join the expanding team in one of Ireland's leading law firms. Acting as a legal adviser to international and domestic clients on a broad range of employment law issues. Candidates should have 2 years PQE, a background in corporate, employment or pensions law. (ref: 152551)

Insurance 2 yrs+ PQE

Top 5 firm requires solicitors to join their progressive insurance practice to advise the growing domestic and international insurance sectors in Ireland. You will have at least 2 years PQE and have experience of providing a full range services to the insurance industry. (ref: 152552)

Dublin Office

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Out of Office Hours: Paul Fahy 087 9109745

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t 01 669 4646

General Practice & Paralegal

t 01 669 4646

IP 1 yr + PQE

Prestigious leading IT/IP practice requires experienced IP Solicitors to join their expanding team to cover a broad range of contentious and/or non-contentious issues. Experience in a similar environment desirable, but not essential. Excellent salary and career prospects offered. (ref 1525420)

IT 5 yrs + PQE

Leading Irish law firm seeks an IT Solicitor to work within their expanding corporate practice. Working within the IT/IP team you will be advising on a wide range of non-contentious IT issues. The work spans many industry sectors across financial services, manufacturing, retail and IT. (ref 1525420)

IT/IP 2 yrs + PQE

Opportunity to join the leading practice within one of Ireland's top tier law firms. International and domestic clients list covering a broad range of IP and IT issues. This is an outstanding opportunity to work alongside renowned practitioners in a fantastic environment. (ref 1525420)

Pensions 2 yrs + PQE

This is an opportunity to join the pensions team which advises a broad range of international and domestic companies, scheme trustees and individuals on all pension scheme aspects and related matters. Applicants should have 2 years PQE preferably gained in a large or medium-sized firm. (ref 1525420)

PPP/PII 5 yrs + PQE

Opportunity to join one of Ireland's leading and most prestigious law firms in their PFI/PPP team. You will have extensive experience in a similar environment along with strong analytical and drafting skills. (ref 1525420)

Tax Consultant 3 yrs + PQE

Opportunity for Tax Consultants to join this prestigious practice within one of Ireland's leading law firms. The team comprises tax lawyers, accountants and consultants serving a broad range of international and domestic clients in all major business sectors. (ref 1525420)

General Practice 1 yr + PQE Cork

Regional general practice firm requires a 1 year PQE solicitor for a broad range residential and commercial conveyancing work. This long established firm will offer the right candidate excellent salary and prospects commensurate with local market. (ref 1525420)

General Practice NQ - 5 yrs PQE Donegal

Opportunity for an experienced solicitor to join this general practice. This is an excellent opportunity for candidates with experience in residential conveyancing, wills & probate and litigation. Excellent salary commensurate with local market. (ref 1525420)

General Practice 1 yr + PQE Dublin

General practice firm located in Dublin city centre require an experienced Solicitor with at least one year PQE. You will have experience in all aspects of general practice, and especially commercial conveyancing. Excellent salary for the right candidate. (ref 1525420)

General Practice NQ + 3 yrs PQE Kildare

County Kildare general practice firm requires a solicitor to join this expanding practice. You will have experience of residential and commercial conveyancing as well as wills and probate work. Excellent salary and prospects will be offered to the right candidate. (ref 1525420)

General Practice 3 - 5 yrs PQE Kildare

This progressive Co. Kildare general practice firm requires a 3 - 5 year PQE general practice solicitor to join their expanding team. You will have a broad range of experience, particularly commercial property and probate. Excellent salary available for the right candidate. (ref 1525420)

General Practice NQ + Limerick

County Limerick general practice firm requires a locum solicitor for three months. Any PQE will be considered. You should have experience of residential conveyancing as well as wills and probate. Flexible terms and conditions will be offered to the right candidate. (ref 1525420)

General Practice NQ - 2 yrs PQE Limerick

A general practice firm located in Limerick city centre require a solicitor from newly qualified to 2 years PQE, to join their expanding team. The ideal candidate will have experience of family litigation and residential conveyancing work. (ref 1525420)

Debt Recovery Legal Executive Dublin

This large Dublin 2 firm is looking for a Legal Executive to support a team of solicitors in the debt recovery department. Previous experience in this area is essential. This is a great opportunity to gain experience in one of Ireland's leading firms. (ref 1525420)

Employment Paralegal Dublin

This large and prestigious Dublin firm seeks a paralegal in the area of Employment Law. You will work closely with this talented and expanding team of lawyers advising both domestic and international clients on all employment issues. Previous paralegal experience is essential. (ref 1525420)

Paralegal Banking Dublin

This top tier firm is looking for a Paralegal to join their Banking and Finance department. Working closely with some of the top solicitors in this field you will gain experience in all aspects of Banking and Finance law. Previous experience required although extensive training offered. (ref 1525420)

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In-House Opportunities:

Regulatory Lawyer – Dublin

This prestigious professional organisation is seeking a strong regulatory lawyer who has at least 2 years ppe specialising in EU law. You will ideally have had competition and administrative law exposure. Project management experience also a preference. This is an exciting role for an ambitious, confident individual. €70,000 – €80,000

Legal Manager - Dublin

Booming financial services organisation has a need for an in-house lawyer. The successful candidate will have at least 5 years ppe from a top law firm or a leading investment bank. You will be responsible for managing all credit facility letters, ISDA agreements and all fund documentation. The role will suit a bright and confident individual who enjoys variety in their work. €70,000 – €80,000

Corporate Lawyer - Dublin

Our client, a prestigious professional services provider wishes to recruit an in-house lawyer to join the well established legal team. This role is very broad, comprising of restructuring, MBOs, Private equity work and general commercial agreements. You will have 1-4 years ppe in a corporate role either from a law firm or in-house. Great opportunity to work with a superb client portfolio. €50,000 – €60,000

Private Practice Opportunities:

Financial Services Lawyers & Corporate Lawyers – London

Our client, Clifford Chance, has exclusively retained us to recruit strong Lawyers for their London office. They are keen to speak to Lawyers from newly qualified level up to 8 years ppe who have experience in banking, corporate or capital markets law. Outstanding opportunities for bright ambitious lawyers eager to join one of the world's leading law firms. £ 60,000 – £120,000 Starting

Commercial Property Lawyers – Dublin

We have a number of commercial property vacancies with highly regarded firms ranging from mid tier to top tier. Candidates will have at least 2 years ppe in commercial property law. More senior candidates will be capable of running their own portfolio independently. Banking experience a preference but not essential. €60,000 – €100,000

Corporate Lawyers – Dublin

One of Ireland's most prestigious and highly regarded corporate divisions now has a number of vacancies for good corporate lawyers due to an expansion in business. Successful candidates will have between 3 and 6 years ppe in corporate transactions, will have ambition to work in a driven environment and have sound client management skills. €60,000 – €80,000

For more vacancies visit our website at www.KeaneMcDonald.com

Interested applicants should contact Yvonne Keane in strict confidence on 01 6415614 or 087 6824581.

Alternatively email your CV to ykeane@keanemcdonald.com



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In addition to these vacancies we currently have a wide variety of opportunities for all levels of solicitors in most areas of law. Visit our website to view further opportunities: www.meghengroup.com

Bio-technology Lawyer. 3-6 years PQE. €70-€100k plus benefits

This is a newly created position to work within a publicly quoted company. The ideal candidate will be a corporate lawyer with experience in pharmaceutical/biotech transactions. The role will involve advising on domestic and international biotechnological issues related to the company; dealing with large transactions, licensing, securities, US securities, M&A and general corporate work. Flexibility, hunger, high aptitude and an entrepreneurial spirit will be required to succeed in this exciting role. This is a compelling opportunity with a competitive package. MN0605-22

General Practice – Partnership Possibility

Join a busy and expanding city centre general practice and you will be rewarded! There is a wide mix of legal work available. Excellent business acumen and professional interpersonal skills are mandatory. MN0605-113

Commercial Property Solicitor

Commercial Property solicitor required with 3 years PQE for a small sized general practice firm on the South Quays of Dublin City. You should be able to provide a client following. The firm offers an excellent, supportive environment in which to service your clients and the move will suit a solicitor looking for a better work/life balance and a friendly, collegiate atmosphere. You will be rewarded with a highly competitive salary, a clearly defined career path and a direct route to partnership. MN0605-50

Family & Litigation Lawyer

My client is seeking to source a Family & Litigation lawyer to further develop the Family department in this well known medium sized Dublin firm. Experience in all aspects of Family law combined with a sound knowledge of succession and estate planning is desirable. MN0604-158

Corporate Solicitor

Corporate Solicitor required for this prestigious practice. Ideally moving from a large or medium firm, you will have experience in M&A's, joint ventures, corporate finance and corporate governance. MN0605-116

- North County Dublin: Litigation Solicitor: 2 yrs PQE. MN0605-129
- Dublin City: Private Clients Solicitor: 1-3yrs PQE: MN0605-12
- Dublin 7: Residential Conveyancing Solicitor: 1 yr+: MN0605-40
- Dundrum: Conveyancing/Family & Litigation Solicitor: 2yrs+ PQE: MN0605-118
- Dublin: Probate & Property Solicitor: 5 yrs+ PQE: MN0605-117
- Dublin: Residential Conveyancing Solicitor: 2 yrs +PQE: MN0605-56
- Cork: Commercial Solicitor: 3 yrs+ PQE: MN0605-115
- Cork: Conveyancing Solicitor: 2 yrs+ PQE: MN0605-114
- Drogheda: Conveyancing & Probate Solicitor: 1 yr + PQE: MN0605-72
- Wexford: General Practice Solicitor: 2 yrs +PQE: MN0605-100
- Mayo: General Practice Solicitor: 2 yrs+ PQE: MN0605-55

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In House Corp/Media Lawyer (3-6 years' PQE)

Dublin €Negotiable

Our client, a leading media/broadcasting house require a Corporate lawyer to join their team. This is an exciting role and will support the senior management in the implementation of the company legal strategy and will also advise in all legal and corporate/commercial matters. You will have 3-6 PQE from a leading law firm or in-house organisation. A background in media is desirable, not essential. Ref: 14555. Contact Portia White

Investment/Pensions Lawyer (1-3 years' PQE)

Dublin €65k+

Our client require an Investment/Pensions Lawyer to join its legal team. You will provide legal advice to their large clientbase in the areas of pensions law, employment law, trust law as well drafting ancillary legal documentation. Relevant experience in pensions and employment law gained either in-house or in private practice is highly desirable but not essential. Ref: 11184. Contact Portia White

In-House Banking Lawyer (1-4 years' PQE)

Dublin €Negotiable

Our client, an international bank require a banking lawyer to join their expanding team. The successful candidate will have up to 4 years PQE in banking services from an in-house organisation or leading law firm. Experience in conveyancing and litigation is preferable, however not essential. Drafting skills and negotiation of commercial legal and banking agreements is essential. Ref: 14717. Contact Portia White

Commercial Litigation (Salaried Partner)

Dublin €Negotiable

Our client a leading firm require a commercial litigation lawyer to join their team. Do you have experience in investment fund disputes, shareholder disputes, insolvency, restructuring & liquidation matters. Advocacy experience would be beneficial. Excellent Terms. Ref: 14772. Contact Justin Loughnane

Commercial Litigation Lawyer (2-5 years' PQE)

Dublin €Negotiable

Our client a leading firm require a commercial litigation lawyer to join their team. Do you have experience in investment fund disputes, shareholder disputes, insolvency, restructuring & liquidation matters. Advocacy experience would be beneficial. Excellent Terms. Ref: 13155. Contact Justin Loughnane

In-House Corp finance Lawyer (2-4 years' PQE)

Dublin €Negotiable

Our client, a small investment bank require a corporate finance lawyer to join their team. You will advise for a number of private investors on a variety of corporate/commercial deals. The role will involve hands-on transaction experience, with particular emphasis on drafting and negotiating skills. The successful candidate will have 2-4 years' PQE, with experience from a leading law firm or investment bank. Ref: 14555. Contact Portia White

In-House Commercial Lawyer (2-4 years' PQE)

Dublin €70k+

Our client a leading commercial aircraft leasing and asset management company require a commercial lawyer to join their team. Experience in aviation finance is an advantage but not essential. You will advise on their aviation leasing portfolio, work closely with internal and external legal counsel, the marketing teams and have a client interface. Ref: 14395. Contact Portia White

Employment Lawyer (2-5 years' PQE)

Dublin €Negotiable

The role will involve working with the partner developing the firm's national & international clientbase. Advising commercial clients on reorganisation, restructuring and downsizing, redundancies and experience in conducting an employment litigation case load is essential. Excellent terms on offer. Ref: 11313. Contact Justin Loughnane

Commercial Property (0-5 years' PQE)

Dublin €Negotiable

A number of opportunities exist with leading firms at all levels. Experience in residential and commercial development, leases, tax, lending & landlord and tenant desirable. Excellent remuneration packages on offer with genuine opportunities for career development. Ref: 99984. Contact Justin Loughnane

Corp/Commercial Solicitor (Newly Qualified)

Dublin €Negotiable

Our client an established firm are looking to recruit a corporate lawyer. You will provide legal advice to an array of national & international, public & private clients. You will have experience in mergers and acquisitions, joint ventures, privatisations and rotations. Excellent terms. Ref: 12929. Contact Justin Loughnane

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