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On the cover

The pending Irish 'embryo custody' case has finally brought the legal issues associated with assisted reproductive technologies into sharp focus

PIC: GETTY IMAGES

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May 2006

REGULARS

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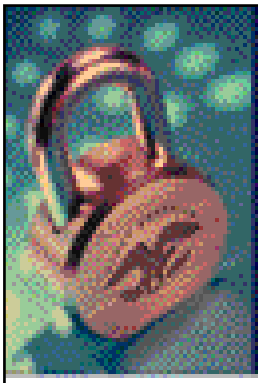

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Law Society discusses *Civil Law Bill*

Time has moved on since my message in the January/February *Gazette*. I write to inform you of some of my activities since my earlier message. I, the director general and the deputy director general met with the Minister for Justice, Equality and Law Reform in February to discuss the *Civil Law (Miscellaneous Provisions) Bill 2006*.

At that meeting, we were given the Heads of Bill concerning the appointment, the powers and the functions of the proposed new Legal Services Ombudsman, who will oversee both the solicitors' and barristers' professions. The text of the draft Heads of Bill have been circulated to all Council members, comments received, processed and sent to the department. The matters of greatest concern to the Council regarding the establishment of a Legal Services Ombudsman are:

- The exact role and powers of the ombudsman,
- The costs to the profession of the ombudsman,
- The manner in which the ombudsman might oversee entry to the profession.

Extensive written submissions and suggested amendments have been made to the minister. At our meeting with him, we raised certain other matters that we believe could be addressed in a bill of the sort proposed. Items included the following:

- The ability of solicitors to limit liability by contract,
- Provisions for dealing with dormant client funds,
- Swearing of documents outside the state.

You will have received a letter from me concerning the purchase of a site adjoining the Law Society and fronting onto Benburb Street. I am delighted to report that the overwhelming response of the members has, to date, been extremely supportive of the decision.

The Society is to open a law school in Cork. The chairman of the Education Committee, director of education, the director general and I visited Cork on 10 April to formally announce the decision. The Society is working with the Faculty of Law in University College Cork to ensure that first-class facilities are available for students. All of us were enthused by the interest, sincerity and helpfulness shown by the President of UCC, Professor Wrixon, and the Faculty of Law.

Concern has been expressed about the proposed new treatment of work-in-progress in solicitors' firms. The concerns of the Society to the proposals outlined in the budget were made to the chairman of the Revenue Commissioners and three other commissioners in January. While the *Finance Bill* did subsequently provide for a deferral of tax over a five-year period, concern was expressed regarding such deferral.

It is hoped that when representations to Revenue have been completed, a practice note will be sent to the profession by the taxation committee. Practitioners should discuss the accounting treatment of work-in-progress with their own accountants.

The director general, Alma Clissman and I have met solicitors in FLAC, the Community Law Centres, the Irish Traveller Movement Legal Unit and the Immigrant Council of Ireland. A discussion paper on possible Law Society assistance is in the final stages of preparation for presentation to the Council in May. At the same time, we must continue to seek the expansion of civil legal aid by government.

A visit to Ireland by the Director of Education of the Law Society of South Africa, Nic Swart, took place in March. South African lawyers from historically disadvantaged backgrounds will undertake training in certain Irish law firms from June to September of this year.

I am most grateful to all who have contributed in any way to this project, in particular the DSBA for their most generous donation. Such projects demonstrate that our profession is a caring and socially-aware body, which is most heartening.

Michael G Irvine
President

"Concern has been expressed about the proposed new treatment of work-in-progress in solicitors' firms"

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GALWAY

Work first

Galway solicitors will be heading northwards to Sligo on 10 June for their summer ball. But before the revelries, they will enjoy (enjoy?) three hours of CPD lectures.

"We think that it is an efficient use of time for us to hold the CPD lectures during the day and the summer ball in the evening," noted Ailbhe Burke, secretary of the Galway Bar Association. She added that there is sufficient talent within their own ranks for the lecturers to be Galway colleagues. She is looking for volunteers.

One of the high points of the evening will be a formal welcome to Circuit Court Judge, Ray Groarke, to the Western Circuit by the president of the Galway Bar Association, Elizabeth Cazabon. Judge Groarke started work on the Western Circuit earlier this year. "We are sorry to lose Judge Harvey Kenny, who has been a very popular judge here for ten years, but we are now looking forward to working with Judge Groarke," Ailbhe said.

The invited guests will include Judge Groarke, District Court Judge Mary Fahy, County Registrar Sean O'Domhnaill, District Court Registrar Peter Rafferty and Phil Armstrong, President of the Sligo Bar Association.

CAVAN

More PIAB

A day on personal injuries and PIAB will be held in Cavan town on 15 May, organised by the Cavan Bar Association. "This CPD day will focus on the practical aspects of working with PIAB and will be provided by Clones colleague Brian Morgan," according to Jacqueline Maloney, president of the association. It follows a long series of CPD lectures organised by the association on a wide range of topics, including professional negligence, employment law and office technology.

PIC: BRIAN MULLIGAN

Lake country

To mark his appointment as president of the Circuit Court, Mr Justice Matthew F Deery was the guest of honour at a special presentation organised by the Cavan Bar Association (CBA) recently. *(Seated, l to r)*: Joan Smith (CBA) presenting a watch to Mr Justice Deery, and Jacqueline Maloney (president CBA). *(Back, l to r)*: Judge John O'Hagan, Rita Martin (secretary), Pat Deery, Judge Sean MacBride, Enda O'Carroll (Monaghan State Solicitor), Gretta McBride, Josephine Duffy (Monaghan County Registrar), and Sean Kennedy, Monaghan Bar Association

DUBLIN

Edmund Sheil, RIP

Practitioners in Dublin, young and old, and in particular those working in the District Courts on a daily basis, were saddened at the recent death of Edmund in his 85th year.

He had been in practice into his early 80s and served with distinction as president of the Dublin Solicitors' Bar Association in 1966. His son, Tony, assumed the same office in 1992.

The judges

The DSBA recently held a dinner for all Dublin District Court judges. "It was a purely social occasion, in which we were delighted to meet the new president of the court and her colleagues. We look forward to having a similar occasion with our Dublin Circuit Court colleagues towards the end of the month," says DSBA's secretary, Kevin O'Higgins.

Tripartite talks

DSBA President, Brian Gallagher, and some colleagues travelled to Liverpool recently, thereby continuing a tradition of meetings with colleagues from Merseyside and Belfast. It's a tradition that has been part of the DSBA calendar for a long number of years, whereby joint conferences with our colleagues in Liverpool and Belfast on a tripartite basis are held. It was Liverpool's turn this year, and there was a useful exchange on matters of mutual interest.

Any day now

The CPD Online Project pioneered by the DSBA is due to be launched later this month and will be available to all practitioners throughout the country as an efficient 'DIY' way of fulfilling your CPD requirements.

Meanwhile, a suite of practice management seminars entitled 'Building a Dynamic and Profitable Practice' – a step-by-step guide to all aspects of running a practice – is being organised for later this month.

LOUTH

Cancer fund

Louth solicitors went down to local auctioneers by 4-1 in a recent fundraising soccer match. And the event was supposed to improve relations between the two groups!

"But we were very pleased to raise more than €3,000 for the Louth Cancer Scanner Appeal for the Louth County Hospital in Dundalk," said John McKenna, the Dundalk-based solicitor who organised the event with local estate agent, Tiernan Mallon.

"We believe that it is very important for solicitors to reach out to the local community and to show that solicitors do care and that we want to make a contribution," John added. There will be other events – and a re-match. The revenge will make it even sweeter. G

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

NEW HIGH COURT JUDGE

Kevin Feeney SC has been appointed a judge of the High Court. The swearing-in ceremony was performed before the Chief Justice in the Supreme Court on 5 April.

RETIREMENT TRUST SCHEME

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All-equity fund: € 1.32475
Cash fund: €2.64236
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HLJ SEEKS SUBMISSIONS

The *Hibernian Law Journal* (HLJ) is seeking articles ranging in length from 5,000 to 15,000 words on any legal topic, for consideration in its 2006 edition. Articles should be thoroughly researched and not previously published. Submissions may be sent to editor@hibernianlawjournal.com. The *Hibernian Law Journal* is compiled and edited by trainee and newly-qualified solicitors, with the support of the Law Society, and is now in its sixth year.

Client focus comes to you

"Client expectations are increasing rapidly and it is up to us as a profession to meet them." So says Law Society President Michael Irvine. "As a profession, there is a lot we can do to improve the overall level of service we offer. We need to focus strongly on managing and retaining our existing clients."

Given that business success relies on these key areas, the Law Society has put together a business development programme for managing partners and sole practitioners that concentrates heavily on client focus.

Through 'client focus seminars', participants will get exclusive access to current ideas and steps to improve legal practices – for both clients and the firm. So join your colleagues at the client focus seminar and learn to tackle some of the key issues involved.

Locations and dates:

- **Dublin:** Four Seasons Hotel, Dublin 4 – Monday 15 May 2006, 1pm – 5pm
- **Cork:** Maryborough House Hotel, Douglas – Friday 19 May 2006, 9.30am – 1.30pm
- **Limerick:** Radisson SAS Hotel, Ennis Road – Monday 29 May 2006, 9.30am – 1.30pm
- **Galway:** Galway Bay Hotel, Salthill – Tuesday 30 May 2006, 9.30am – 1.30pm

COLLEGE OPENS POSTGRAD DOORS
At the recent opening of the Portobello College Postgraduate School of Law and Business were *(l to r)*: Director of Portobello College Andrew Kearns, Minister for Justice Michael McDowell, and President of Portobello College Raymond Kearns

ONE TO WATCH: NEW LEGISLATION

Criminal Law (Insanity) Act 2006

The *Criminal Law (Insanity) Act* was signed into law on 12 April and will be commenced on 1 June. First published in 2002, its origins lie in the 1978 Henchy Committee report. It addresses the difficult issue of the trial of crimes where:

- The person accused is unfit to stand trial because of a mental disorder, or
- The person accused was suffering from a mental disorder at the time the criminal act was committed, and did not have the mental intention to commit a crime, or
- The person accused (of murder) was not insane under the law, but was not in command of his or her normal faculties and had diminished responsibility.

It applies to the general criminal law and also to offences tried by court martial. Apart from introducing the new defence of diminished responsibility (available in Britain for many years) and replacing the existing advisory committee with a statutory review board, the act largely restates existing law and elaborates on it, for example, in relation to appeals. It does not represent an attempt to update the criminal law to reflect the current greater understanding of mental illness and its causes and conditions. The explanatory memorandum published with the bill refers to a lack of consensus on this matter in other common law jurisdictions. However, it gives considerable discretion to judges to divert mentally disordered defendants to the health system.

Mental disorder

The act makes a distinction between:

- Mental disorder, as defined in section 1: "mental disorder includes mental illness, mental disability, dementia or any disease of the mind, but does not include intoxication";
- Mental disorder within the meaning of the *Mental Health Act 2001*, section 3. In the 2001 act, the constituent conditions are also identified as mental illness, severe dementia and significant intellectual disability, but the definition is more detailed. It requires a serious likelihood of serious harm to self or others, or the risk of serious deterioration in the person's condition without admission, or the necessity of admission to enable treatment to be given, and (in relation to the latter two conditions), that the reception, detention and treatment would be likely to benefit and alleviate the person's condition to a material extent.

One difference in the effect of the two definitions is that, as confirmed by the minister, personality disorders are not specifically excluded by the 2006 act definition, unlike the provision under the 2001 act. Such disorders are not considered amenable to 'treatment' (though this is disputed, and it is argued that some are amenable to significant management and improvement through cognitive behavioural therapy, not psychiatry). The stress on treatment potential by the *Mental Health Act 2001* is not so relevant when mental disorder results in crime. However, in many sections, both definitions of mental disorder are referred to.

Fitness to plead

The new statutory definition of fitness to be tried is based on the existing common law and involves the accused being unable, by reason of a mental disorder, to understand the nature or course of proceedings so as to plead,

Discrimination law event

The only disability event of its kind in Europe – the annual Summer School on Disability Discrimination Law – will take place in NUI Galway from 6-14 June. Hosted by the Faculty of Law at NUI Galway, the school is co-financed by the European Commission. Last year it attracted participants from over 13 countries.

The school's main focus will be the EU *Framework Directive on Employment*, which prohibits discrimination against people with disabilities (among others) at work. This will appeal to lawyers and legal advisers to NGOs interested in crafting test-case strategies under the directive on disability grounds. Non-legal audiences with a special interest in disability should also find the course useful.

Participants in last year's disability discrimination event

The course will be taught by leading practitioners in disability law who have experience before a variety of courts, including the US Supreme Court (Prof Peter Blanck, Syracuse University), the House of Lords (Robin Allen, QC), the Canadian Courts, (Patricia Bregman, attorney), the European Court of Justice (Prof De Vos, University of Ghent) and the European Court of Human Rights (Prof De Schutter, Catholic University of Louvain).

A highlight of the school will be a moot court competition organised around practical issues that are likely to confront the European Court of Justice when dealing with disability discrimination issues.

Further information on the programme and application forms are available at: www.eusummerschool.info.

■ ESTATES AND TRUSTS SEMINAR

Stephenson Solicitors will hold their ninth seminar, to be held on 2 June 2006, from 9.15am to 5.15pm, at the Westbury Hotel in Dublin. Titled 'Post-grant Administration of Estates and Trusts', the speakers will include Anne Stephenson, Finola O'Hanlon and Mary Condell. Further details can be obtained by contacting Stephenson Solicitors directly at: stephensonsolicitors@eircom.net

■ DOCKLANDS MOVE FOR MASON HAYES & CURRAN

Mason Hayes & Curran has moved from three premises on Leeson Street and Fitzwilliam Square into South Bank House – a purpose built nine-storey building on Barrow Street in the Dublin Docklands. South Bank House boasts 60,000 square feet of open-plan space. It features a five-floor atrium and a landscaped terrace garden with views over Dublin Bay.

instruct a lawyer, elect for trial by jury (if appropriate), make a proper defence, challenge a juror or understand the evidence. The issue of fitness to plead can be raised by the defence, the prosecution or the court, and the court must decide the question with medical evidence. If the court decides the defendant is fit to be tried, the trial must proceed. If not, and there is evidence that the defendant is suffering from a mental disorder and would benefit from treatment, the court may commit the defendant to a designated centre or make an order in relation to out-patient care, which will then be reviewed under section 13 in the ordinary course of reviews of all detention of mentally disordered persons.

The court has two other options to avoid mentally disordered people from being entangled in the criminal justice system. The court may defer the decision on fitness to be tried and allow the trial to proceed, up to any point before the opening of the case for the defence. At that point, if the jury or the court returns a verdict in favour of the accused, the need to decide on fitness to plead is avoided and the accused will be acquitted. Alternatively, the court may decide that the person is unfit to be tried and may (on application) allow evidence to be adduced as to whether the accused did the act complained of. If the court is satisfied that there is a reasonable doubt on that point, it must order the accused to be discharged. In that event, the accused may be dealt with under the *Mental Health Act 2001*, outside the criminal justice system.

Not guilty by reason of insanity

This term replaces the existing, more pejorative verdict of 'guilty but insane'. The new statutory definition reflects existing law. The onus of proving insanity on the balance of probability is on the person alleging it. It requires evidence from a consultant psychiatrist to the effect that:

1) The accused was suffering from a mental disorder;
2) The mental disorder was such that the accused person ought not to be held responsible for the act alleged because he or she:
   a) Did not know the nature and quality of the act, or
   b) Did not know that what he or she was doing was wrong, or
   c) Was unable to refrain from committing the act.

On such a verdict, the court has the option of committing the accused to a designated centre for up to 14 days for examination in relation to potential need for in-patient care, and extending this to a maximum of six months. His or her detention there then comes under the standard review procedures set out in section 13.

Alternatively, a court may refer a defendant for treatment on an in-patient or out-patient basis, rather than to prison.

Diminished responsibility for murder

Prior to this act, there was no defence of diminished responsibility in relation to murder. In relation to every other offence, the accused's effective diminished responsibility can be reflected in the sentence imposed by the judge. But in relation to murder, the life sentence is mandatory. The new verdict of diminished responsibility reduces the risk that juries will reach a verdict of insanity in cases where the accused does not meet the technical criteria for insanity, but nevertheless was not functioning normally.

The resulting verdict is one of manslaughter on the ground of

Further Advanced Advocacy Course

The Law Society of Ireland recently played host to the 'Further Advanced Advocacy Course' in Malahide, Co Dublin. The course was run in partnership with the National Institute for Trial Advocacy (NITA). Participants from three jurisdictions attended, including the Republic of Ireland, Northern Ireland and Scotland. This is the fourth year that the course has been run. NITA has identified it as one of their most prestigious foreign programmes.

This year's distinguished NITA tutors included the President of NITA, Lonny Rose, Louise La Mothe and Tom Geraghty – all experienced advocates. The NITA faculty was assisted by tutors from the three jurisdictions.

The residential weekend course was only open to those who have previously participated in the week-long 'Advanced Advocacy' course, which takes place every September in Belfast or Dublin, and to solicitor advocates from Scotland. There was case analysis of a complex medical negligence case, lectures and demonstrations on examinations-in-chief, cross-examinations, closings, dealing with difficult witnesses and expert witnesses. The Recorder of Belfast, Judge Burgess, also gave a lecture on skeleton arguments.

Eager beavers: advocacy course participants

The participants were given the chance to further enhance their advocacy skills and put their new knowledge to the test by participating in moot trials. They were critiqued by both NITA tutors and local tutors on their performances. The weekend concluded with an inter-jurisdictional symposium.

Next year's 'Further Advanced Advocacy' course will be hosted by our Northern Irish counterparts. All previous participants in the annual Advanced Advocacy course will be invited to attend.

NITA deserves great praise for its continued support of advocacy in this jurisdiction, as do all the tutors for their infinite enthusiasm, and the witnesses who gave so generously of their time for the course.

diminished responsibility. It will apply also to cases of infanticide. The criteria are that:

- The accused did the alleged act,
- Was at the time suffering from a mental disorder, and
- The mental disorder was not sufficient for a finding of insanity, but was such as to diminish substantially his or her responsibility for the act.

Designated centres

The Central Mental Hospital is designated as a centre, and other psychiatric centres may be designated in future in consultation with the Minister for Health and Children. Minister Michael McDowell accepted an amendment from Deputy Aengus O'Snodaigh that removed forever the possibility that a prison or any part of a prison could be used as a designated centre to hold mentally ill persons. This was an important decision and represented a complete change of policy. This renders a secondary provision in section 13(1) superfluous, and it will be removed by an amendment in the *Criminal Justice (Miscellaneous Provisions) Bill*, currently being drafted.

Review of detention

The case law of the European Court of Human Rights requires that the detention of persons on grounds of insanity must be periodically reviewed, and this will be the task of the Mental Health (Criminal Law) Review Board. It will be chaired by a practising lawyer or judge, have at least one medical officer, and the members will be civil servants appointed for five years. It must assign a legal representative to a patient (if the patient does not plan to engage one) and, among its tasks, it must set up a scheme of free legal aid for the patients. Its investigations are to be held in private, and it must hear medical evidence. It must review all patients at least once every six months, but a clinical director may refer a case at any time and a patient may make an application at any time, though the board is not obliged to entertain it.

Temporary release

The clinical director of a designated centre may direct a patient's temporary release without consulting the review board. But the minister must consent to ensure the public interest is considered. There is also provision for the transfer from prison to a designated centre and back, and other matters.

Welcome

At 26 sections, the act is not long, but it is welcome. It has been long awaited, being partly based on the 1978 *Third Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons* (the Henchy Committee). The need for reform of the law in this area has been the subject of repeated judicial comment. It is a great improvement for those whose mental distress and illness previously meant indefinite detention, subject to review of an advisory committee. Now their detention must be reviewed at least every six months by an independent statutory review board and they are entitled to be legally represented. Further, courts have the option of referring convicted persons under this act to in-patient or out-patient treatment, instead of to prison or the Central Mental Hospital, which is to be warmly welcomed. G

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

Annual dinner celebrates South African adventure

The Annual Dinner of the Law Society, held on 10 March, was 'A South African Adventure' in a very real sense. Law Society President Michael Irvine chose the theme in order to focus minds on the great work being carried out by a group of Irish solicitors in the South African republic since March 2002.

Among the guests on the night were the Chief Justice, President of the High Court, President of the Circuit Court, President of the District Court and other members of the judiciary, as well as the Garda Commissioner and members of the Oireachtas. Special guest was the Ambassador of the Republic of South Africa, Her Excellency Priscilla Jana. The guest speaker was Nic Swart, the Director of Legal Education and Development Division of the Law Society of South Africa.

Training for 200 lawyers

The aim of the Law Society's South African programme has been to provide a course in commercial law for lawyers from historically disadvantaged backgrounds. The idea was the brainchild of the Law Society's EU and International Affairs Committee following approaches by the Law Society of South Africa for assistance in developing this aspect of its education programme. Since that time, over 200 lawyers have received training in commercial law.

During his after-dinner speech, President Irvine said that South African lawyers from disadvantaged backgrounds would now receive office training of three months in Ireland. This programme is due to start in May 2006.

Senior Vice-President of the Law Society Philip Joyce, President Michael Irvine, guest speaker Nic Swart (Law Society of South Africa) and Junior Vice-President Gerard Doherty

Her Excellency Priscilla Jana, South African Ambassador to Ireland, and Simon Murphy, Council member of the Law Society

Guest speaker Nic Swart thanked the members of the Law Society for their support for the South African programme. He said that growth could only occur where people were valued. Irish lawyers had shown this to be the case in their involvement in the South African programme, he said.

In reply, Michael Irvine said that Irish tutors had been "enriched and privileged" by the experience. "For that we must not only thank you, Nic, and all your staff, but most of all, we must thank the lawyers from disadvantaged backgrounds who we work with in South Africa. For me, the journey has at times been frustrating, at times arduous, but always most worthwhile.

"Lack of access to justice is bad for people and bad for society," he continued. "This concerns everyone – not just lawyers … It is our responsibility to champion this issue. We can do this by argument and by example." He ended by saying that, while the profession was anxious to increase its role, it also believed that government, too, had an important part to play. "In this regard, I reiterate our request for civil legal aid monetary thresholds to be raised and its scope widened."

The president thanked Senior Vice-President Philip Joyce and Junior Vice-President Gerard Doherty for their support and paid a special word of thanks to the organiser of the annual dinner, Colleen Farrell, and to Ayanda Zulu Ntuli, who entertained those present with a selection of South African music.

UIA TO HOLD DUBLIN SEMINAR

The Union International des Avocats (UIA) is organising a seminar on 'Emerging trends in cross-border mergers and acquisitions – corporate, tax and financial law aspects' in Dublin on Friday 16 and Saturday 17 June.

The day-and-a-half seminar will cover the issues facing lawyers acting in mergers and acquisitions. The focus will be on smaller deals and would be relevant, for example, to purchasing a business in Northern Ireland. This is an opportunity to learn, swap experiences and meet colleagues from foreign countries. The cost is a competitive €425 for non-UIA members.

For further information, please log on to the UIA web site at: http://www.uianet.org, or contact James Grennan at A&L Goodbody.

LRC ISSUES eCONVEYANCING REPORT

The Law Reform Commission's *Report on eConveyancing: Modelling of the Irish Conveyancing System* was launched by Taoiseach Bertie Ahern on 5 April.

The 'Modelling Report' is the first detailed analysis of what's involved in the conveyancing process. It examines the roles played by vendors and purchasers, estate agents, solicitors, financial institutions, local and planning authorities, the Land Registry and Registry of Deeds and other users.

The key recommendation in the report is the establishment of a so-called 'Project Board', whose task it will be to make a detailed assessment of the most appropriate model for eConveyancing in Ireland.

The issue of eConveyancing is particularly urgent, given the increased demand to transact business online within Irish public bodies.

human rights watch

International human rights instruments in Irish law

Noeline Blackwell reports on developments in relation to the practical application of the *European Convention on Human Rights*

The ECHR was "given effect" in Irish law by the *ECHR Act 2003*. No such incorporation has occurred of the major UN human rights treaties that Ireland has signed and ratified. This is not to say that these treaties cannot be quoted with persuasive effect – they can be, and often are, used in Irish courts to support a particular interpretation of human rights law. But they do not prevail over Irish law because of our dualist legal system.

An important purpose of international human rights law treaties is to hold states to account in the international community for breaches of human rights law. For the most part, the main mechanism in a treaty is an oversight committee to examine the state's report on progress. Individual complaint mechanisms tend to come as an add-on. This is the case with the *Convention on the Elimination of Discrimination against Women* (CEDAW), where the individual complaints mechanism is an add-on, a protocol that is optional.

The individual complaints mechanism in the optional protocol to CEDAW, as in many of the other treaties, requires a complainant to exhaust domestic remedies. In one of the three published decisions of the CEDAW's committee (*Rahime Kayhan v Turkey*, 8/2005), the complainant's case failed on this ground.

Exhausting domestic remedies can be a long, tedious and expensive process. Only the truly dedicated and those with adequate resources will make it to this point.

Another limit on international human rights mechanisms is that most of them, including CEDAW's optional protocol, will only examine a complaint that has not been examined by another international law mechanism. So a complainant has to choose a forum at an early stage. Traditionally, this has led Irish lawyers to focus on the ECHR and the Strasbourg court. Judgments of that court receive substantial publicity in Ireland and are well understood by government, legislators and executive. Now that the convention has been incorporated into Irish law, a judgment of that court is also likely to have significant value as a precedent in later cases tried in the domestic courts.

Changing the law

This leads to the third reason why there is little use of the individual complaint mechanisms of the various UN treaties: the effectiveness of a decision of a UN committee.

It took five years to have the law changed to decriminalise homosexual acts after David Norris won his case in Strasbourg in 1988.

Sometimes there is no sign that the law will be changed, even when a case is won. In December 2000, the ECtHR held that s52 of the *Offences Against the State Act 1939* was in breach of fair trial requirements of the ECHR in two cases (*Heaney & McGuinness v Ireland* and *Quinn v Ireland*). Although those decisions were widely publicised, the relevant legislation has not been amended. In practice, the state just does not prosecute people under this particular section any longer.

ECHR in Strasbourg

In a more recent case, a Mr Kavanagh went to the courts, asking them to quash his conviction on the basis that the UN Human Rights Committee had given a decision that the Irish state had breached Mr Kavanagh's rights as set out in the *International Covenant on Civil and Political Rights*, which Ireland had ratified (*Kavanagh v Governor of Mountjoy Prison* [2002] IESC 13). The courts did not accept that they were bound by the decision. As Mr Justice Fennelly said in the Supreme Court:

"The notion that the 'views' of a committee, even of admittedly distinguished experts on international human rights ... though not necessarily lawyers, could prevail against the concluded decision of a properly constituted court is patently unacceptable. To be fair, even in international law, neither the covenant nor the protocol make such a claim. Neither the covenant nor the protocol at any point purports to give any binding effect to the views expressed by the committee. The committee does not formulate any form of judgment or declare any entitlement to relief. Its status in international law is not, of course, a matter for this court. It suffices to say that the appellant has not furnished any arguable case for the effect of the committee's views."

While the complaint was valuable in terms of international human rights law jurisprudence and was an encouragement within Ireland to use the procedure, and almost certainly will affect Irish state practice, Mr Kavanagh himself benefited little from the process. So while decisions of international tribunals are undoubtedly important in terms of persuading the legislature and setting precedents, they can be of limited value to an individual complainant who seeks redress.

Future potential

If international human rights instruments are used as part of an overall campaign of lobbying, information and individual complaints, the decisions of bodies such as the CEDAW committee are likely to become more prominent and thus easier to implement and to enforce. This means that lawyers and NGOs will have to learn to understand more clearly how they can build on each other's skills and information to prepare and present and use the law in a way that brings international human rights law home. G

Noeline Blackwell is the director general of FLAC. This article is based on a paper delivered at the March conference 'Taking CEDAW Seriously', organised by the Women's Human Rights Alliance.

Law Society launches new law

The Law Society has answered the 'staggering increase' in legal student numbers with the launch of a new Cork-based law school, set to open this winter

The Law Society is to open a new law school in Cork for trainee solicitors next November. It means that trainee solicitors will now have a choice of either Cork or Dublin for their professional training. It is thought that up to 150 trainee solicitors will choose to study in Cork, rather than at Blackhall Place in Dublin, when the new school opens for business.

President of the Law Society, Michael Irvine, made the exciting announcement at a ceremony in the courthouse in Washington Street, Cork, on 10 April. Launching the new school, he said: "This is a very historic day for the Law Society. It is the first time in our history that we have planned to offer our training courses outside Dublin.

"Until recently, this would not have been feasible. It is feasible today due to the staggering increase in the number of those training as solicitors. In October 2002, a total of 356 trainee solictors started the Professional Practice Course I (PPCI) in Dublin. In October 2005, that had increased to 647 students – an increase of 83% in three years."

'Dramatic increase'

He continued: "In 2002, there were 714 trainees at various stages in the process of qualification. The equivalent figure now is 1,437. This dramatic increase shows no sign of abating. The number of training contracts registered in the first three months of this year is 63% higher than the number registered in the first three months of 2005. These extraordinary figures are a testament to the willingness of the solicitors' profession to invest time and resources in training their future colleagues."

Southern support
President of the Southern Law Association, Sinead Behan, leads her Council on the Washington Street steps

SLA secretary, Joan Byrne, Law Society Council member James O'Sullivan, and SLA Council member Gail Enright

Ken Murphy and Sinead Behan

Advertisements have already appeared in the *Irish Examiner* for professional staff to run the new courses. Premises have been identified and works are being carried out to provide the new law school with offices, IT and teaching facilities. "University College Cork has very kindly agreed to collaborate with us," said the president.

The president said that the huge influx had motivated the Law Society to investigate how best to expand its training capacity. "We have invested heavily in our education facilities in Dublin – most notably our modern Education Centre – opened in 2000."

He continued: "There has been a proportionate increase in the number of trainee solicitors based in Munster in this national surge. A number of years ago, we started to provide the Final Examination – First Part, in Cork, as numbers justified it. The provision of our training course in Cork has, we think, now become viable."

Morning Ireland

Speaking on RTÉ's *Morning Ireland* on the day of the launch, Director General Ken Murphy said that, currently, there were more than 7,000 practising solicitors. "We are increasing by 8% or 9% per annum. There are many in the profession who believe the level of growth in the number of solicitors is completely unsustainable, but the Law Society has accepted for many decades that it has no role to play whatsoever in seeking to control the numbers entering the profession. Our job is simply to provide the professional training to allow them to do so."

Asked about the reasons for the huge demand to enter the profession in Ireland, the director general replied: "There are a number of factors. I think we are a far more educated population. People are more inclined to know their rights and have the confidence to assert them. The Oireachtas, every year, produces ever more complex, ever longer, more detailed laws. The European Union does the same.

"We are a more regulated society, a more complex society, a wealthier society," he continued. "Areas like family law, employment law, planning law and tax law have developed enormously in recent years. For

school in Cork to meet demand

Chair of the Education Committee, Stuart Gilhooly, Law Society President Michael Irvine, SLA President Sinead Behan and Education Committee Vice-Chair Tom Murran

Dean of the Law Faculty of UCC, Caroline Fennell, with Sinead Behan and Michael Irvine on the steps of Cork Courthouse

The Law Society's Director of Education, TP Kennedy, Stuart Gilhooly and Ken Murphy enjoy the Cork sunshine

example, there are more judges in the High Court hearing judicial review cases now than there are personal injury cases.

"We have discussed whether the way in which American TV dramas depict lawyers as wealthy, glamorous, powerful – even sexy – may have actually contributed to the huge demand, but certainly it is a global phenomenon. More and more people want to become lawyers."

UCC link

The PPCI course in Cork will be identical to its Dublin counterpart. The same course will be taught in Cork, using the same syllabus and the same materials. It will be organised by Law Society staff based in Cork. As with Dublin, the teaching will be done primarily by practising solicitors.

UCC Law Faculty member Irene Lynch-Fallon with Council member Jerome O'Sullivan

The Law Society has a core of over 600 practising solicitors from all over Ireland who lecture and tutor in their areas of expertise. A good proportion of these are Munster-based. However, the Society needs to recruit more than 100 new solicitors to assist at Cork. Said Michael: "The Southern Law Association has been extraordinarily helpful with this project and I'm confident it will assist us with rallying the profession in Cork and beyond to get involved in training future generations of solicitors."

Trainee solicitors attending the Cork course will be registered both with the Law Society and University College Cork (UCC). This will give them access to the college's excellent academic facilities, including its library and other social, sporting and entertainment options.

"The link with UCC is a valuable one," said President Irvine. "We have been delighted with the support that has been offered by Prof Caroline Fennell, and the Faculty of Law and the President of UCC, Prof Gerry Wrixon.

"We are determined that the courses provided in Cork will be every bit as good, if not better, than those provided in Dublin. Our professional training is at least on a par with the best in the world," he said. "We are hopeful that our new course in Cork will attract students from all over Ireland and that some students from Munster will continue to attend the courses in Dublin," he concluded. G

CORK RECRUITMENT OPPORTUNITIES

The Law Society of Ireland provides training courses for trainee solicitors as part of their pre-qualification training (the professional practice courses) in Dublin. From winter 2006, the Law Society will also provide these courses in Cork.

To provide these courses, the Law Society wishes to recruit the following staff that will be based in Cork:

- Cork City - Course Leader
- Cork City - Course Executive (four posts)
- Cork City - Administration Executive.

For more information on these positions, please refer to the 'Employment Opportunities' section of the Law Society's website at: lawsociety.ie (Refs 4.12, 4.13, 4.14)

PIAB – the case for

Ever since PIAB's introduction, the focus of the solicitors' profession has been on claimants and their rights. It seems as though we have forgotten that respondents' interests need protection too, says Stuart Gilhooly

It's easy to side with David. Nobody wants to be Goliath's best friend. It's a bit like being a Chelsea fan these days: great if you're on their side, but everyone else hates you. Never let it be said that we are biased, though. The time has come to ask the pertinent question – is PIAB really in the best interests of the respondent?

The answer to that question, like most legal queries, is not straightforward. There can be no doubt that if the respondent is facing an unrepresented claimant in a case where consent has been given, then PIAB is the best invention since sliced bread. PIAB will do the necessary for them. It will reach a decision eventually, probably at the low end of the spectrum of damages, the unadvised claimant will lap it up and say "thank you very much". No court, no solicitors, no hassle. Pretty good value for €850, I'm sure you'll agree. Respondent happy, claimant oblivious. It's only later, when it's too late, and the injury is still causing trouble, that the claimant sees the folly of going it alone.

However, fortunately for justice, most claimants are sensible and will use their solicitor. As PIAB is unable (very strange, with all the technology at its disposal) to give the figure for those that use representation, we are left with Ms Dowling's best estimate, which tells us that over 80% use solicitors. Either way, this means that respondents must accept that the vast majority of claimants will be properly advised.

PIC: GETTY IMAGES

Eaten bread is soon forgotten

Say you will

The upshot of this is that, although currently 75% of those awards made are accepted, clearly a further 25% are not – and this figure is set to increase substantially, as more and more claimants seek proper advice and realise that they can do a whole lot better. Furthermore, while the claim is meandering through the seemingly never-ending process, the insurers cannot adequately reserve against it without up-to-date medical evidence, which will surely have severe repercussions if they then underestimate the value of a large number of claims. Even so, it is probably worth the respondent's while to allow an assessment where liability will not be an issue, as the acceptance rate is never likely to fall below 50% – and unless it turns out that there are thousands of undervalued claims that come out the other side and proceed to court, then insurers will probably accept that risk.

It's where liability is or could be an issue that respondents really have to look at their options very seriously. Take the classic multi-party building site accident as an example. Labourer falls off scaffolding and the scaffolding contractor, main contractor and employer are potentially liable. Let's say the scaffolder thinks he could have a liability but, say, the employer won't get off scot-free. Scaffolder consents to PIAB and the other parties don't. With a two-year statute of limitations, the claimant can't hang around to see if the PIAB award is accepted by both claimant and respondent, so has to issue concurrent proceedings against the other two parties. In this scenario, assuming the appropriate O'Byrne-type letter has been written, the scaffolder is in a lose/lose situation. If he rejects the PIAB award, he has wasted his €850 in going to PIAB, but if he accepts it, then he ends up paying the costs of the outstanding, but now moot, proceedings against the other two non-participating respondents.

Respondents also have to consider the issue of contributory negligence. As PIAB assesses only on a full-liability basis, it cannot be taken into account. So is it worth a respondent's while to consent to PIAB where there is that possibility? Well, it would want to be a very small degree of contributory negligence for this to make sense. When you consider the difference that even a small finding of 25% can make to an award, the contributory negligence possibilities would need to be negligible to take the risk of either the claimant rejecting the award or PIAB awarding too much for the respondent to stomach.

Rumours

A new consideration when deciding to consent is the rumoured increase in charges that PIAB is believed to be seeking from respondents. It

viewpoint

the defence

currently stands at €850 but is, apparently, due to increase substantially in the near future. Clearly this will have a large effect on respondents' decisions to consent, as the larger the fee, the higher the gamble that PIAB will deliver the goods for them. And if claimants stop taking the awards, then PIAB ceases to be a mediation service that respondents will want to use.

So, in a nutshell, as things stand, if liability is definitely not an issue, then it is probably worthwhile referring to PIAB – but it really is a gamble in any other circumstance.

Of course, to consent or not to consent isn't the only conundrum facing respondents in the new litigation world. One of the most potent weapons – which has always been available to defendants – is the ability to make a competitive tender or lodgement. The PIAB proponents have long claimed that the way to really worry a claimant who refuses a PIAB award is to tender the award in the subsequent proceedings. As more and more proceedings are now issued following refusals of awards, these tenders are becoming prevalent.

Mystery to me

In a recent case in the midlands, a PIAB award of €6,500 was refused by the claimant, proceedings issued and a tender in the same sum made. The tender was then accepted by the claimant, but when the cheque was forwarded to the claimant's solicitor, it was accompanied by the proviso that it was tendered on the basis of no costs being payable. The claimant's solicitors understandably sent the cheque back and brought a motion seeking the court's directions. The court, unsurprisingly, found that costs must be payable in those circumstances and made an order in those terms.

It is not clear quite how the defendants in this case thought they could escape the payment of costs in the light of section 51 of the *PIAB Act 2003*. This is very clear in stating that "an assessment … shall not be admissible in evidence in any proceedings between the claimant and respondent … or referred to in any originating document, pleadings, notice or affidavit relating to those proceedings". Therefore, it would seem impossible for a defendant to even make the argument that no costs are payable in such proceedings, much less to succeed.

Another new phenomenon is the 'all-in tender'. It appears that a certain insurance company is instructing its solicitors to make tenders that are expressed to be inclusive of costs. This has yet to be tested in the courts, but it would seem highly unlikely that the courts will consider it a valid tender. Common sense tells us that if a court awards a sum, then costs will inevitably follow. Quite how a tender that is stated to be inclusive of costs can be evaluated against such an award is unclear, but you may take it that the courts will not be impressed. Furthermore, the rules of court state that, upon acceptance of a lodgement/tender, the plaintiff is entitled to have its costs taxed.

The lesson from all of this is to be careful with your tenders. If a respondent wishes to make one in any court proceedings, then he or she should expect to pay costs with it.

PIAB may have brought good cheer to many respondents, but they should be aware that every rose has its thorns. Just be careful it's not your client who pricks his finger. G

Stuart Gilhooly is a member of the PIAB Taskforce and is chairman of the Gazette *Editorial Board.*

letters

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

'No wriggle room' on PIAB, says the Master

From: Edmund Honohan SC, Master of the High Court

Your correspondent (PV Boland of Newbridge, *Gazette*, last issue) is complaining about my practice of requiring applicants for leave, post-PIAB, to add a co-defendant in pre-PIAB personal injury cases to first seek an authorisation from PIAB. It seems a pity that the *Gazette* did not contact me for a clarification before publishing the letter.

The *PIAB Act* was bound to give rise to teething difficulties, but this particular difficulty is transitional. It is clear that no personal injury proceedings can be instituted after the commencement date without a PIAB authorisation. But section 6(1) of the *PIAB Act 2003* reads: "Nothing in this act affects proceedings brought before the commencement of this section" (1 June 2004). The date of commencement of the proceedings is the critical determinant of PIAB involvement. The question is: what is the date of the commencement of proceedings against a co-defendant added under order 15?

Order 15, rule 13, provides that: "The court may … order that the names of any parties … be added … and every party whose name is so added as defendant shall be served with a summons … and the proceeding as against such party shall be deemed to have begun only on the making of the order adding such party."

Though there may be room here for learned debate about the (chicken and egg) interplay between court rules and

statutory provisions, the Master of the High Court cannot lightly ignore the clear terms of the relevant rule. The rule 'fixes' a commencement date for proceedings against a co-defendant, and the act does not alter this in any way: I see no wriggle room. Proceedings cannot be backdated to exclude PIAB.

I do not think there is any ambiguity in PIAB s6, but if there were, one would look to the 'mischief' etc as aids to interpretation. This act was designed to ease the cost burden of litigation on defendants (and their insurers) by establishing a lawyer-free mechanism for resolution of cases when liability was not disputed. One must interpret s6 so as to give fullest effect to that end. A proposed co-defendant cannot be lightly deprived of his rights by interpreting the section against his interest. He may sue! (He will probably seek to stay the court proceedings: an order under order 15 adding him as co-defendant is no guarantee that he will not be subsequently granted a stay. And, who knows, if he's successful in staying the proceedings commenced without PIAB authorisation, it may be too late for the plaintiff to start again!)

Even more bad news: practitioners should note that since proceedings against an order 15 co-defendant commence "on the making of the order", not only do the provisions of the *PIAB Act* apply, but so also do the provisions of the *Civil Liability and Courts Act 2004*. An added co-defendant may be able to plead the statute after two years! (See *The Limitation of Actions*, Brady and Kerr, Incorporated Law Society of Ireland, 1994, p9).

Your correspondent also made Freudian references to my having persisted in "refusing", even though senior counsel had appeared! The days of juries being swayed by oratory and status are well and truly over. It is the message and not the messenger that counts (*Haran Report* implementation committee, please note!). An application to court is won or lost on its merits. It is disturbing that a solicitor apparently thinks otherwise.

The sin of omission

From: Feargal Ó Dulaing, Marian Petty & Co, Solicitors, Ennis, Co Clare

A registry of deeds memorial was recently returned to me queried. A second witness was absent from the memorial – a common (I trust) omission, which took a minute of my time (or perhaps even less) to rectify. For my sins, I was required to pay an additional €12 penalty, imposed by the relevant legislation.

On a prior occasion (in 2005), I stamped a Circuit Court notice of trial in error (stamp duty at €45). In applying for my refund to the Courts Service, I was advised that my claim did not fall within the criteria recently established for stamp-duty refunds.

I trust the treasurer of the relevant government department will spend this windfall wisely! No doubt he/she will obtain further windfalls.

I promise to be more vigilant in the future!

Boston's dynamo

From: Liam Geraghty, Geraghty & Co, Solicitors, Galway

On a recent visit to Boston, USA, I contacted our firm's Boston agent, Lenahan O'Connell, to discover a sprightly 92-year-old lawyer turning up for a full day's work, five days a week for his firm, O'Connell & O'Connell.

His grandfather had emigrated to Boston from Co Cork. He himself was a legal officer with the American Army in the Pacific in World War II.

I am now in the process of reviewing my retirement plans.

SWEET child o' mine

The 'embryo custody' case pending in the High Court has brought the area of assisted reproductive technologies into sharp focus and highlighted the whole range of legal, moral and ethical dilemmas that are involved. Hilary Coveney puts them under the microscope

Infertility can be described as a "private trouble and a public issue" that affects 10-15% of the population. The development of new assisted reproductive technologies (ARTs) holds out new hope for those who suffer from the associated effects of loss, desperation and grief. These medical breakthroughs make it possible to create parents and children in ways not previously contemplated.

ART for ARTs sake

Assisted reproductive technology practices include artificial insemination (AI), *in vitro* fertilisation (IVF) and surrogacy. The use of donated gametes (sperm and ova/eggs) and embryos is also possible within the above frameworks. According to British statistics, some 2,000 children are born each year from donated gametes and many more elsewhere in the world. The practice of surrogacy involves a woman carrying a child as either a gestational or 'partial' surrogate (with no genetic link to the child) or as a 'full' surrogate where she also provides the ova.

Although ARTs have been available in Ireland since the 1980s, they have remained unregulated by statute, with the result that each clinic operates its own independent rules and systems. The only guidelines are those issued by the Irish Medical Council and the Institute of Obstetricians and Gynaecologists. While these deal with the medical and scientific aspects of ARTs, they of course do not deal with the very real and significant legal implications that flow from these practices.

Arguably, some of the most interesting cases before international courts in recent times have concerned these issues. The current Irish High Court case has for the first time raised these questions in this jurisdiction. This area of law can now no longer be considered as esoteric or unreal, and it will undoubtedly exercise Irish lawyers in the future.

In any society, it is essential to know with certainty who is your 'parent' and your 'child'. However, it is now possible for a child to have five 'parents', where, for example, a child is born from donated sperm, donated eggs, a surrogate mother and two social (or commissioning) parents, by whom the child is adopted and raised. Where no third-party or donor genetic material is employed, the legal position in relation to parentage is relatively straightforward.

The use of donor gametes and surrogacy, however, has entirely challenged our traditional understanding of parentage and gives rise to various family law questions. Who is the legal 'mother' or 'father'? Or can there (or should there) be more than one possible mother and father? These issues obviously have enormous consequences for both parents and children. With collaborative or third-party reproductive arrangements in other jurisdictions, donors are not usually regarded as legal parents. However, surrogate arrangements have formed the basis of several cases where the surrogate (gestational) mother has often been held to be the legal 'mother', regardless of any genetic link with the child.

Surrogacy will provide a particular difficulty in Ireland since these arrangements usually envisage the child being surrendered for adoption to the commissioning couple. However, under the *Adoption Acts*, private adoption arrangements are forbidden, save where the adoptive parent is a relative of the spouse or the child. Otherwise, adoptions can only take place in Ireland through a recognised adoption agency. In addition, if the surrogate mother is married, her husband will be legally presumed to be

MAIN POINTS

- **Assisted reproductive technologies**
- **'Embryo custody' case**
- **Wider implications on *Succession Act* rights**

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BEDTIME STORIES

The Commission on Assisted Human Reproduction (CAHR) was established in Ireland in March 2000 "to prepare a report on the possible approaches to the regulation of all aspects of assisted human reproduction and the social, ethical and legal factors to be taken into account in determining public policy in the area". This interdisciplinary commission undertook a careful review of the range of ARTs currently available in Ireland and the resulting legal and ethical difficulties. Its May 2005 report set out a wide range of recommendations (40 in all), including:

- Statutory regulation of ARTs is essential in the best interests of all concerned and follows best international practice to recognise the special position of reproductive medicine in society.
- A body should be established to centrally regulate ART practices, storage of gametes and embryos, and access to treatment.
- The donation of sperm, ova and embryos and the use of surrogacy should be permitted, subject to regulation, and legislation should be enacted to define the status and parentage of ART children.
- In general, donors should not have any legal relationship with the child and no legal responsibilities should arise for donors. Any financial payments for donations should be prohibited.
- Identifying information should be made available to children in relation to their genetic parents. However, donors should not be able to access the identity of children born through the use of their gametes or embryos.
- Further recommendations were also made, to include keeping national statistics and monitoring of ARTs through longitudinal studies of ART children.

Following its publication, the CAHR report was referred to the Oireachtas Joint Committee on Health and Children and is still under consideration. However, the committee has stated that it has serious concerns in relation to surrogacy practices and the CAHR's (majority) view that the embryo should only attract protection upon implantation.

"It is now possible for a child to have five 'parents', where a child is born from donated sperm, donated eggs, a surrogate mother and two parents, by whom the child is adopted"

the father of the child and a 'marital' child can only be given up for adoption in the most extreme and limited circumstances.

The issue will also, of course, arise as to the existence of any rights and responsibilities of donor parents and surrogates. Although a donor is not usually treated in law as a legal parent, there have been several cases in other jurisdictions where donors have sought to assert parental rights, to include claims to guardianship, custody and access. Each case will fall to be decided on its particular facts and circumstances, but it has generally been held that the donation of reproductive material alone is not sufficient to ground a claim to 'family life' under the *European Convention on Human Rights*, and therefore rights of access and parental responsibility. It is also generally acknowledged that donors will have no legal responsibility to their 'child', for example, through the payment of maintenance.

Numerous disputes have also arisen in other jurisdictions in relation to the 'custody' of stored embryos following the break-up of a marriage or relationship. Due to the invasive and potentially dangerous processes of egg retrieval and IVF treatment for women, surplus embryos are often frozen (cryopreserved) and stored for future use. One of the most emotive and best-known cases in recent times has been the English case of Natalie Evans, who created embryos with her partner prior to undergoing cancer treatment and removal of her ovaries. Their relationship subsequently broke down and he withdrew his consent for the continued storage and use of the embryos. Ms Evans sought custody of the embryos as constituting her only chance to have a genetic child of her own. Since the relevant legislation insists on the consent of both parties, the English courts held in favour of her partner, who wished to avoid becoming a father (with associated legal consequences) against his will. Ms Evans recently appealed to the European Court of Human Rights, which, although expressing considerable sympathy for her plight, held that her human rights had not been breached. One final avenue of appeal lies to the Grand Chamber of the ECHR, but that decision, although eagerly awaited, is not expected to overturn the earlier judgment. While Ms Evans' situation has generated huge public sympathy, the position of Mr Johnson must also be acknowledged. However, but for the specific legislative provisions, it could be submitted that he gave his consent to fathering a child when he provided his sample in the course of the infertility treatment.

Pregnant pauses

The 'embryo custody' case currently pending in the Irish High Court has finally brought this area into sharp focus in this jurisdiction. This is a landmark legal action to decide the fate of three frozen embryos created during IVF treatment undertaken by a married couple who have since separated. Six embryos were created in the course of the treatment, three of which had previously been implanted, resulting in the birth of a child. The wife wishes the embryos to be implanted, but her husband has refused to consent. The High Court is now charged with the unenviable task of assessing the competing interests of the mother's right to procreate and the father's right not to be forced to have a child against his will. On what criteria will the court's decision be based? In the normal course, child custody disputes are resolved upon an analysis of the child's best interests and welfare. It will be interesting to see how these factors are applied to a child not yet in being. And if the court holds in favour of the father, what will become of the embryos? Does an embryo constitute a life that attracts the constitutional protection afforded to the

unborn or only the *capacity* to become a life when implanted? If the former, any destruction of the embryos would be unconstitutional and prohibited. However, any donation of the embryos would be similar to surrendering a marital child for adoption, which is also problematic. The question of when life begins has been a controversial and divisive one in Irish legal history and is likely to become more so in answering the embryo question. A constitutional referendum may be required to decide this question as a precursor to the enactment of any legislation in Ireland.

Generation game

In addition to these family law implications, ARTs also have wider implications on *Succession Act* rights and the administration of estates. It is possible for a child to be conceived following the death of its genetic parent(s) where, for example, gametes or embryos are held in storage following death. However, in the case of such posthumous conception in Ireland, the *Succession Act 1965* would not legally recognise for inheritance purposes a child born more than ten months following the death of its father, and such a child would, in fact, be regarded as having no legal father.

An obvious question also arises as to whom access to ART services should be provided: should their use be confined to married heterosexual couples? Should unmarried couples be included? And what of single parents and same-sex couples? It is arguable that, with the changing fabric of contemporary Irish society, a wider definition of 'new' family units to include ART families might be appropriate.

With the involvement of donors in ART practices, a dispute will inevitably arise between a donor's wish for anonymity and the child's rights and interests in gaining information on his/her parents. As with many adoption cases, the experiences of children who do not know the identity or any information concerning their parents are well documented. This is often referred to as 'genealogical bewilderment'. In general, an international trend towards a more child-centred approach is now evident in the provision of medical and identifying information to children.

Very difficult and harrowing cases have also come before the courts, where human errors have been made during infertility treatment. In one English case, two couples who were attending separately for infertility treatments became inextricably linked when the hospital mixed up the sperm samples. The hospital error in this case was immediately apparent upon birth, as the couples were of different racial origin, and proceedings were subsequently successfully instituted by the genetic father of one child seeking parental rights, to include access.

Finally, ART practices bring with them inherent ethical, moral and social dilemmas. The question as to how far the limits of science can, and should, be pushed will inevitably be posed. Scientific and medical advances are continuing at a rapid and often alarming pace, with ARTs in theory now extending to cloning, embryo and stem-cell research, pre-genetic selection and even the creation of artificial wombs. While reproductive cloning is generally prohibited throughout the world, there are some unconfirmed reports that it has already taken place. Concerns have also been voiced in relation to the commerciality and 'buying and selling' of human reproductive material and the enforceability of surrogate 'baby contracts'. In addition, the creation of 'designer babies' and children for a purpose other than their own existence (for example, the medical treatment of a sibling) do not rest easy with our traditional concepts of procreation and life. An added controversy in Ireland will concern the legal and moral status of the human embryo and the intractable question of when 'life' begins.

Go forth and multiply

The rapid advances in medical science have expanded the frontiers of human existence and life, raising new questions about how the resulting legal relationships should be identified and defined. In forging novel legal and social relationships between donor, recipient and child, ARTs now require a new legal infrastructure to clearly delineate who is your 'parent' and 'child'.

Our legal system is limping behind, and the absence of any statutory regulation in Ireland is extremely serious. Like it or not, ARTs are here to stay and, while the Irish situation is different for cultural and societal reasons, a genuinely Irish framework to deal with our particular situation must urgently be found. Ireland is in an enviable position in this regard, where it can draw from the experience and mistakes of other jurisdictions. The enactment of legislation in Ireland will also help to avoid disputes concerning status and parentage and, in the event of disputes arising, provide a mechanism for resolution.

Statutory regulation of these practices will serve the best interests of society as a whole by promoting the advantages of ARTs, while at the same time ensuring adequate protection for all participants, and ultimately the children of the 'reproductive revolution'. Only time will tell how these and other issues will be borne out in the Irish context. In the meantime, the CAHR report's conclusion expressed the hope that their recommendations would "provide the stimulus for a national debate on a matter that is of major importance to current and future society". Let the debate begin. G

Hilary Coveney is a solicitor with Dublin law firm Gallagher Shatter. A longer treatment of this topic was published in the Irish Journal of Family Law *in November 2005.*

Club SAND WEDGE

There are many legal issues involved in running a club, including contract, tort, licensing, employment, trusts and data protection. Dermot McNamara drives out of the bunker

MAIN POINTS
- Role of club trustees
- Serving alcohol
- Data protection requirements

In civil society, people have always come together to form clubs and associations for sporting and recreational activities. There is no legislation defining how to form a club or association – indeed, there is no requirement that a club should have written rules at all. Written rules are commonly called a 'constitution', 'standing orders' or 'club rules'. Where written rules have not been adopted, there is greater risk of dispute between members, and this risk is increased where the assets of the club are substantial. All too often, where rules have been adopted, they are out of date and do not accurately reflect how the club has developed and evolved since the adoption of its first set of rules. Registered clubs (clubs entitled to sell alcohol to members) are required to amend their rules on a regular basis to comply with amendments to the *Intoxicating Liquor Acts*, but frequently such amendments are badly drafted, with clubs failing to properly remove previous rules dealing with the provision of alcohol. A club can also choose to form a company limited by guarantee (usually €1 per member), and this option is particularly attractive where the organisation will engage in an activity that may involve a risk of being sued for damages.

A club in itself has no legal persona. A club is a contract between the members and therefore it is imperative that the contract is made in writing and kept up to date to ensure that it sufficiently covers the activities of the club and accurately reflects the relationship between the members and the committee.

Providing an overview of a club's rules can be a daunting task, particularly bearing in mind the broad and diverse range of legal issues involved, which can range from the law of contract, tort, licensing, employment, taxation/charitable status, trusts, equal status and data protection.

Club rules can be simple or complicated, depending on the activities of the club. There is no universal set of rules that can be adopted to suit all clubs. However, most club rules have a similar structure, which usually provide for rules under the following headings: name, objects, membership, committee and officers, meetings, alterations, bye-laws, subscriptions, trustees, borrowing, registered clubs, suspensions and expulsion, data protection and dissolution. In a short article, it is impossible to deal with the legal issues of each category of rules and therefore I will focus only on some of the rules that solicitors will be instructed to advise on.

Trustees

When a club intends to acquire assets, in particular property, the appointment of trustees should be considered when compiling the rules. Although it is possible for a property to be acquired in the name of each and every member of the club, this is generally impractical, particularly if there are a large number of members or where memberships change on a regular basis.

The rules should also delimit the role and function of the trustees. Are they mere trustees holding the property at the direction of the committee on behalf of the members, or are they completely independent and have the function of supervising the work of the committee? For example, are the trustees entitled to refuse to acquire, sell or mortgage property if they believe it is not in the best interest of the club? Trustees with such power have effective control of the club and could impede its development, despite the wishes of the members, and consequently it is recommended that the rules provide that the trustees hold the assets in trust for *and* at the direction of the committee.

In the event of legal proceedings being issued against the club, the trustees are generally named as the defendants. The trustees are entitled to an

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Don't get stuck in the legal quicksand when running a club

implied indemnity from the members to the extent that they can apply the assets of the club to satisfy any court judgment or order for costs. However, they remain personally liable if the assets of the club are insufficient to discharge any such award. Consequently, trustees should be advised not to accept an appointment unless the rules provide them with an indemnity from the members.

Where land is involved, the deed will be registered in the individual names of the trustees and the deed should contain a clause indicating that the property is held by the trustees in trust for the benefit of the club and held by them at the direction of the committee of the club. These words have the effect of making it clear, on the face of the title deeds, that the trustees are not beneficially entitled to the property and puts potential purchasers and lenders on notice of this fact. With Land Registry title, a caution should be registered on the folio requiring notice of dealing affecting the folio to be given to the club secretary. It is also advisable to prepare a declaration of trust signed by all trustees confirming the property is held by them for the benefit of the club. Where new trustees are appointed, the minutes of the meeting appointing the new trustees should record this fact and a deed of appointment of new trustees should be prepared and completed. All property owned by the club should be held by the trustees as joint tenants and not as tenants in common. If the property is held as tenants in common, it is necessary for a grant of probate/administration to be taken out in a deceased

SUSPENSIONS AND EXPULSIONS

A member can only be suspended or expelled if there is power granted to the committee in the rules to do so. In addition, for a suspension or expulsion to be effected, it must be carried out strictly in accordance with the rules of the club and the rules of natural and constitutional justice. The entire process leading to a suspension or expulsion must be carried out in accordance with the rules – even meetings at which suspensions are considered must have been convened with the appropriate notices being served and within the prescribed notice periods. A suspension may be imposed by way of punishment of a member for a prescribed time, thus denying the member the use of the club facilities for a fixed period. Alternatively, a suspension may be imposed on a temporary basis to allow the committee to carry out an investigation, for example, where misappropriation of funds or club assets is alleged.

The rules of natural and constitutional justice require that: (a) the allegations made against a member are made known to him/her, (b) that he/she is given a reasonable opportunity to comment on the allegations and to put his/her side of the case forward, and (c) that the allegations are heard and determined in an unbiased manner.

It can be useful for the rules to provide an appeals system permitting aggrieved members to appeal decisions made by a disciplinary sub-committee. The appeals system will reduce the risk of intervention by the court, will assure members of a fair system for reaching decisions in disciplinary matters, and will allow the appeals sub-committee an opportunity to remedy any procedural defects that could have arisen during the initial disciplinary hearing. In some clubs, a suspension or expulsion could result in a loss of income or an inability to earn a livelihood, and in such cases the risk of a court challenge to disciplinary decision is greater. Consequently, disciplinary procedures and sanctions should be fair, consistent and transparent. Members should be able to understand the procedures without legal advice.

trustee's estate. This procedure can, of course, be expensive and may need the assistance of the deceased's family.

Registered clubs

Clubs that wish to provide alcohol to their members must be registered pursuant to the provisions of the *Registration of Clubs Acts 1904-2004*. Like most matters within the licensing laws, the provisions of the *Intoxicating Liquor Acts* dealing with clubs are cumbersome, complicated and deficient in many respects, which is not surprising considering that the principal piece of legislation was enacted in 1904 and has, since then, evolved over a period of 100 years. Briefly, some examples of the deficiencies in the legislation are:

- Although members are allowed to invite visitors onto the club premises, the visitor must not pay for any alcohol consumed by him or her on the premises, nor can the visitor give money to the member to purchase alcohol on behalf of the visitor;
- Members are permitted to consume alcohol outside of the club buildings between the hours of 8am and 10pm, but visitors are not entitled to do so;
- Clubs are permitted to apply to the District Court for 15 club authorisations each year (it is unclear whether this 'year' means a calendar year or a licensing year), but the legislation does not state that visitors are entitled to consume alcohol during the authorised period.

In order to become registered, it must be shown to the court that the club is *bona fide*, conducts its affairs in good faith, and that the building has appropriate planning permission and meets the fire officer's requirements. No other person other than the members can have any interest in the sale of alcohol. Therefore, it is not permitted to franchise the bar to a third party or to allow any share of the profits to be distributed to non-members.

In addition to specific legislative criteria required by the *Registration of Clubs Acts*, the rules must specify certain conditions with regard to the sale and consumption of alcohol on the club premises, and these rules must be amended from time to time when new legislation is enacted. In such instances, the Registrar of Clubs will require each club to amend its rules to ensure that they comply with the new legislation. The court will, in some cases, refuse to renew club certificates of registration unless the club has amended its rules to adopt the new licensing provisions. To avoid the necessity of clubs going to the considerable trouble of convening an extraordinary general meeting for the purpose of amending the rules, clubs should consider adopting a general rule that permits the committee to make amendments, alterations or additions to the rules for the purpose of complying with any requirement of the *Intoxicating Liquor Acts*. Frequently, rules are poorly amended, with clubs simply adopting precedent rules that have been given to them by the District Court clerk or their legal advisors without having properly married them into their existing rules. As it can be difficult for clubs to ascertain exactly what amendments are required to be made in order for their rules to comply with the most recent legislative changes, a simple solution is to recommend that the club revoke all previous rules dealing with the sale of alcohol and adopt an entirely new rule to comply with current legislative requirements. A precedent rule is now available on the precedents page of the Law Society's website (www.lawsociety.ie/precedents).

Data protection

The *Data Protection Acts* (1988 and 2003) impose certain duties on people and organisations that process information containing personal details and

also grant rights to individuals to know what personal information is held about them and to seek details of that information and challenge it where necessary. Clubs are affected to the extent that they process personal data relating to both employees and members. For example, depending on the nature of the club, members' details – including name and address, date of birth and occupation – may all be recorded by a data controller within the club. The data controller for most clubs is the club secretary. Sporting clubs and those engaged in dangerous activities may also require their members to disclose more detailed information, such as religious beliefs, blood type and medical history. Clubs that hold a certificate of registration are required to disclose the name of its members to the gardaí and the names are also available for inspection at the office of the Registrar of Clubs. Also, clubs that are affiliated to a governing body may be required to disclose the name and address of the club members to the governing body. Such disclosures must be carried out lawfully, and clubs must ensure that any information given will be treated in compliance with data protection legislation. To ensure compliance with the legislation, the rules should contain the members' written consent to the club obtaining, recording, holding and retaining their personal data (including sensitive personal data) solely for club purposes, either on its computer or its manual filing system, and the rule should further state that the members consent to the use of all such data, including its disclosure to third parties, for the proper and effective management of the club. Alternatively, the members can be asked to sign a data protection consent form when paying their annual subscription.

'Sensitive personal data' is defined as information relating to a person's racial origin, political opinion, religious or other belief, physical or mental health, sexual life, criminal convictions or alleged commission of an offence, or trade union membership. Clubs that retain sensitive personal data on its members (or employees) must register annually with the Data Commissioner.

It would appear that the majority of clubs fail to understand or appreciate their obligations under the data protection legislation. Practitioners who advise clubs should make them aware of their obligations, as non-compliance can lead to an investigation and fines of up to €100,000. G

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Identity CRISIS

The late 1920s in Ireland continued to see great change in the country. Partition brought its own problems for the solicitors' profession, while the burning of the Four Courts continued to leave the Law Society without a permanent home … and then there was the 'Irish' question, writes Mark McDermott, in his historical review of the *Gazette*

MAIN POINTS

- **Partition and its effect**
- **Clarity on the Four Courts**
- **Compulsory Irish for lawyers**

In November 1924, the issue of the partition of the country and its effect on the solicitors' profession – both North and South – was at the forefront of the Council's mind. "The time is now beginning when young Solicitors who serve their apprenticeships in the Free State will not be entitled to practise in Northern Ireland, and those who serve their apprenticeship in Northern Ireland will not be entitled to practise in the Free State. All Solicitors sworn in prior to 1st October, 1921, have a right to practise in every part of Ireland. All who were apprentices to Solicitors in Ireland on or prior to 1st October, 1921, when admitted in the Free State, have the additional right to practise in Northern Ireland, or on admission in Northern Ireland have the additional right to practise in the Free State" (*Gazette*, December 1924, p25).

On 18 May, the president, Arthur HS Orpen, referred to the ongoing difficulty with accommodation for the Society. "With reference to the Solicitors' Buildings, the Government have apparently not made up their minds as to whether or not the Four Courts shall be rebuilt to be used as Courts of Justice, and until this question is definitely decided, it is impossible for the Incorporated Law Society to have any permanent home, as the Council feel that, if the Four Courts be rebuilt as Courts, the Society's Buildings at the Four Courts should also be rebuilt. After long negotiations, correspondence and interviews with the Minister of Finance and with the Chairman and representatives of the Board of Works, we hope that a private residence, situate close to where we now are, will be in the very near future placed at our disposal for our temporary occupation pending a decision on the question of the rebuilding of the Four Courts …

"In reference to this, I may say that we have acquired, both by donation and purchase, a very considerable library of new books. We have purchased the Law Reports belonging to Mr. Justice Pimm, lately Judge of the King's Bench Division. We shall now be able to have the use of these books, as up to the present we have had no sufficient accommodation for them.

"A new room for the exclusive use of Solicitors has been provided in the Castle, near Court No. 6, and we believe that this room will be of great use to members of the profession" (*Gazette*, June 1925, pp6/7).

Temporary quarters

By November 1925, some clarity had appeared on the future of the Four Courts. President Orpen congratulated the members of the Society on "being at last in occupation of temporary quarters which are consistent with the prestige and dignity of the Society … It is now almost certain that the Four Courts will be rebuilt, and that we will be back again in our old home. In respect of our claim for compensation for the destruction of furniture and effects at the Four Courts, we have received a substantial sum which is enabling us to furnish our premises in Kildare Street in an adequate way, and care has been taken that the furniture purchased shall be such as shall be of use

1927 – The inauguration of the ossuary at Douaumont, near Verdun – home to the scattered bones of 130,000 men

when we return to our re-built habitation.

"You will see that the membership of the Society has slightly decreased during the year, following a large increase last year, and you will see that for the first time the majority of the Council last year and next year are Provincial Solicitors …" (*Gazette*, December 1925, p25).

The non-adoption of the *Colonial Solicitors Act* by the Free State greatly animated Council members the same year. President Orpen stated: "The non-adoption of this Act puts a Free State Solicitor who wishes to become a Solicitor in England at a considerable disadvantage. I am glad to say that His Majesty's Government have informed the Free State Government that they were ready to take into consideration, in consultation with the appropriate authorities, the question of the issue of an Order in Council applying to the Irish Free State the Colonial Solicitors Act, with such modifications as might appear to be necessary, as soon as the additional necessary legislation has been passed by the Free State Parliament. In the month of August last a reply to a communication from the Council was received from the Attorney-General, stating the Executive Council had again considered the matter, and that they were not at present prepared to promote the legislation requested by the Council, and, therefore, the matter still remains in an unsatisfactory position" (*Gazette*, December 1925, p25).

Members of the Society were requested in May 1926 to assist the Public Records Office in building up its records. In a letter from the Assistant Deputy Keeper of Public Records, quoted in full in the *Gazette* of July that year, they are asked "to co-operate in building up again the Public Record Office by presenting it with original probates or letters of administration or certified copies of Records obtained from the Record Office or other Legal Departments, e.g., Wills, Grants, Hearth Money [see panel overleaf] and Census Returns, Patents, Chancery and Exchequer Bills and Pleadings, etc.

"Plain copies and extracts from Wills, Marriage Licence Bonds and other similar documents, if preserved, would often be of great genealogical interest.

"The legal profession and its clients have already suffered irreparable loss through the destruction of the original records which were preserved here, and, under the circumstances, it is of the greatest importance that any substitutes for them which exist would be preserved" (*Gazette*, July 1924, p25).

The Council took a swipe at the *Courts of Justice Act 1924* during its half-yearly general meeting in

HEARTH MONEY TAX IN IRELAND (1662-1793)

The records of the hearth money tax (known as the hearth money rolls) are among the most valuable genealogical records of the 17th century, giving us some insight into the inhabitants of the district, their location and distribution, and even a little of their social status. Indeed, they provide the most complete lists of the people of the land that are available before the 19th century surveys.

The hearth money tax was begun by acts 14 and 15 of King Charles II. It was a new tax of two shillings yearly on every hearth or fireplace in a house. Granted by parliament to the king in compensation for the loss of certain lucrative feudal rights, and together with increased custom and excise duties, and a new quit rent, it raised the royal income considerably. Charles was thus enabled to rule Ireland without calling another parliament.

The hearth tax, like all taxes, was resented, especially as it entailed the inspection of houses. Furthermore, it was considered unfair. The quit rent fell only on landlords who were able to pay, but the hearth tax was oppressive on the poor, and, for that reason, it was abolished in England in 1689. However, it was continued in Ireland till nearly the end of the 18th century.

Henry Grattan finally succeeded in having parliament abolish the hearth money tax in Ireland in 1793, "and thus the peasant was encouraged to build a comfortable cottage in place of his hovel".

The hearth money rolls are lists of persons paying the hearth tax. They list householders in a barony, parish by parish, on a townland basis. The tax was collected over areas known as 'walks' and based on a town, but covering not only the town but also large areas surrounding it. They are not, of course, of all householders, for the very poor were exempt from the tax and others, no doubt, by their ingenuity escaped the attention of the 'smoke man', as the collector was called in Ireland.

The original hearth money records were destroyed in the Four Courts, Dublin, in June 1922, together with other invaluable historical material. Fortunately, several transcripts had been made.
(From *The Hearth Money Rolls for the Parishes of Ramoan and Culfeightrin*, by Frank Connolly.)

Níl aon tinteán … President of the Law Society from 1928-29, Edward H Burne, had a serious bee in his bonnet about the so-called 'Compulsory Irish for Lawyers Bill"

November 1926, decrying the difficulty for creditors of obtaining judgments in relation to dishonest debtors. Previously, creditors could take proceedings in the High Court for any substantial sum. The new act now meant that creditors had to bring their case first to the Circuit Court, with the possibility of delay that this entailed in the early days of the Free State's judicial system. The president, TG Quirke, said:

"The fundamental principle of the Courts of Justice Act, 1924, is the decentralisation of the administration of justice. At our meeting in May last, whilst I stated that your Council and the profession generally would continue to do everything possible to make the new administration and its procedure a success, I ventured to question the wisdom of the Act. It is becoming more manifest every day that if the Irish Free State is to make progress and become really prosperous it can only be done by cultivating friendly relations with England and the world beyond our shores; by extending our trade and commerce, and by broadening and strengthening our credit. That credit can only rest on a sure foundation when it is made clear that there is machinery provided for a certain and speedy enforcement of obligations.

"Under the new system, a creditor a merchant [sic] in London, Manchester, Glasgow or Dublin is practically compelled, unless his claim exceeds £300, to sue his debtor in the local Circuit Court with all the consequent delay entailed by the fact that the Court only sits at intervals of months, with the great expense of bringing witnesses to a remote country town, and with a further prospect of having to defend an appeal after he has obtained the judgement of the Circuit Court … there are only eight Circuit Courts for the whole of the 26 counties, and in many counties the arrears are accumulating, and with the additional work put upon them by the greatly increased jurisdiction, it is impossible for the Judges to overtake the arrears" (*Gazette*, December 1926, p27).

Death of Kevin O'Higgins

The death of Kevin O'Higgins resulted in a special meeting of 15 members of the Council on 15 July 1927. "The following resolution was proposed by the President [WT Sheridan], seconded by Mr F Fottrell, Vice-President, and passed unanimously:

'The President, Vice-Presidents and Council of the Incorporated Law Society of Ireland desire to express their horror at the foul murder of Mr Kevin O'Higgins, who so ably filled the important offices of Vice-President of the Executive Council, Minister for Justice and Minister for External Affairs.

'The Council record their deep sense of the loss which the Government of the Irish Free State has sustained through his death.

'The Council held in admiration his statesmanlike qualities and his great administrative abilities.

'The Council desire to convey to the widow, family and relatives of Mr O'Higgins sincere sympathy in the bereavement, and to the President and other members of the Executive Council respectful sympathy in the loss of an eminent colleague'."
(*Gazette*, August 1927, p16. See also *Gazette* December 1927, p27.)

Illness of the English king

At its Council meeting on 17 January 1929, a letter was read from the Secretary of the Department of External Affairs stating that the minister had been requested to convey to the Society "an expression of the grateful appreciation of Their Majesties the King and Queen for the Society's message of sympathy on the occasion of the illness of His Majesty" (*Gazette*, February 1929, p32).

The delays in the working of the Circuit Courts

(referred to above) had largely been addressed by May 1929. The president, Edward H Burne, commented: "The delays in the Circuit Court have to a very large extent been remedied owing to the appointment of additional Circuit Judges both for the Metropolitan Circuit Court and on other Circuits, which appointments may have been in some measure due to the suggestions made by us to the Government, based upon the experience of the Solicitors practising in this Court. In a short time all arrears will be worked off" (*Gazette*, June 1929, p7).

The 'Irish' question

The issue of compulsory Irish for lawyers was dealt with extensively by the Council in May 1929. During his half-yearly general meeting, the president, Edward H Burne, firmly nailed his colours to the mast with a strident speech on the "very objectionable provisions of what has come to be known as the Compulsory Irish for Lawyers Bill".

"I think it right that you should know the history of the attempted passage of the Bill. The document was introduced into the Dáil and received its second reading by a majority, the voting being 110 to 17.

"Having gone to Committee certain amendments were brought forward by our member, Mr J Travers Wolfe, and after scant impolite discussion these were, metaphorically, torn up and thrown in our faces. The Bill itself may yet be torn up by the promoters.

"The Council having considered the position of the profession concluded that the question was so serious for the future of the profession that a Special General Meeting of the Society should be made acquainted with the impossible and ridiculous provisions of the intended measure. That Special General Meeting being fully representative of the entire profession all over the Free State, deliberated seriously on the Bill, and by a majority of 110 to 8 passed a resolution against the Bill, and directed the Council to take all possible steps to oppose same. It is to be noted that at this meeting not one single voice, even an Irish-speaking voice, was raised in favour of the Bill, though Irish speakers spoke …

"Almost the entire of the public press of the country in leading articles have demonstrated the foolishness of bringing forward such a Bill, and some have expressed the forcing of the measure as an effort at political suicide, and so it may be …

"… The promoters and some members of the Government must now appreciate that our profession throughout the country, while not using offensive expressions and jack-boot methods, can, in making their influence felt, act as sportsmen and gentlemen and yet be effective.

"… the Solicitors of Ireland wield perhaps more power and influence than any other body of men, and it is now that we must make our weight felt by those who support this atrocious measure, which in its present form spells waste of money, brains, energy and time, and … is not wanted and has not been asked for by anyone save extreme and foolish idealists, quite ignorant of the necessary high legal education of our future Solicitors.

"… In conclusion, I remind you that if the Solicitors throughout the country make their voices heard, and withhold their money and influence from the support of those members of our Parliament now trying to force the tyrannical measure, we shall hear the last of this foolish Bill" (*Gazette*, June 1929, pp7, 8). G

Darwin duel – Clarence Darrow *(left)* and William Jennings Bryan *(right)* fought a famous courtroom battle in 1925 in what became known as the *John Scopes Monkey Trial*, where 24-year-old high school teacher John T Scopes was tried for teaching the theory of evolution in a public school classroom in contravention of the *Butler Act*

PRESIDENT'S CHAIR

The Society received the gift of its president's chair in 1928, which was reported in the June *Gazette* as follows:

"Sir John O'Connell, LL.D., who for some years was a member of the Council, has presented to the Society a President's Chair. The chair is in mahogany, and is of very handsome design and elaborately carved. A silver plate on the chair bears the following inscription:

'Presented to
The Incorporated Law Society of Ireland
by
Sir John O'Connell, LL.D.,
in grateful appreciation of many kindnesses received from the Council by both his father, the late Thomas Francis O'Connell, Vice-President of the Society 1895-96, and by himself, Vice-President of the Society, 1923-24.
1928'

The chair was designed by Mr R Caulfield Orpen, RHA and manufactured by Mr James Hicks.

Mr Basil Thompson, the President of the Society, has presented to the Society an ivory mallet for a presiding Chairman's use. The mallet bears the following inscription:

The Incorporated Law Society of Ireland.
Presented by
Basil Thompson,
President, 1927-28."

There has been much publicity and hype about the recent extension of the penalty-point system for traffic offences. But the system's success or failure will depend on enforcement. Evan O'Dwyer gets behind the wheel

PIC: REX FEATURES

Since 3 April, countless newspaper columns, television reports and internet blogs have been preoccupied with the introduction of the latest batch of offences to attract penalty points – 31 new offences have been added, to bring the total to 35 (see SI 134 of 2006). Everyone who owns a car has an opinion and, in most cases, has reason to have an opinion. Points mean money in the form of insurance hikes, job opportunities and exposure to the loss of driving licences. The latest raft of offences means more exposure for motorists.

It's easy to understand why the government has prioritised the issue of points. There are now record numbers of road deaths. The general standard of driving is appalling and, with more cars on the roads, the rise in accidents is inevitable. This has now led to the introduction *en masse* of these additional offences in an attempt to raise awareness of the road traffic laws and curb the spiralling incidences of accidents brought about by their flagrant breach.

Get your motor running

Points were heralded as the panacea to all the road traffic ills. In 2002, when speeding was introduced as the first penalty-point offence, we were advised that points were here to wipe out speeding. Yet the National Roads Authority's 2005 *Survey on Free Speeds* shows that, three years after the introduction of penalty points for speeding, 63% of car drivers broke the 80km/h limit on regional roads, compared with only 8% in 2003, before the limit was reduced from 60mph.

Failure to wear a seat belt is also an offence attracting penalty points. The NRA has found that only an 87% average of drivers are now wearing seat belts.

Whether the nation's motorists are heeding the media blitz on the effect of penalty points appears to be a moot point. The real Achilles' heel lies in the effectiveness of enforcement.

The penalty-points system was a creation of section 11 of the *Road Traffic Act 2002*. It provided the framework that was initially introduced for the offence of speeding. Later, the offences of failure to wear a seatbelt, careless driving and driving with no insurance were added. The section sets out that penalty points shall attach to 'fixed-charge offences'. There is no definition of what constitutes a fixed-charge offence, although we now know that it comprises the 35 offences listed to date.

Where the gardaí detect a fixed-charge offence, a 'fixed-charge notice' (FCN) must issue. There is no discretion. The FCN is a standard form document, the format of which is set out in SI 492 of 2002. The main components of a FCN are:

- The time and date of the detection,
- The name of the motorist,
- The registration number of the vehicle, and
- The offence alleged.

MAIN POINTS

- **Penalty-point system for traffic offences**
- **Legal basis**
- **Enforcement issues**

POINTS *of order*

Detection is and always has been solely a matter for the gardaí. They have been issued with new hand-held computers to assist in processing detections. These new devices allow the gardaí to log the motorist's details and offence on the roadside. The details are later uploaded onto the Garda PULSE system and sent electronically to a central fines processing centre in Dublin from where the notices are issued some days later. The technology does not permit the motorist to have a written confirmation as to what they are alleged to have done or to check whether there are existing points on the motorist's licence.

Head out on the highway

Irrespective of which type of offence an FCN issues for or how the motorist was detected, the rules of enforcement are the same:

- From the date of the FCN (which is not necessarily the date of the alleged detection), the motorist has 28 days to complete the notice **in full**, pay a fine of €80 and consequentially accept two points on the licence. The imposition of penalty points is entirely consequential to the detection or subsequent conviction and is carried out by SWS, a state-appointed private enterprise on behalf of the Department of Transport.
- If the motorist fails to pay within the initial 28-day period, he/she has a further 28 days to pay an increased fine of €120 and still accept two penalty points.
- If 56 days have elapsed since the date of the FCN, no fine can be tendered.

When completed, the FCN must be returned to the nominated garda station, post office or online through the post office website. One of the main pitfalls that awaits motorists is the failure to complete the FCN in full. For an FCN to be considered complete, it requires:

- The full name of the motorist,
- The full postal address of the motorist,
- The motorist's signature,
- The motorist's licence number.

If any of these are not included, the FCN will be returned with the payment, marked incomplete. Many people return their FCN again but find that the time limit has expired and will not be accepted by the gardaí. This is a common complaint and is one used when lay people try to defend themselves in court. It is not a defence to a prosecution.

The gardaí do not have the capacity to accept payment outside the 56 days, and there is no provision for the time to be extended. Any payment tendered after that will simply be returned and a summons will follow.

There is, of course, provision for the offence to be challenged if so desired. On the expiration of the 56-day period and if the motorist has not accepted their guilt by tendering payment, a summons will follow. That is for all offences except for (a) driving a vehicle when unfit, (b) parking a vehicle in a dangerous position, (c) breach of duties at an accident, (d) driving without insurance, and (e) careless driving – where all proceed to summons directly.

As fixed-charge offences are summary offences, they are prosecuted in the District Court. Apart from establishing evidence relating to the offence itself, the state also must aver to the fact that an FCN has issued and the motorist has failed or neglected to pay the fine.

Lookin' for adventure

The gardaí or courts have no place in the imposition of penalty points. Points are a consequence of detection for a fixed-charge offence or subsequent conviction by the court. They are the sole responsibility of the Department of Transport. The department is notified by either the gardaí or the Courts Service of the detection, depending on the

outcome and only when the issue is finally determined.

If the fine is paid within the 56 days, the gardaí will advise the department as to the name and address of the motorist and the date of the offence (in fact, it is the nominated contractor, SWS Limited, that is contracted to handle the notification of the points).

Alternatively, if a summons issues and the case comes before the court and a conviction is recorded, the Courts Service will notify the department of the conviction and four points will follow.

Some time later, the department writes to the motorist and advises them of the imposition of the points, which last for three years and lapse automatically after that time.

Whatever comes my way

Points can only operate as a deterrent to poor driving if there is an effective means of enforcement. At present, there is no coordination between the gardaí who detect and the Department of Transport who impose. In essence, there is therefore no enforcement.

It was hoped that the new technology operated by the gardaí, in the form of the hand-held computers now used to log detections, would interface with the gardaí's PULSE system and in turn with the Department of Transport's own database, but to date this has not happened and is not believed to be possible.

There has been extensive press coverage recently alleging that there are motorists still driving while in excess of the maximum 12 points on their licence. This is possible – even probable – but not even the gardaí or the department are in a position to confirm if this is so.

Clearly, there has to be some form of common database or coordination of efforts before the penalty points become a truly effective deterrent for errant motorists.

The success or failure of the penalty-point system will be entirely dependent on the enforcement of the law. At present, there is effectively no enforcement and the procedure is almost self-regulatory. If a driver exceeds 12 points, there is no enforcement body demanding the surrender of the licence. It is a matter for the motorist to decide if they want to abide by the law and volunteer themselves for a sabbatical. Given that many motorists who have exceeded the 12-point threshold are not paragons of motoring virtue, it is improbable that self-imposed exile is a high priority. In the absence of an effective enforcement regime, the points system is – for now at least – a noble concept, but in reality it is toothless. G

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HIGHWAY STARS

Penalty-point systems have operated in other jurisdictions with great success for many years now, most notably in Britain. And in Australia some years ago there was also grave concern about road deaths, which led to the introduction of a concept known as 'double demerit' points. These were introduced at peak holiday periods, such as Christmas and Easter, where double points would apply to motoring offences such as not wearing a seatbelt or speeding. In such instances, if just one passenger is not wearing their seat belt, the driver's licence is revoked immediately and without recourse to the courts.

Change of DIRECTION

Clear and comprehensive principles for determining whether a director has acted honestly and responsibly have been articulated in recent case law, but legislative reform is still needed. Brian Conroy shows the way

MAIN POINTS

- Restrictions on company directors
- The *La Moselle* test
- Relevant case law

Section 150 of the *Companies Act 1990* aims to tackle the 'phoenix syndrome', whereby a person irresponsibly leads one company into insolvent liquidation before being resurrected shortly afterwards as a director of a new entity, immune from being pursued for the debts of its predecessor. The provision allows an application to be made to the High Court to restrict directors of companies that have gone into insolvent liquidation from acting as directors for a five-year period, unless certain financial conditions are satisfied.

With no statutory obligation on liquidators to apply, relatively few restriction applications were brought here in the early years following the 1990 act's entry into force. Then s56(2) of the *Company Law Enforcement Act 2001* transformed the practice in this area by obliging the liquidators of all insolvent companies to bring restriction proceedings, except in circumstances where they are specifically relieved of this obligation by the Director of Corporate Enforcement (DCE). Suddenly, the restriction of directors has become a very busy area of High Court practice.

The flood of recent cases has afforded our courts the opportunity to develop the law on s150 applications. This is important, because Ireland is the only jurisdiction in the common-law world that provides for the restriction rather than just the disqualification of directors. Our courts have thus had to flesh out their own principles to govern restriction applications in the cases decided since 2001 – instead of borrowing wholesale from British precedents, as in other areas of company law.

The *La Moselle* test

Section 150(2)(a) of the 1990 act provides that a restriction order shall not be made against a respondent where the court is satisfied that he has "acted honestly and responsibly in relation to the conduct of the affairs of the company" – so long as "there is no other reason why it would be just and equitable" to make a restriction order.

The principal criteria to be applied when considering whether a party has acted honestly and responsibly remain those set out in the seminal *dictum* of Shanley J in *Re La Moselle Clothing* ([1998] 2 ILRM 345):

"a) The extent to which the director has or has not complied with any obligation imposed on him by the *Companies Acts*.
b) The extent to which his conduct could be regarded as so incompetent as to amount to irresponsibility.
c) The extent of the directors' responsibility for the insolvency of the company.
d) The extent of the directors' responsibility for the net deficiency in the assets of the company disclosed at the date of the winding up thereof.
e) The extent to which the director, in his conduct of the affairs of the company, has displayed a lack of commercial probity or want of proper standards."

There has been one addition to the *La Moselle* criteria since the coming into force of the 2001 act. This arises from the judgment of Finlay Geoghegan J in *Re Tralee Beef and Lamb Ltd* (High Court, unreported, 20 July 2004), where the judge indicated that a sixth factor – whether the respondent has complied with the duties imposed on him by the common law – must also be taken into account in this regard. Finlay Geoghegan J described these common-law duties as "duties of loyalty based on fiduciary principles" and "duties of skill and care developed initially ... from the duties in the law of negligence". The significance of this new limb of the test is illustrated by the facts of *Tralee Beef and Lamb* itself, where the actions of respondent directors were found wanting in the

context of the general common-law duty of skill and care, rather than against the narrower background of a director's statutory obligations.

Some of the most important recent developments as regards restriction proceedings have involved the application of the *La Moselle* test to different categories of director. The obligation to bring a s150 application imposed by the 2001 act has led in some cases to proceedings being taken against directors with little decision-making power or involvement with the running of a company. The question that arises is whether such people should be judged by the same exacting standards as directors who appear more culpable for the problems encountered by a company on a day-to-day basis.

Directors of multiple companies

In *Tralee Beef and Lamb*, Finlay Geoghegan J had to consider whether the court could take into account the actions of a director in his capacity as director of another company in considering whether he had acted honestly and responsibly. One of the respondents – Mr Coyle – was a director of CFIM, a company that had invested in the insolvent company under a business expansion scheme (BES). In that context, he had been appointed as a non-executive director of the insolvent company. As a matter of statutory interpretation, Finlay Geoghegan J rejected the view that the unimpeachable nature of Mr Coyle's conduct as a director of CFIM could excuse his "almost total inactivity" as regards the insolvent company, stating that "the court has no discretion [under s150] to take into account the performance or position of a respondent as a director of any other company".

The judge also considered whether a lesser standard could be imposed in considering the actions of non-executive directors. While acknowledging that non-executive directors are not expected to have an intimate knowledge of a company's day-to-day affairs, he stressed that a director's fundamental duty to keep himself informed of, and to supervise a company's affairs, applied to executive and non-executive directors alike:

"Non-executive directors normally do not participate in the day-to-day management of a company. The directors collectively delegate the day-to-day management of the company to, *inter*

SUBSIDIARIES OF MULTI-NATIONAL GROUPS

The respondents in *Re 360 Atlantic (Ireland) Ltd* (unreported, High Court, 21 June 2004) were four directors of a wholly owned Irish-incorporated subsidiary of a Danish company, which in turn belonged ultimately to a Canadian group. The Irish-incorporated company was not managed or controlled separately from the overall group of companies. Nor were the respondents permitted to make management decisions or to become involved in the financing of the company, simply being required to ensure that the company complied with this country's regulatory requirements.

The respondents argued that they should not be held responsible for the implementation of decisions made at a group level that were not in the trading interests of the Irish-incorporated company, given their lack of capacity to influence group policy. While indicating that the economic reality of a company's status as a subsidiary should be taken into account, Finlay Geoghegan J held that there could be no modification of the ultimate requirement that directors must act in the interests of their company, stating: "... where a group corporate structure exists ... and the issue under s150 of the act of 1990 is whether a director of the wholly-owned Irish subsidiary company acted responsibly in the sense of discharging the minimum common-law duties, he must be able to establish at a minimum that he did inform himself about the affairs of the Irish subsidiary company as distinct from any other company within the group and, together with his fellow directors, that he did take real steps to consider and take decisions upon at least significant transactions to be entered into or projects undertaken by the Irish subsidiary company".

alia, the executive directors ... such delegation does not absolve the non-executive directors from the duty to acquire information about the affairs of the company and to supervise the discharge of delegated functions. However ... the court should take into account the differing roles of each director."

This modified test provided no succour to the respondent non-executive directors of Tralee Beef and Lamb Limited in the instant case, since Finlay Geoghegan found that the three non-executive directors had failed to join together to supervise and control the affairs of the company – not even convening a board meeting during the relevant period. The fact that one of the non-executive directors had no financial expertise and a limited role in the running of the company was irrelevant, because she should have taken steps to bring the information that she admittedly had about the parlous state of the company's finances to the attention of those who were competent to deal with the matter.

Re RMF Limited

The *Tralee Beef and Lamb* approach to the responsibilities of non-executive directors did help prevent the imposition of a restriction order in *Re RMF Limited* (High Court, unreported, 27 May 2004). There, Finlay Geoghegan J held that the respondent non-executive director had kept himself reasonably abreast of the company's affairs at all times, ruling that he could not be held responsible for the failure of the company to file tax returns in circumstances where this omission had not been brought to his attention.

The differences between the approach of the courts to the roles of executive and non-executive directors is well illustrated by the attitude of MacMenamin J to the first and second-named respondents, respectively, in *Re Cooke's Events Company* (unreported, High Court, 29 June 2005). There, the second-named respondent was the wife of the first-named respondent, who was the managing director of the insolvent company. Taking account of her status as a non-executive director and her lack of experience in the restaurant business, MacMenamin J found no evidence that she had failed to adequately inform herself of the company's affairs as required under the *Tralee Beef and Lamb* test. But the court rejected the argument that the first-named respondent, as an executive director, could absolve himself of responsibility for the company's failure to keep proper accounts or to file VAT or corporation tax returns by pointing to the fact that he had employed staff to deal with these matters.

Satisfied by whom?

In *Business Communications v Baxter* (unreported, High Court, 21 July 1995), Murphy J stated, in relation to the onus of proof in a s150 application: "the most important feature of the legislation is that it effectively imposes a burden on the directors to establish that the insolvency occurred in circumstances in which no blame attaches to them as a result of either dishonesty or irresponsibility".

In other words, a restriction order does not require a finding of dishonesty or irresponsibility against a director. Unless a director can show that he has acted honestly and responsibly, an order will be made.

In *Re SPH Ltd* (High Court, unreported, 25 May 2005), Finlay Geoghegan J seemed to apply the *Business Communications* view of s150 when stating that "the onus of establishing that he/she acted honestly and responsibly rests on the director". But in *Re USIT World plc* (High Court, unreported, 10 August 2005), Peart J rejected the argument that s150 places a burden on the respondent in refusing restriction orders against two directors who did not even appear or submit affidavits in answer to the application, stating:

"The section cannot be fairly interpreted, in the absence of express wording to such effect, as meaning that a presumption of dishonesty and irresponsibility is to be inferred where a director takes no step to participate in the application ... The task of the court is to be satisfied. The section does

not confine the court as to the source of that satisfaction."

This approach to the court's role in a s150 application seems too generous to the respondent director. The observation that s150 cannot be interpreted as creating "a presumption of dishonesty and irresponsibility ... where a director takes no step to participate in the application" – though undoubtedly correct – is irrelevant. A court does not have to be persuaded that a director has acted dishonestly or irresponsibly to restrict him: it has to be satisfied that he acted honestly and responsibly for a restriction order to be refused. There is no scope under s150 for the court to exercise a general discretion in relation to the moral culpability of the respondent director's conduct.

Obligation to apply

Peart J did make one striking point in *USIT World* in favour of his approach to s150. He indicated that the creation of the obligation to apply under s56(2) of the 2001 act means that "there will inevitably be cases where the court can be satisfied, even in the absence of justification of conduct by a particular director, that he or she has acted honestly and responsibly". This suggests that s56(2) is causing entirely baseless s150 applications to come before the courts.

Section 56(1) of the 2001 act requires the liquidator of an insolvent company to provide a report to the DCE, within six months of his appointment, covering certain matters relevant to a restriction application. Section 56(2) then provides that – on pain of criminal liability – a liquidator must bring restriction proceedings against the directors of the company between three and five months after this report is furnished, unless the DCE relieves him of his obligation to do so. But the DCE has displayed great reluctance to exercise his discretion to relieve a liquidator of the obligation to apply. For example, in *Re Cooke's Events Company Ltd*, MacMenamin J concluded that there was not even a stateable case for restriction against the second-named respondent. He noted that the liquidator had written to the DCE, setting out the limited nature of the second-named respondent's role in relation to the company's affairs, but went on to comment that "despite this additional information having been furnished, this did not cause the director to alter the decision that the liquidator should not be relieved of bringing proceedings".

A lot done, more to do?

Unnecessary restriction proceedings are undesirable because they waste time and lead to the unnecessary accrual of legal costs, and, as the *USIT World* decision demonstrates, because they encourage judges to adopt strained interpretations of s150 in order to refuse them where they are uncontested. Legislative reform is needed to counter this problem. A neat compromise between an absolute obligation to apply and the pre-2001 act situation, where too few restriction applications were brought, might be to permit a liquidator to include a recommendation founded on stated reasons against bringing s150 proceedings in his report. This recommendation would operate to free the liquidator of his obligation to apply. The DCE would retain discretion to overrule the liquidator and reactivate the obligation to apply where the stated reasons were deemed inadequate.

Clear and comprehensive principles for determining whether a director has acted honestly and responsibly have been articulated in the recent case law. The only factor that has muddied the waters is the obligation on the liquidator of an insolvent company to make a restriction application. The legislature should take steps to ensure that restriction orders will no longer be sought in cases where they are clearly unnecessary. G

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COX'S PIPPINS

Arthur Cox recently won the European Law Firm of the Year and Irish Law Firm of the Year awards and topped the 'PLC Which lawyer?' Irish survey. Mark McDermott spoke with managing partner, Pádraig Ó Ríordáin, about what makes Arthur Cox so special

You'd think that a firm with an expansion rate of 20% in the past 18 months – with the staff growth that this entails – would have quite enough on its plate without going in for winning awards. Generally speaking, you'd expect something to give at the seams. But its seams are holding quite nicely, thank you – perhaps substantiating the firm's award-winning ways.

So what makes Arthur Cox special? Managing partner at the firm, Pádraig Ó Ríordáin, thinks it's all down to putting the client first, a 'hard work' ethic and consistency across a whole range of practice areas – developed over a long period of time.

"We have generally been best known for our corporate work," he says. "Over the last five to six years, however, our expertise in our other core areas like litigation, finance and particularly property have been growing equally strong. As a result, what you have is a team that is essentially firing on all cylinders.

"The expertise we have, the people we have been able to attract and develop over the years are critical to our success. We have been able to build and augment practice teams quickly, consisting of people at senior level and straight out of college. We are the firm of choice for those who are newly qualified. As a result, from a people point of view, we have got very, very good people – and for any law firm that is obviously essential."

How does he explain the employee growth of one-fifth in the last 18 months? Ó Ríordáin says that it's chiefly due to a firm-wide focus on client needs and, as a result, Arthur Cox aligning itself more successfully to what the marketplace requires.

"We have been very successful also in relation to attracting new business. All these things tend to feed into each other. It is a question of getting all of the circumstances correct. If you get the client base correct, the service levels correct, good people coming up – these are the factors that drive growth."

The managing partner also believes that results for clients are another factor in the dynamo that is Arthur Cox. He refers, for example, to the firm's achievement in the celebrated *Parmalat* case and other significant European legal battles. "*Parmalat* was a very big European issue that ended up being litigated in the Irish and Italian courts. We acted in the Irish case and that worked out very successfully."

Apples and oranges

However, it's not just track record that is important in winning new clients. "Potential clients will also look to see whether a firm is capable of practising to the best international standards," says Pádraig. "Are international clients comfortable that we can provide the level of expertise and service that they are accustomed to from the larger American or UK firms? That's one of the areas where clients clearly believe that we can deliver. Track record and expertise in our area is obviously reinforced by the type of people we have."

What can its competitors learn from its successes? "I think that our competitors are all very strong – and each firm has its own distinct strengths. Our strengths derive from our consistency across a whole lot of key areas, a very focused strategic viewpoint in relation to where the firm is going, and a very cohesive, very collegiate firm. I think if you look at the relative successes of firms, it's probably down to getting the extra few things right – which would be business structure and approach to clients, mainly."

MAIN POINTS

- **A fixation with clients' needs**
- **Legal battles**
- **New business teams**

Just what direction is Arthur Cox going in and how far ahead does it set its targets? "It's difficult to look ten years out because the market is changing so rapidly," he says. "If you look at the legal market even five years ago, it would have been very hard to predict exactly the width and shape of it now, so I would tend to take a more medium-term view – say about five years."

And the main challenges over the next five years? Are there any sharks in the waters? "Well the sharks in the waters are always going to be the alignment of your resources with activity in the market. We have been growing strongly, as I said – which is a wonderful thing – and the firm is just very, very busy. But we also work hard to ensure that our growth is sustainable and that it matches what the market is doing.

SPOTLIGHT ON PÁDRAIG Ó RÍORDÁIN

BORN: "Cork city."

AGE: "Just 40. I was 40 about three months ago. It's not that bad. You get used to it!"

STATUS: "Married to Leila Anglade, a Harvard classmate. Leila is a member of UCD's law faculty, where she lectures in arbitration and business law."

CAREER PATH: BCL in UCC in 1986, followed by a Master's in UCC in 1989. Qualified at King's Inns in 1988. Moved to the US a year later to study for a Master's in Harvard Law School, following it up with the New York Bar exams. He then trained in a Wall Street firm, where he worked for a number of years before joining Arthur Cox in the New York office in 1993. Returned to the Dublin head office in 1996 as a member of the corporate department.

PETS: "Two Airedales and an Irish terrier – three great, unruly dogs."

PASTIMES: "Going to Wicklow at weekends, theatre, hurling and rugby. I'm a big fan of Munster."

PREDICTION: "Munster for the Heineken Cup. Cork hurlers for the All-Ireland three-in-a-row."

BEST BUSINESS LESSON: "It feels like I learn a new one every day!"

"One thing that we are very keen on here is to make sure that everybody in the firm has a proper career path, that everybody finds a place to grow into, and that their careers can keep developing here. So again, that is something that I focus on daily – making decisions about the right size of the firm in relation to the size of the market."

Growth in the firm is widely spread across all sectors. "That's quite a contrast to ten years ago," says Pádraig, "when there would have been far more dependence on growth in fewer areas. Now we are seeing development across a large number of areas."

When pressed on what Arthur Cox wants to achieve in the next five years, the mantra appears again. "What we want to do is to become perfectly aligned with our clients' needs. Taking a specific example in relation to capital markets, we saw this as being a major need for many of our clients. Traditionally it wasn't a strong area in Ireland, so we decided to go about building that element of the business. We brought in some experienced specialists from internationally-renowned firms, and a number of associates to supplement the department. In addition to that, we anticipated a related service that clients required – listing – so we built a listing team from scratch that has been performing strongly.

"We also knew that we were going to need a greater level of tax input, so we put significant further resources into our tax department. These are fairly concrete examples of how you see something that your clients will need – and you go about establishing it."

How long did it take to build these units? "About three or four years, I would say. The thing about a services firm and a law firm is that it is a complex entity because it is people-based and it is expertise-based. Your costs have to align with your expertise, and your people with what your clients need. We have done the same right across the projects area and a whole lot of other areas. We structure our practice groups very carefully to make sure that the right range of people – senior, intermediate and junior – are available to clients."

"If the question is 'do we need to merge with somebody?', then the answer is no"

Core issues

"We also make sure that we have cross-departmental teams that are geared up to deal with specific client issues. We are quite flexible in relation to putting teams together to deal with particular matters. These cross-departmental units are established on a project-by-project basis. For a significant project, we will look at what sector it's in, what the needs are and will be, and then we'll put a team together from across the firm. We don't operate on a hierarchical basis – we will all roll up our sleeves to get the job done. That culture of performance has been in this firm for a long time. It gets passed on through the generations and permeates through to each of the client teams as well."

How will Arthur Cox look five years from now? "That's a hard question to answer, because I'm looking at it from the inside, out. I would say it will be different – I'm sure it will. However, the basics will be very much the same. When I say the 'basics', I mean the approach to client work. On top of that, you build specific strategies; you build particular practice groups; you get these working. These will lead to different types of work, but I think that, culturally, we are likely to be very similar. I expect we will continue to grow, though."

Does he see any acquisitions or consolidation possibilities ahead? "In any jurisdiction you are going to need to have a certain number of firms because of potential conflicts of interest and the nature of the legal market. If you look at other countries, you tend to see four or five major corporate firms and a number of strong, medium-sized ones, which is not very dissimilar to Ireland."

No dramatic change, then? "It's very hard to predict that," Pádraig replies. "A lot of different things could affect that situation, including the future shape of the international market. Who knows what ultimately will happen? That's what keeps the job interesting. If the question is 'do we need to merge with somebody?', then the answer is 'no', because we are fortunate insofar as we have very good expertise in just about all of the areas, so there isn't a particular practice need to do it."

On a personal level, what does the law mean to him? "What engages me, really, is how the law affects peoples' lives in business – and how they respond to how it affects them. The law, for me, is a question of solving problems and that is what I love." G

practice doctor

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IT's not rocket science

Elizabeth Keys Farrell: "We have to be prepared to commit time and resources"

As lawyers, knowledge is our trading stock: we provide a professional service based on the knowledge we gather and sell on. And the systems we use to manage our know-how determine the quality of our services and, ultimately, our profitability. To remain competitive, we need efficient systems.

Technology is the great equaliser between small and large firms. If managed correctly, IT enables the small firm to generate work product at the same level as the large firm. The challenge for every firm is to develop and maintain the skills necessary to effectively manage IT. Although most law firms now have the basic systems – such as networked computers, email, internet, accounts software and automated diary systems – many still fail to take full advantage of their IT. To get the most out of the initial IT investment, we have to be prepared to commit time and resources. The purchase and installation price is only a portion of the overall costs to be considered. We need to budget for:

- Conversion expenses,
- Development of know-how systems to capture expertise,
- Training,
- Lost time due to unfamiliarity with the system,
- Lost time working out the inevitable 'bugs', and
- Maintenance and upgrades.

HANDY HINTS

- Plan and budget technology purchases and include hidden costs such as maintaining, upgrading, training, and lost time for implementation;
- Plan for future needs, the firm's growth, and system obsolescence;
- Documents saved to a client file on the computer should reflect the hard copy system;
- Implement standards for naming and storing documents and organising directories;
- Implement standards for capturing and storing precedents, opinions and other expertise;
- Organise and prioritise email using the tools provided with the software;
- Measure the efficiency of the system by how easily documents are created and accessed;
- Measure the value of the system by the amount of time we save in the long term.

We should be able to offset the initial costs against the value of the time saved once the system is operational. For example, consider a system that saves the firm one hour a day in productivity time. If the average value of staff time saved is €100, the total savings for a work year based on 250 days is approximately €25,000. For a small to medium-sized firm contemplating system upgrades such as new or additional PCs, an upgraded network with exchange server, an updated Office Suite, document scanning, and an office-wide task diary, within a reasonable time, the costs should be offset by the value gained in increased productivity.

We need to encourage each person to spend the time necessary to learn and become familiar with the new system. Once the system is implemented, have each user keep a list of problems encountered as he/she goes along. This list can then be submitted to the consultant for troubleshooting and, if necessary, further training sessions.

The implementation of new technology alone will not transform a poorly-organised system. Client documents that are saved to various user PCs will not become more accessible simply by the installation of a networked system. We will need to review the entire method of document management. The computer file for the client should mirror the hard-copy file. No one would contemplate filing all letters in a filing cabinet under the date created. Yet we don't think twice about saving them on the computer this way. Every document relating to a client matter should be saved to a designated client folder located on the server, using an agreed naming system. If a document cannot be located within two mouse clicks, the system is not working efficiently.

IT has transformed the practice of law. Our competitive edge depends on our ability to acquire a new skill set and to keep abreast of the latest developments. Taking control of IT means our clients will be better served, and our sanity will be preserved. G

Elizabeth Keys Farrell is a solicitor and management consultant.

Open sesame

The Law Society held its annual PPC II Open Day on 24 April at Blackhall Place. Over 240 students visited the exhibition, which showcases member services. It gave them an opportunity to meet representatives from all sections of the Law Society. Four legal recruitment agencies also attended. *(From l to r)*: Augusta Touhy (trainee), Dan O'Connor (Arthur Cox), Stuart Gilhooly (chairman of the Education Committee), Dolores Wallace (trainee), President of the Law Society Michael Irvine and Brenda Walsh (trainee)

Holding court

The County Cavan Solicitors' Association (CCSA) recently met at the Courthouse in Cavan, where the guests of honour were Senior Vice-President Philip Joyce, and Director General of the Law Society, Ken Murphy. *(Front, l to r)*: Ken Murphy, Philip Joyce, Jacqueline Maloney (Chairperson CCSA) and Rita Martin (secretary). *(Middle, l to r)*: Joan Smith, Evelyn O'Donnell, Kathleen McCabe Gibbons, Marian O'Donovan-Mackey (PRO), Rory Hayden, State Solicitor Co Cavan, and Niall Dolan. *(Back, l to r)*: Garrett Fortune, Gabriel Toolan, Norma Garvey and Nora Conlon

Newlyweds

Orla and Stephen Fitzpatrick from Dublin *(centre)* took in the annual conference in Dubrovnik on their way home from honeymoon in South Africa. They caught up with friends Anita and Fergus Gallagher at the gala dinner on 21 April

Frankly speaking

Guests at the gala dinner were treated to the singing talent of fellow guest, *Gazette* advertising manager Sean Ó hOisín, who does Sinatra like nobody else. Joining in the fun were Deputy Director General of the Law Society, Mary Keane, and Council member James McGuill

West Bank

From Donegal to Mayo to Limerick, they were all at this year's annual conference, including *(back, l to r)*: Brendan Twomey (Donegal) and Peter Leonard (Mayo). *(Front, l to r)*: Anne Leonard (Mayo) and Suzi and Cian MacMahon (Limerick)

Good friends

Tom and Pauline O'Donnell from Galway met Waterford-based Anne Murran at the gala dinner in the Revelin Fort, Dubrovnik

PIC: LENSMEN

Cabinet members visit Law Society

The Law Society recently hosted a dinner attended by lawyer members of the Cabinet. *(Front, l to r)*: Attorney General Rory Brady SC, Minister for Justice Michael McDowell, An Taoiseach Bertie Ahern, President of the Law Society, Michael Irvine, Minister for Foreign Affairs, Dermot Ahern, and Minister for Arts, Sports and Tourism, John O'Donoghue. *(Back, l to r)*: Junior Vice-President Gerard Doherty, Senior Vice-President Philip Joyce, Deputy Director General Mary Keane, Director General Ken Murphy and Immediate Past-President Owen Binchy

PIC: LENSMEN

The best of legal advice

Sharing a light moment at Blackhall Place are *(l to r)*: Attorney General Rory Brady SC, Director General Ken Murphy, An Taoiseach Bertie Ahern, and President of the Law Society Michael Irvine

PIC: LENSMEN

Fine Gael dinner

Senior members of Fine Gael were recent guests at a dinner hosted by the Law Society. *(Front, l to r)*: Senator Paul Coghlan, Fine Gael leader Enda Kenny, President of the Law Society, Michael Irvine, and Jim O'Keeffe TD. *(Back, l to r)* Barry Ward, Legal Research Officer, Director General Ken Murphy, Kevin O'Higgins (Law Society Council), Senior Vice-President Philip Joyce, Junior Vice-President Gerard Doherty, Immediate Past-President Owen Binchy, Mark Kenneally, Chef de Cabinet, and Deputy Director General Mary Keane

PIC: LENSMEN

Two heads – are better than one!

Michael Irvine and Enda Kenny were pictured during a recent visit of the Fine Gael leader to Blackhall Place

PIC: LENSMEN

Labour partying

Labour Party politicians were invited recently to a dinner at Blackhall Place. *(Front, l to r)*: Jack Wall TD, Senator Joanne Tuffy, President of the Law Society Michael Irvine, and Senator Derek McDowell. *(Back, l to r)*: Immediate Past President Owen Binchy, Junior Vice-President Gerard Doherty, Director General Ken Murphy, Deputy Director General Mary Keane, and Senior Vice-President Philip Joyce

Calcutta Run set to hit €1.5m target

The annual 'Calcutta Run' is set to raise €250,000 for the homeless in Ireland and abroad this year. If it succeeds, it will push the overall amount raised over the past eight years to a staggering €1.5 million. Currently, the total stands at €1.3 million.

The event is the brainchild of a group of Dublin solicitors and has been supported, since inception, by the Law Society. Back in 1999, a group of solicitors approached the Law Society with a view to getting its support for a charity event that incorporated a 10k run/walk, followed by a large barbecue. The Society was happy to support the initiative and to commit the resources of Blackhall Place to hosting the pre-run and post-run activities.

Why the 'Calcutta' run?

The initial idea was to raise money for GOAL's orphanage in Calcutta. However, it quickly became obvious that, while there was a significant amount of goodwill for supporting GOAL's tremendous work, there was also a desire to support the homeless closer to home. Consequently, the proceeds of the event now support both GOAL's orphanage in Calcutta and Fr Peter McVerry's Arrupe Society in Dublin.

On the run: Matt Cooper

The two charities, being shrewd operators, quickly put a set of golden handcuffs on the committee and set about launching specific programmes that are totally dependent on the Calcutta Run for their funding. So there was no going back!

Net widens

To date, 8,000 people have taken part in the run/walk. In the early years, most participants were connected to the legal profession. In recent years, though, the net has widened to trap other professional services firms and financial institutions, with about 50% of participants now connected to legal firms.

THE DAY
27 MAY

- **12 – 1.30pm:** Register, massage, warm-up
- **2pm:** Start
- **3.30pm:** Barbeque, DJ and jazz

One of the main attractions of the run is the barbecue afterwards. This is held on the pitch behind Blackhall Place, where well over 1,000 participants enjoy food and refreshments, a DJ, jazz band, raffle and spot prizes.

This year, Matt Cooper of Today FM has committed to the event and regularly plugs it on his radio programme *The Last Word*. Matt updates listeners on how his training (with the aid of a personal trainer) is going. This has given a renewed boost to this year's event.

It's over to you

So why not take part this year and raise some sponsorship for these two worthy causes? To reach the overall target of €250k, participants will need to raise a minimum of €150 each. However, many participants achieve many multiples of this, so don't be afraid to set your standards high!

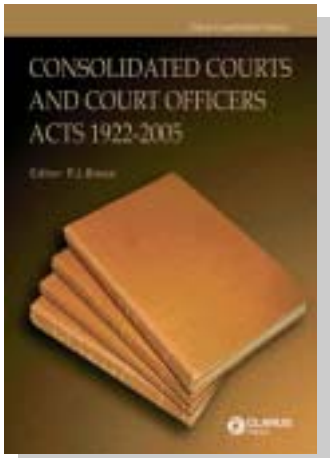
books

Consolidated Courts and Court Officers Acts, 1922-2005

PJ Breen (ed). Clarus Press (2005), Griffith Campus, South Circular Road, Dublin 8. ISBN: 1-905536-00-3. Price: €95 (paperback).

This book is the first in a series to be published by Clarus, and is likely to prove a useful tool for litigation practitioners, both civil and criminal, and a helpful reference work for court staff.

These acts set out the legislative basis for the establishment, constitution, procedure and staff of all courts from the District to the Supreme. The acts are dealt with in chronological order, from the foundation statute in 1924, the *Courts of Justice Act*, through to the important constitutional changes in 1961 with the *Courts (Establishment and Constitution) Act*, *Courts*



(Supplemental Provisions) Act and *Courts of Justice and Court Officers (Superannuation) Act*, and finishing with two major pieces of legislation, the *Courts and Court Officers Act 2002* and the *Civil Liability and Courts Act 2004*.

The 2002 act, when it comes fully into force, will significantly extend the jurisdictions of the Circuit and District Courts. The 2004 act enacts a new procedural scheme for personal injury actions and also provides for the limited publication of information deriving from *in camera* proceedings.

The editor, barrister PJ Breen, has provided an 'amendment history' in respect of repeals/amendments, confined to a brief statement of amending legislation, and also a short note indicating legislative provisions not yet in force. There is, however, no attempt to provide any commentary, legal analysis or case law history in respect of the statutes, and this is, perhaps, a missed opportunity. Also missing is legislation dealing with criminal procedure – such as, for example, the *Criminal Justice Act 1999*, which replaced the *Criminal Procedure Act 1967* as to preliminary examination procedure in the District Court. G

Pamela Cassidy is the principal of Cassidy Law.

Trees, Forests and the Law in Ireland

Damian McHugh and Dr Gerhardt Gallagher. COFORD (National Council for Forest Research and Development) (2005), Arena House, Arena Road, Sandyford, Dublin 18. ISBN: 1-902696-42-5. Price €20 (hardback).

This book is a successor to, and a more elaborate and updated version of, HM Fitzpatrick's *Trees and the Law*, published by the Law Society in 1985. COFORD is to be complimented on this occasion for publishing this specialised but significant legal topic written by Damian McHugh BL and Dr Gerhardt Gallagher.

Most solicitors know that at least once in their professional lives, they have been, or will be asked to, act in a dispute between adjoining neighbours. As often as not, such disputes, fraught as they generally are with client 'aggro' and emotion, involve allegations that one neighbour has breached the other's rights of enjoyment of the use of his or her property. If they relate to encroaching branches or roots, falling or poisonous trees or branches, or other circumstances where trees interact with legal rights and obligations, then this brief but useful source book should be within easy reach.

Solicitors will likely already be familiar with the name of one of the authors – barrister Damian McHugh, for many years the *Irish Press* newspaper's High Court reporter, the author of *Libel Law: A Journalist's Handbook* (1989) and *Going to Court: A Consumer's Guide* (2002) and the editor of the *Irish Courts Guide*. Dr Gallagher, less known among lawyers, is a household name among the tree-growing fraternity.

The book includes both the historical and the more up-to-date Irish and English reported cases concerning legal liability relating to trees, which comprise the common law on the subject. There are separate chapters on a wide range of relevant aspects, including abatement of nuisance caused by trees and roots (including a consideration of the seminal House of Lords decision in *Delaware Mansions Ltd v Westminster City Council*, [2002] I AC 321, which reviews virtually all of the earlier tree incursion cases), liability for poisonous trees, falling trees, high boundary trees and anti-social behaviour (the authors highlight recent British legislation showing the way our law should go), occupiers' liability, liability for accidents within the forestry workplace, the right to light, view, fruit, carbon and other matters, and international legislation and protocols.

This work is to be recommended as a provider of a convenient focus on how a solicitor should initially approach a legal issue concerning trees, as it readily leads the reader from the specific context back to the more general common-law principles relating to nuisance and negligence, in particular, as well as to the relevant statutes such as the *Occupiers' Liability Act 1995* and the *Safety, Health and Welfare at Work Acts* and regulations. G

Michael V O'Mahony is a consultant with McCann FitzGerald.

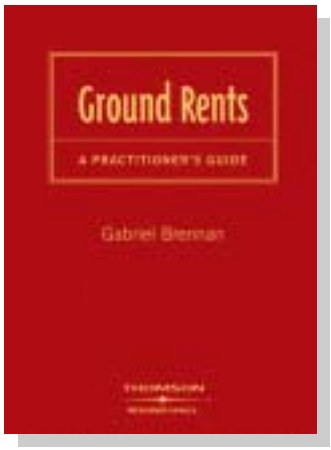
Ground Rents: a Practitioner's Guide

Gabriel Brennan. Thomson Round Hall (2005), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-424-1. Price: €120 (hardback).

The purchase of ground rents is a technical and complex area, particularly in the case of commercial property or where land is being acquired for redevelopment. Gabriel Brennan's book on the subject is a concise and practical guide and will be welcomed by many practitioners.

The book opens by setting the historical background to ground rents in Ireland and the development of pyramid titles. The author then proceeds to set out how the law has evolved to enable tenants to buy out their ground rents, or fee farm rents as the case may be. She analyses the various preconditions that have to be satisfied in order to prove that one is entitled to purchase the relevant interest and examines, with the assistance of case law, what exactly is meant, in the context of ground rents legislation, by permanent buildings, land that is subsidiary and ancillary to permanent buildings, and so forth. Practitioners instructed to buy out a superior interest in property where their client proposes to redevelop the land will find Ms Brennan's comments on covenants that survive the purchase of the ground rents to be particularly useful.

Although this is a practical



textbook to assist in unravelling the complexities of the ground rents legislation, it includes some well-researched commentary on recommendations, which have been made for the reform of the legislative position by various practitioners, academics and particularly the Law Reform Commission. Ms Brennan also comments on the constitutional position and, no doubt, the author awaits with interest the written judgment resulting from the recent constitutional challenge to the ground rents legislation taken by JSE Holdings Limited.

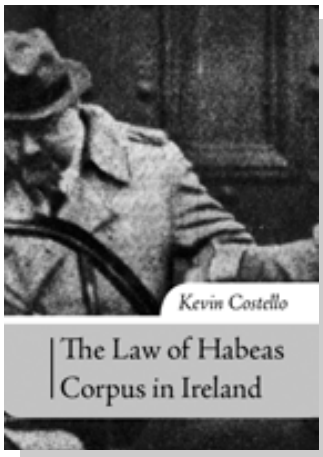
I recommend this carefully researched but eminently-readable book. G

Deirdre Morris is a partner in Matheson Ormsby Prentice.

The Law of *Habeas Corpus* in Ireland

Kevin Costello. Four Courts Press (2006), 7 Malpas Street, Dublin 8. ISBN: 1-85182-836-2. Price: €65 (hardback).

Habeas corpus ('that you have the body') is an order of the High Court to compel a person in whose custody another person is detained to produce the body of that person before the court and to certify in writing the grounds of this detention. The court, having given the person in whose custody he is detained an opportunity of justifying the detention, will order the release of the person from detention unless satisfied that he is being detained in accordance with law. The old writ of *habeas corpus* was far reaching, including ordering the release of a wife who was unlawfully detained by her husband!



Kevin Costello presents a wonderful treatise on the historical development of *habeas corpus* in this island, and for a busy practitioner who gets a limited time to prepare for a *habeas corpus* application, it's a fascinating insight into the origins of the writ.

A *habeas corpus* application made under article 40.4.2 of the Constitution, it has been said, envisages "the widest possible powers to be conferred on the judge or court conducting the enquiry" (*Gallagher v Director of Central Mental Hospital*, [1996] 3 IR 1). Mr Costello's book certainly throws open some interesting questions regarding the court's powers under article 40.4.2, one of which is the question of an ancillary power of remittal.

The book deals with the criminal process, the grounds of review, the procedure, costs and also administrative detention and detention ancillary to civil litigation.

With the increasing frequency of *habeas corpus* applications, the law is developing on a regular basis, and it is almost impossible to produce a book that is absolutely up to date. General practitioners, trainee solicitors and others who want a general overview of the principles of article 40.4.2 will find the book most readable and informative. G

Gemma Moran is a solicitor in the Office of the Director of Public Prosecutions.

committee reports

CONVEYANCING

Draft *Land and Conveyancing Bill 2005* – adverse possession

Readers may recall from the December issue that the Conveyancing Committee proposed lodging a submission on the above topic with the Minister for Justice, Equality and Law Reform. The committee's first submission, arguing against the proposed changes in the law on adverse possession contained in the draft bill, was duly lodged on 21 December 2005 and was followed by a supplemental submission on 31 January 2006. (Both submissions can be accessed on www.lawsociety.ie by logging in to the members' area and clicking in turn on 'Society committees', 'Conveyancing Committee' and 'submissions'.)

The committee has received a letter, dated 21 February 2006, from the private secretary to the Minister for Justice, Equality and Law Reform, replying on behalf of the minister to the committee's submissions. The reply confirms: "The position is that the provisions relating to adverse possession of land in the draft *Land and Conveyancing Bill* published by the Law Reform Commission sought to take account of the European Court of Human Rights judgment in the case of *JA Pye (Oxford) Ltd v UK*. The UK authorities have now sought to appeal this judgment to the ECHR's Grand Chamber and, if this request is successful, a new judgment will follow in due course. In the meantime, it is not intended to proceed with changes in existing statutory provisions relating to adverse possession. However, the points set out in your submissions will be taken into account in the context of any such future changes."

The committee is pleased to note that the proposed changes will not now proceed and, if a review becomes necessary at any stage, the committee's submissions will be taken into account. The committee will continue to monitor the situation. Thanks to all practitioners who wrote to the committee and to the department on this topic. It was noted that the vast majority of you supported the committee's views on the matter.

Conveyancing Committee

Proper receipts for lodgement of title deeds with lending institutions

Conveyancing practitioners will be aware that a number of lending institutions implemented a new practice late last year of not acknowledging individually listed or scheduled deeds when received from solicitors in discharge of their certificate of title undertaking. A practice was adopted whereby the bundle of deeds would be acknowledged but receipt of individual documents was not being acknowledged, as the lenders concerned indicated they were not checking the documents other than the mortgage documentation. The Conveyancing Committee made strong representations to the lenders concerned and is pleased to inform the profession that Permanent TSB has now agreed to revert to its former long-standing practice of issuing a full receipt for scheduled deeds and documents. The committee welcomes this decision and hopes that the other few lending institutions will now follow suit.

The committee also welcomes the decision of Permanent TSB to stop sending non-title documentation (such as life policies, house insurance policies and so on) out to solicitors to retain on their file with the title deeds. This practice had never been agreed by the committee with any lending institution and it is accepted that, under the certificate of title system, the solicitor has no role in dealing with any insurance policy or other non-title matter.

The committee thanks Permanent TSB for giving due consideration to its representations in relation to these matters.

Conveyancing Committee

practice notes

FLOOR AREA COMPLIANCE CERTIFICATES ON CLOSING

In its practice note to the profession in the March 2005 issue of the *Gazette*, the Conveyancing Committee recommended that purchasers' solicitors utilise special conditions in contracts for the purchase of new properties in order to ensure that floor area compliance certificates (FACCs) are available for closing of purchases in cases where the purchasers wish to avail of, and are entitled to, first-time buyer stamp duty relief.

Notwithstanding the terms of the practice note, the committee has been advised that many solicitors acting for builders persist in resisting the inclusion of such special conditions. In fact, it is reported that many builders' solicitors insist on including conditions that oblige a purchaser to complete a purchase whether or not the necessary FACC is in place at closing, in contradiction of what is expressed in the *Finance Act* certificate in the deed. There are two reasons why it is **essential** to obtain the FACC on closing:

1) The purchaser can legitimately claim stamp duty relief where entitled to do so;
2) The purchaser can be satisfied that the new house or apartment complies with "such conditions as may be applied by the minister from time to time ... in relation to the standards of construction and with the requirements of the *Building Regulations*", as required by paragraph 5 of SI 128 of 2004 – *Housing (Floor Area Compliance Certificate) Inspection Regulations 2004.*

The stamp duty relief for first-time buyers of houses and apartments under 125 square metres is used by the Department of Finance and the Department of the Environment to police building standards for these smaller, so-called 'grant-sized' dwellings and to ensure that builders' VAT and tax clearance (C2) position with Revenue is in order. The Department of the Environment has indicated that if FACCs are applied for in time, there should normally be no problem in having them available for closing, and if a FACC has not issued, it is indicative of a substantive problem with the house or of the builder's position with Revenue not being in order. In either case, the FACC will not issue until the relevant problem has been rectified and, as these matters are not within the control of the builder's solicitor, it is not appropriate to either give or accept an undertaking on closing to furnish the FACC following closing.

If purchasers' solicitors do not insist on obtaining the FACC on closing:

1) They will be legally obliged to stamp the deed within the statutory period and they must obtain the appropriate stamp duty monies from their clients in advance of closing in order to do so. This **cannot** be cured by an undertaking from the builder's solicitor to furnish a FACC following closing, because the *Finance Act* certificate to the effect that there was a FACC in existence at the date of the deed (ie the date of closing) cannot be used retrospectively in the deed; and
2) The purchaser is forced to complete the purchase of a house or apartment without the required confirmation that proper building standards have been observed. If remedial work is required by the department before issuing the FACC this may, in any event, prove to be very inconvenient for both builder and purchaser if the purchaser is in occupation.

The use of conditions in contracts that would tend to result in purchasers losing their entitlement to stamp duty relief, or in forcing purchasers to close without confirmation that necessary building standards have been adhered to, is considered by the committee to be most unreasonable and should be resisted and discouraged by **all** practitioners for the reasons outlined above. Appropriate special conditions **should** be used to ensure that the FACC is available for closing.

Conveyancing Committee

USE OF 'ENTIRE AGREEMENT' CLAUSES IN CONTRACTS FOR THE SALE OF RESIDENTIAL PROPERTY

The Conveyancing Committee is concerned to note that the use of 'entire agreement' clauses in contracts for the sale of residential property appears to be increasing.

While these clauses may take different forms, they essentially preclude a purchaser from relying on any advertisement or statement, oral or in writing, whether or not in the course of any negotiations for the sale by the vendor or the vendor's agent and that the contract for sale represents the entire terms and conditions of the agreement between the parties.

'Entire agreement' clauses are commonly found in mergers and acquisitions agreements and are not unreasonable there. In such transactions, the prospective purchaser will have carried out comprehensive 'due diligence' and significant warranties on a number of matters will have been included in the agreement.

An entire agreement clause in a contract for sale of residential property will not only prevent the purchaser from relying on any advertisement, brochure or representation made or published by or on behalf of the vendor, but also any replies given to a purchaser in pre-contract enquiries. It will also exclude any oral answers given in reply to questions raised at an auction as well as to any statements made by the vendor to the purchaser.

The Conveyancing Committee takes the view that such clauses should not be included in agreements for the sale of residential property, whether by auction or private treaty.

Conveyancing Committee

PROPERTY NOT A FAMILY HOME – SPOUSE SHOULD PROVIDE FAMILY LAW DECLARATION

A family law declaration, whether or not it relates to a family home, should, if owned by an individual, be sworn both by the owner and his or her spouse. This, in the view of the Conveyancing Committee, is a consequence of *Tesco v McGrath* insofar as it relates to reviewable dispositions.

The statutory concept of the 'reviewable disposition' was introduced by section 29 of the *Judicial Separation and Family Law Reform Act 1989* (the 1989 act), which was repealed and replaced by section 35 of the *Family Law Act 1995* (the 1995 act). It was continued and applied in section 37 of the *Family Law (Divorce) Act 1996* (the 1996 act).

'Reviewable disposition' is defined in both sections 35 and 37 as meaning "in relation to proceedings for the grant of relief brought by a spouse ... a disposition made by the other spouse or any other person but does not include such a disposition made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in good faith and without notice of an intention on the part of the respondent to defeat the claim for relief".

A reviewable disposition can be restrained prior to taking effect. Thereafter, it can, without limit as to time, be set aside, with proof of intention to defeat the claim for relief. That intention will be presumed if the application to set aside is brought within three years of the making of the reviewable disposition.

In *Tesco Ireland Limited v Patrick J (otherwise PJ) McGrath and Thomas McGrath* (1998 no 526 Sp), the president of the High Court was asked to determine a number of issues, one of which is relevant for this practice note.

This issue was whether a statutory declaration (of the defendant/vendor in question alone) containing the paragraph *"No proceedings of any kind have been instituted or threatened and no application or order of any kind has been made in relation to the property under any of the provisions of ... the 1989 act or ... the 1995 act or ... the 1996 act ... and the assurance of the property to the ... parties mentioned in paragraph 7 hereof is not a disposal for the purpose of defeating a claim for relief..."* was adequate to protect the plaintiff /purchaser.

The judgment stated that, if a purchaser is to be protected from the possibility of a transaction being set aside as being a reviewable disposition, the purchaser must establish that the disposition was made for valuable consideration and that at the time he or she acted in good faith and without notice of any intention on the part of the vendor to defeat the claim for relief.

In the *Tesco* case, it became apparent, after the plaintiff/purchaser had made enquiries, that proceedings under the 1989 act were in existence between the first-named vendor and his wife. The court could therefore presume, unless the contrary was shown, that the disposition was for the purpose of defeating a claim for financial relief.

The court decided that the plaintiff/purchaser would not be protected if he relied on the statutory declaration offered.

It is therefore best practice to make proper enquiries in relation to possible family law claims, and where the existence of proceedings is disclosed, a family law declaration of the vendor's spouse must be furnished confirming that the disposition is not reviewable. In the alternative, the vendor must furnish the appropriate court order.

The Conveyancing Committee has also given consideration as to whether family law declarations from non-owning spouses should, as a matter of prudence, be required by a purchaser's solicitor, even where no proceedings are in being. Reluctantly, the committee has concluded that they should be. This conclusion is based on best practice. The Conveyancing Committee is conscious of the fact that best practice is not possible or practical in all cases. There will be occasions where a vendor may be able to explain why best practice cannot be implemented and, in those circumstances, a solicitor must use his or her professional skill and judgement in order to protect the interests of the client – but, where best practice has not been implemented, a solicitor must bear in mind the power of the court under the 1995 and 1996 acts.

Conveyancing Committee

BRIEFING

legislation update

21 March – 19 April 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

Aviation Act 2006

Number: 7/2006

Contents note: Gives effect to the *International Convention relating to Co-operation for the Safety of Air Navigation* signed at Brussels on 13/12/1960, as consolidated by the protocol signed at Brussels on 27/6/1997 (revised *Eurocontrol Convention*), and for this purpose amends the *Irish Aviation Authority Act 1993* and provides for related matters. Amends the *Aer Lingus Act 2004* to provide for the commencement of section 2 of that act (insofar as it relates to section 5(2) of the *Air Companies (Amendment) Act 1993*) and section 7 (issue of shares in Aer Lingus Group plc) of that act with effect from 19/8/2004. Amends the *Aviation Regulation Act 2001* to provide for the designation of the Commission of Aviation Regulation as the responsible organisation for administration of the EC regulation 261/2004 on denied boarding and on cancellation or long delay of flights.

Date enacted: 4/4/2006

Commencement date: 4/4/2006

Criminal Law (Insanity) Act 2006

Number: 11/2006

Contents note: Amends the law relating to the trial and detention of people suffering from mental disorders who are charged with offences or found not guilty by reason of insanity; amends the law relating to unfitness to plead and the special verdict; provides for the committal of such persons to designated centres and for the independent review of the detention of such persons; provides for the establishment of the Mental Health Review Board; repeals the *Trial of Lunatics Act 1883*, and provides for related matters.

Date enacted: 12/4/2006

Commencement date: Commencement order(s) to be made (per s26(2) of the act)

Diplomatic Relations and Immunities (Amendment) Act 2006

Number: 10/2006

Contents note: Amends the *Diplomatic Relations and Immunities Act 1967* by the insertion in part VIII, as amended, of the limitation that only privileges and immunities of the nature of those conferred in relation to the *Vienna Convention on Diplomatic Relations 1961* may be conferred by government order. Also provides that all orders made under part VIII of the 1967 act, as amended, and in force immediately prior to the enactment of this act, shall have effect as if they were an act of the Oireachtas.

Date enacted: 12/4/2006

Commencement date: 12/4/2006

Employees (Provision of Information and Consultation) Act 2006

Number: 9/2005

Contents note: Implements directive 2002/14, establishing a general framework for informing and consulting employees in the European Community. Introduces a general right to information and consultation for employees in undertakings with at least 50 employees. Provides for the establishment of arrangements for informing and consulting employees and provides for related matters.

Date enacted: 9/4/2006

Commencement date: Commencement order(s) to be made (per s22(2) of the act)

Finance Act 2006

Number: 6/2006

Contents note: Provides for the imposition, repeal, remission, alteration and regulation of taxation, of stamp duties and of duties relating to excise and otherwise makes further provision in connection with finance including the regulation of customs.

Leg-implemented: Dir 2005/19, amending dir 90/434 concerning companies of different EU member states; dir 2003/48 on taxation of savings income in the form of interest payments and related matters

Date enacted: 31/3/2006

Commencement date: Various – see act; commencement order(s) to be made (per s130(9) of the act); 1/1/2006 for part 1 (chapters 1 to 5 – ss1 to 77), except where otherwise expressly provided in part 1 (per s130(8) of the act)

Sea-Fisheries and Maritime Jurisdiction Act 2006

Number: 8/2006

Contents note: Revises with amendments part XIII of the *Fisheries (Consolidation) Act 1959* and the *Maritime Jurisdiction Acts 1959 to 1988*; amends and extends the *Fisheries Acts 1959 to 2003*, the *Mercantile Marine Act 1955*, the *Fishery Harbour Centres Act 1968*, the *Dumping at Sea Act 1996* and the *Maritime Safety Act 2005*. Updates penalties for a wide range of sea-fisheries offences and makes new statutory provisions for forfeiture of proceeds from illegally caught fish. Provides for the establishment of the Sea-Fisheries Protection Authority for enforcement of sea-fisheries law and food safety law in relation to fish and fishery products. Provides for the transfer from the Attorney General to the DPP of responsibility for the prosecution of sea-fisheries offences and for the prosecution of offences under the *Dumping at Sea Act 1996* and provides for related matters.

Date enacted: 4/4/2006

Commencement date: 4/4/2006. Establishment-day order to be made for the establishment of the Sea Fisheries Protection Authority (per s40 of the act). Order to be made appointing a day on which the prosecution function will transfer from the Attorney General to the DPP (per s39 of the act)

Social Welfare Law Reform and Pensions Act 2006

Number: 5/2006

Contents note: Provides for a number of measures announced in budget 2006, including measures relating to child benefit and the respite care grant, the income threshold for the one-parent family payment, the duration of carer's benefit and the means test applicable to the supplementary welfare allowance scheme. Provides the legislative basis for the payment of the early childcare supplement as announced in budget 2006, provides for the establishment of a standard non-contributory

support payment for persons aged over 66 years – the state pension (non-contributory) – and for related matters. Amends the titles of some schemes operated under social welfare legislation and makes a number of amendments to the *Social Welfare Consolidation Act 2005*. Also provides for a number of amendments to the *Pensions Act 1990* in relation to occupational pensions and amends the *Combat Poverty Agency Act 1986*, the *Freedom of Information Act 1997*, the *Taxes Consolidation Act 1997* and the *Carer's Leave Act 2001*.

Date enacted: 24/3/2006

Commencement date: Commencement order(s) to be made for ss4, 5, 6, 9 to 14, 16 to 27, 31 and 33 and part 3 (ss38 to 44) (per s1(4) of the act); see act for commencement dates of other sections

SELECTED STATUTORY INSTRUMENTS

Commission of Investigation (Child Sexual Abuse) Order 2006

Number: SI 137/2006

Contents note: Establishes a commission to investigate the handling of allegations or complaints of child sexual abuse made against clergy operating under the aegis of the Catholic archdiocese of Dublin, to investigate the position in a Catholic diocese, following a notification from the Minister for Health and Children that it may not be implementing Church guidelines for responding to an accusation, suspicion or knowledge of child sexual abuse by a priest or religious, and to investigate the position in a diocese, following a notification from the Minister for Health and Children that a Catholic diocese in the state may not be implementing satisfactorily the recommendations of the *Ferns Report* delivered to the Minister for Health and Children on 25/10/2005.

Commencement date: 28/3/2006

Circuit Court Rules (Jurisdiction in Matrimonial Matters and Matters of Parental Responsibility) 2006

Number: SI 143/2006

Contents note: Substitute new order 14A in the *Circuit Court Rules 2001* (SI 510/2001) to prescribe Circuit Court procedures in respect of reg 2201/2003 (*Brussels II bis Regulation*) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing reg 1347/2000 (*Brussels II Regulation*).

Commencement date: 27/4/2006

Education (Former Residents of Certain Institutions for Children) Finance Board (Establishment Day) Order 2006

Number: SI 77/2006

Contents note: Appoints 17/2/2006 as the establishment day for the establishment of the Education (Former Residents of Certain Institutions for Children) Finance Board under part 3 of the *Commission to Inquire into Child Abuse (Amendment) Act 2005*.

Environmental Noise Regulations 2006

Number: SI 140/2006

Contents note: Implement directive 2002/49/EC relating to the assessment and management of environmental noise. 'Environmental noise' means unwanted or harmful outdoor sound created by human activities, including noise emitted by means of transport, road traffic, rail traffic, air traffic, and from sites of industrial activity, including those defined in annex 1 to directive 96/61/EC concerning integrated pollution prevention and control.

Commencement date: 3/4/2006

European Communities (Patent Agents) Regulations 2006

Number: SI 141/2006

Contents note: Amend certain provisions of the *Patents Act 1992* in order to allow a person, established in another member state of the European Community and qualified under the law of that state to act as a patent agent, to act for another person in relation to patent matters before the Controller of Patents, Designs and Trade Marks

Commencement date: 29/3/2006

European Communities (Quality and Safety of Human Tissues and Cells) Regulations 2006

Number: SI 158/2006

Contents note: Give effect to directive 2004/23, setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells, and directive 2006/17 implementing directive 2004/23 as regards certain technical requirements for the donation, procurement and testing of human tissues and cells. Lay down standards of quality and safety for human tissues and cells intended for human applications and for manufactured products derived from human tissues and cells intended for human applications.

Commencement date: 7/4/2006 for all regulations except regs 9(2), 9(4), 11(1), 11(2), 11(7), 12(1), 12(2), 12(3), 12(4), 14(3), 14(4) and 14(5), which come into operation on 1/11/2006 (per reg 1(2) and 1(3) of the regulations)

Rules of the Superior Courts (Mode of Address of Judges) 2006

Number: SI 196/2006

Contents note: Substitute a new rule 1 in order 119 of the *Rules of the Superior Courts 1986* (SI 15/1986) in order to amend the mode of address in court of judges of the superior courts.

Commencement date: 25/4/2006

Garda Síochána Act 2005 (Commencement) Order 2006

Number: SI 129/2006

Contents note: Appoints 31/3/2006 as the commencement date for the following provisions: section 4 and schedule 1, insofar as they relate to the repeals specified in the third column of the schedule to this order; sections 6, 9 to 23, 25 to 28, 30 (other than s30(3)), and 31 to 38; sections 42, 46, 59 and 61; sections 74 (other than s74(3)) and 75; part 5; sections 121(2)(c), 122 (other than s122(1)(o)), and 127, 128 and 129; schedule 2, insofar as it relates to a person transferred under section 19.

Local Authorities (Traffic Wardens) Act 1975 (Fixed Charge Offences) Regulations 2006

Number: SI 136/2006

Contents note: Declare which offences involving the use of mechanically propelled vehicles are fixed-charge offences for the purposes of section 3 of the *Local Authorities (Traffic Wardens) Act 1975*, determine the amount of fixed charge for each offence and prescribe the form of notice and document to be used in the enforcement of those fixed-charge offences.

Commencement date: 3/4/2006

Patent (Amendment) Rules 2006

Number: SI 142/2006

Contents note: Set out the evidential requirements with which a person established in another member state of the European Community and qualified to act under the law of that state as a patent agent must comply in order to act for another person in relation to

patent matters before the Controller of Patents, Designs and Trade Marks.
Commencement date: 29/3/2006

Road Traffic Act 2002 (Commencement of Certain Provisions) Order 2006
Number: SI 134/2006
Contents note: Commences certain provisions of the *Road Traffic Act 2002*, with effect from 3/4/2006, including provisions to apply the penalty-point system to specified road traffic offences. Also commences an amendment to the *Local Authorities (Traffic Wardens) Act 1975* to enable local authority traffic wardens to enforce offences by means of the fixed-charge system. Appoints 3/4/2006 as the commencement date for the following provisions of the *Road Traffic Act 2002*: (a) s12 (insofar as it is not already in operation); (b) ss9, 14 and 19; (c) ss8 and 22 in respect of (i) offences under ss48, 51A, 55, 96, 106 and 109 of the *Road Traffic Act 1961*, (ii) the offences specified in part 4 of schedule 1, and (iii) the offences specified at reference numbers 8, 11, 13, 14, 15 and 17 in part 1 of schedule 1; and (d) s25(2), insofar as it applies to the repeal of s36(1) and 36(2) of the *Road Traffic Act 1961* in respect of the offences specified (i) at reference numbers 8, 11, 13, 14, 15 and 17 in part 1 of schedule 1, and (ii) in part 4 of schedule 1.

District Court (Equal Status Act 2000) Rules 2006
Number: SI 161/2006
Contents note: Amend order 83, 'Registration of clubs and granting of club authorisations', of the *District Court Rules 1997* (SI 93/1997) by the addition of a new rule 12 to provide a form of application for a determination order and a form of determination order as to whether a club is or continues to be a discriminating club under sections 8(3) or 8(15) of the *Equal Status Act 2000*.
Commencement date: 1/5/2006

District Court (Housing (Miscellaneous Provisions) Act 1997) Rules 2006
Number: SI 133/2006
Contents note: Amend rules 6, 7 and 11 of order 99A, 'Procedure under the *Housing (Miscellaneous Provisions) Act 1997*', of the *District Court Rules 1997* (SI 93/1997) in order to take account of amendments made by section 197 of the *Residential Tenancies Act 2004*.
Commencement date: 19/4/2006

District Court (Order 24) Rules 2006
Number: SI 149/2006
Contents note: Amend order 24, 'Proceedings relating to indictable offences', of the *District Court Rules 1997* (SI 93/1997) by the substitution of the words "fourteen days" for the words "ten days" where they appear in rule 11 of the order, in order to provide 14 days for the transmission of documents to the county registrar when an accused has been sent forward for trial.
Commencement date: 1/5/2006

District Court (Temporary Closure Orders) Rules 2006
Number: SI 162/2006
Contents note: Amend order 82, 'Register of licences', of the *District Court Rules 1997* (SI 93/1997) to provide a form of temporary closure order under section 36A(2) of the *Intoxicating Liquor Act 1988*.
Commencement date: 9/5/2006

Road Traffic Acts 1961 to 2005 (Fixed Charge Offences) Regulations 2006
Number: SI 135/2006
Contents note: Declare which offences involving the driving or use of mechanically propelled vehicles are fixed-charge offences for the purposes of section 103 of the *Road Traffic Act 1961*, determine the amount of fixed charge for each offence and prescribe the form of notice and document to be used in the enforcement of these fixed-charge offences and, where applicable, the penalty-point system in relation to those offences.
Commencement date: 3/4/2006

Social Welfare Act 2005 (Commencement) Order 2006
Number: SI 119/2006
Contents note: Appoints 1/3/2006 as the commencement date for ss7(1)(a)(ii), 7(1)(a)(iii), 7(1)(b), 7(2) and 8(1)(a)(i) of the act. These sections provide for the extension of the duration of payment of maternity and adoptive benefit as announced in budget 2006.

Social Welfare Consolidation Act 2005 (Commencement) Order 2005
Number: SI 923/2005
Contents note: Appoints 1/12/2005 as the commencement date for all provisions of the act, except for schedule 6. G

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Solicitors Disciplinary Tribunal

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

In the matter of Gerard O'Connor, solicitor, of Dobbyn & McCoy Solicitors, and in the matter of the *Solicitors Acts 1954 to 1994* [3503/DT356]
Client in person (applicant)
Gerard O'Connor (respondent solicitor)

On 1 December 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:
a) Failed to reply to the applicant's correspondence,
b) Failed to reply to the Law Society's correspondence.

The tribunal ordered that the respondent solicitor:
a) Do stand advised and admonished,
b) Pay 50% of the applicant's vouched expenses.

In the matter of Keith Finnan, a solicitor practising as Keith Finnan & Company at Humbert Mall, Main Street, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954 to 2002* [4346/DT56/05]
Law Society of Ireland (applicant)
Keith Finnan (respondent solicitor)

On 23 February 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to file his accountant's report for the year ended 31 January 2004, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001*, statutory instrument no 421 of 2001, in a timely manner.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €500 to the compensation fund,
c) Pay a contribution of €500 towards the costs of the Law Society of Ireland.

THE HIGH COURT 2006
No 7 SA
In the matter of Thomas Flood, solicitor, and in the matter of the *Solicitors Acts 1954 to 2002*
Law Society of Ireland (applicant)
Thomas Flood (respondent solicitor)

On 6 March 2006, the president of the High Court, having considered and noted the solicitor's previous disciplinary findings, ordered:
1) That the name of the respondent solicitor be struck off the Roll of Solicitors;
2) That the ICS Bank and Ulster Bank shall furnish any information in its possession that the Society may require relating to any aspect of the financial affairs of the practice of the solicitor, with liberty to the Society to apply to the court for further orders relating to specified banks if necessary;
3) That the respondent solicitor swear an affidavit disclosing all information as to his assets, either in his possession or control or within his procurement, that have been, but are no longer, in his possession, control or within his procurement, and if no longer in his possession or control or within his procurement, his belief as to the present whereabouts of those assets, such affidavit to be sworn within four weeks of the date of this order;
4) That the respondent solicitor do pay to the applicant the costs of this application and the costs of the proceedings before the Disciplinary Tribunal, such costs to be taxed in default of agreement.

The president had before him the report of the Solicitors Disciplinary Tribunal dated 27 September 2005. The tribunal had found that there had been misconduct on the part of the respondent solicitor in respect of the following complaints:
a) Up to the swearing of the Society's affidavit, the respondent solicitor failed to register his clients as owners of their property, which was purchased in 1998, in a timely manner or at all;
b) Failed to respond to correspondence from his clients and to explain the failure to register the said property in a timely manner or at all;
c) In his letter of 5 November 2002 to his clients, inferred that their deed had been stamped when this was not in fact the position;
d) Misled the Registrar's Committee on 17 December 2003 by telling them that duty had been paid on the deed when this was not in fact the position;
e) Failed to comply with an undertaking given to the Registrar's Committee on 17 December 2003 to assist the clients' new solicitor in rectifying the matter;
f) Failed to respond to correspondence from the Society, and in particular the Society's letters dated 27 November 2003, 4 December 2003, 19 December 2003, 19 January 2004, 25 February 2004, 21 April 2004, 10 May 2004 and 30 July 2004;
g) Failed to comply with the direction made by the Registrar's Committee at its meeting on 24 March 2004 that he make a contribution of €500 towards the complainant's new solicitor's costs.

In the matter of Joseph Griffin, a solicitor practising as Joseph Griffin and Company, Solicitors, 93 O'Connell Street, Limerick, and in the matter of the *Solicitors Acts 1954 to 2002*. [3474/DT13/05]
Client in person (applicant)
Joseph Griffin (respondent solicitor)

On 7 March 2006, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had failed to carry out his client's instructions.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay the sum of €5,000 to the compensation fund,
c) Pay the sum of €11,308.50 as restitution to his client, without prejudice to any legal right of his client,
d) Pay the expenses of his client and that of his client's witness, measured in the sum of €150. G

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Compiled by Flore Bouhey for FirstLaw

COMMERCIAL LAW

Practice and procedure

Joiner of parties – whether the plaintiff's previous employer ought to be joined as a defendant to the proceedings against the wishes of the plaintiff.

The plaintiff, who was the former managing director of Arnotts and a member of Arnotts' staff pension fund (the fund), claimed that the defendants, who were the trustees of the fund, failed to properly consider and/or effect the transfer of his pension entitlements to another retirement benefit scheme following the termination of his employment with Arnotts. The defendants refused to transfer the plaintiff's pension entitlements on the basis that his employer considered his termination to be a retirement and, consequently, he was not entitled to a transfer of his pension. The plaintiff maintained that he was dismissed from his employment. Subsequently, Arnotts sought to be joined as a defendant to the proceedings.

Kelly J joined Arnotts as a defendant, holding that the pivotal issue for determination was whether or not the plaintiff retired from Arnotts. However, that issue could only be determined in a binding manner between the plaintiff and Arnotts. If Arnotts were not joined as a party to the proceedings, the action could not effectually and completely be adjudicated upon.

***Dugan v Dudgeon*, High Court, Mr Justice Kelly, 14/10/2005** [FL12104]

CRIMINAL

Delay

Right to trial with reasonable expedition – accused brought to trial eight years after date of alleged offence – whether further prosecution of offences should be prohibited – European Convention on Human Rights, *article 6(1).*

The applicant sought leave to prohibit the further prosecution of charges of murder, false imprisonment and firearms offences, on the basis that there had been excessive and unlawful delay in the said prosecution from the date of the alleged offences in February 1996 to 2004. No explanations for the delay had been given by the respondent.

De Valera J prohibited the further prosecution of the offences, holding that prejudice in matters of excessive delay could be presumed in the absence of any specific prejudice and that the applicant had been deprived of his right to an expeditious trial under the Constitution, common law and article 6(1) of the ECHR.

***Sweetman v Director of Public Prosecutions*, High Court, Mr Justice de Valera, 20/12/2005** [FL12115]

Drink driving

Intoxilyser – warning given by garda in charge – whether discrete and separate period – whether information and cautions given at time of arrest by garda in charge when accused brought to garda station, if sufficient to render lawful the overall detention, would also be sufficient to render lawful detention during period of 20-minutes' observation for purposes of intoxilyser test – case stated – Road Traffic Act 1961, *section 49.*

The respondent had been arrested for driving under the influence of intoxicating liquor and was subjected to an intoxilyser test in respect of which he alleged he had not been informed of the reason for his detention, being the requirement not to consume anything for a 20-minute period prior thereto. The District Court judge dismissed the charges but posed the following question to the High Court for its opinion by way of case stated: whether he was correct in dismissing the charge by reason of the fact that there was an obligation on the prosecution to establish on evidence that the accused was told of the act of, and the reasons for, his detention, that in the absence of such evidence, the detention was unlawful and in breach of the accused's constitutional rights and that, in consequence, the evidence subsequently obtained should not be admitted.

O'Neill J answered the case stated in the negative, holding that if the period of 20 minutes for the purposes of observation was justified by way of evidence as being necessary for the purposes of obtaining a suitable sample of breath for the purposes of validly carrying out the breath test, it necessarily followed that the 20-minute period was an integral part of the detention for the purpose for which the arrest was made, namely, to detain a person so that samples could be acquired under section 13 of the *Road Traffic Act 1994* and tested pursuant to its provisions. The period of detention in question was to be properly regarded as an integral part of the overall detention initiated by the arrest of the accused for the purpose of enabling samples to be taken, pursuant to section 13 of the *Road Traffic Act 1994*. In that situation, no additional caution or warning was required at the commencement of that 20-minute period so as to render it lawful. The information and cautions given at the time of the arrest by the garda in charge when the alleged offender was brought to the garda station, if sufficient to render lawful the overall detention, would also be sufficient to render lawful the detention during the period of 20-minutes' observation. Accordingly, there was no breach of the accused's constitutional rights by reason of an absence of such a warning.

***DPP (Curran) v Foley*, High Court, Mr Justice O'Neill, 31/1/2006** [FL12121]

Judicial review

Delay – indecent assault – prohibition – whether the applicant established that there was a real and serious risk that he would not receive a fair trial due to the delay in bringing proceedings against him.

The applicant sought, by way of an application for judicial review, an order of prohibition restraining the respondent from proceeding further with the prosecution of him in respect of three charges of indecent assault alleged to have occurred between 1973 and 1983. The complainant first reported those offences to her parents in 1983. She informed her husband of the incidents

prior to their marriage and they moved to England in 1988. The complainant also reported the alleged incidents to the applicant's wife in 1994 and subsequently to the gardaí in 2002. The applicant alleged that his right to a trial with reasonable expedition was violated by virtue of the inordinate and inexcusable delay on the part of the complainant in reporting the offences to the prosecuting authorities and also by the delay of 11 months on the part of the prosecuting authorities between the date when the applicant was first interviewed and the date he was returned for trial. The applicant contended that the delay resulted in both presumptive and express prejudice and, consequently, there was a real and serious risk that he would not receive a fair trial.

Quirke J granted the order of prohibition, holding that:

1) The prosecuting authorities were not guilty of any inordinate or other delay in the prosecution of the applicant in respect of these offences.
2) The evidence of prejudice alleged by the applicant was of a general nature directed towards undermining the credibility of the complainant. Consequently, the applicant failed to establish that he suffered specific prejudice so grave that, of itself, it warranted the prohibition of his trial.
3) The applicant did not occupy a position of dominion over the complainant after the time when she departed Ireland in 1988 and moved to England. Consequently, the delay in reporting the abuse until 2002 was *prima facie* excessive and inordinate in the circumstances. Furthermore, there was no good reason to justify the delay.

***F(S) v DPP*, High Court, Mr Justice Quirke, 23/11/2005** [FL12031]

Sexual offences

Judicial review – delay – whether there was a real or serious risk that the applicant would not receive a fair trial due to the delay in prosecuting him in respect of numerous sexual offences.

The applicant sought to restrain the respondent from taking any further steps to prosecute him for sexual offences, which were alleged to have been committed between 24 and 30 years previously. The applicant submitted that, given the delay in complaining, there was presumptive prejudice in relation to his trial. He also submitted that there was prosecutorial delay and that none of the delay was attributable to his actions. The applicant submitted that his right to a trial with reasonable expedition was breached by reason of the delay in prosecuting him.

Murphy J refused the application, holding that:

1) The delay by the prosecution authorities, even if considered to be inordinate, was excusable in the circumstances of this case.
2) Despite the fact that there was no actual dominance by the applicant of the complainants, the alleged abuse had a very significant effect on each of the complainants to a varying degree, which justified the long delay in reporting the matter to the gardaí. Furthermore, there was no actual prejudice arising from the delay.

***O'B(T) v DPP*, High Court, Mr Justice Murphy, 17/1/2006** [FL12086]

LICENSING

Declaration

Intoxicating liquor – application for declaration that extension to premises fit and convenient to be licensed – factors to be considered – traffic hazard – demand in vicinity – number of licensed premises in vicinity – whether extension to premises fit and convenient to be licensed – Licensing (Ireland) Act 1902 *(2 Edw 7, c18)*, *section 6* – Intoxicating Liquor Act 1960 *(no 18)*, *section 15*.

The Circuit Court refused to grant to the applicant a declaration pursuant to section 15 of the *Intoxicating Liquor Act 1960* that an extension to his premises was fit and convenient to be licensed for the sale of intoxicating liquor on the premises. The applicant appealed to the High Court. The objection to the grant of the declaration came from the gardaí, who submitted, *inter alia*, that they had apprehensions that public order would be adversely affected into the future and that there were already sufficient similar premises in the vicinity.

Murphy J granted a declaration pursuant to section 15 of the 1960 act, holding that the premises were fit and convenient to be licensed and that there was no constitutional right to a liquor licence or a renewal thereof. They were only rights granted by statute, subject to limitations and conditions prescribed thereby. The same principles applied to the grant of a declaration that premises were fit and convenient to be licensed, pursuant to section 15 of the *Intoxicating Liquor Act 1960*. In that respect, 'unfitness' had to do with the premises themselves, whereas 'inconvenience' included the location of the premises. As the criterion of adequacy was not relevant to an application for a declaration under section 15 of the 1960 act, the court was entitled, pursuant to section 4 of the *Licensing (Ireland) Act 1833*, to have regard to the number of public houses in the neighbourhood but not the number of extensions for nightclubs. Moreover, the court was not entitled to have regard to the future apprehensions of the gardaí insofar as public order was concerned.

***Re Peter Kingston*, High Court, Mr Justice Murphy, 21/12/2005** [FL12050]

PLANNING AND DEVELOPMENT

Waste management

Environmental law – risk of pollution – 'polluter pays' principle – whether respondents liable for environmental pollution caused by dumping of waste – Waste Management Act 1996 *(no 10)*, *section 57 – council directive 75/442/EEC – council directive 91/156/EEC – company law – limitation of liability – requirement not to frustrate objectives of European legislation – whether company directors liable for acts of company causing environmental pollution.*

The applicant sought various reliefs requiring the respondents to cease the holding and/or disposal and/or recovery of waste at certain lands. The respondents accepted their liability, and the only dispute between the parties was as to the measures to be taken to reinstate the lands. The applicant's proposal required the removal of all waste to an authorised waste facility, whereas the respondents' proposal would result in the sorting of waste on-site and be a cheaper solution. The applicant contended that the respondents' proposal would not remediate the land properly.

Peart J granted the reliefs sought, holding that, where two solutions are put forward, the solution that places the lesser burden on the paying polluter should be regarded as the appropriate one, provided that the less onerous solution is equally effective and satisfactory in order to achieve the objectives of the legislation. In this instance, the solution put forward by the respondents was not one that could be reasonably regarded as providing an adequate solution to the task of remediation of the lands and the fact that the applicant's proposal would cost more than the proposal put forward by the respondents could not be a fac-

tor against the former. Furthermore, the veil of incorporation should be lifted and the orders should be made against the directors of the company to ensure the full application of the polluter pays principle and other objectives of the *European Waste Directive*. ***Laois County Council v Scully, Scully, Scully Skips Ltd and Boyhan*, High Court, Mr Justice Peart, 18/1/2006** [FL12105]

PRACTICE AND PROCEDURE

Abuse of process

Application to High Court seeking similar relief to that sought in appeal to Supreme Court while Supreme Court appeal pending – whether abuse of process – whether application should be struck out – inherent jurisdiction of court – litigant bringing vexatious proceedings before High Court while appeal to Supreme Court pending in respect of same matter – High Court prohibiting plaintiff from commencing further proceedings relating to same matter in High Court without leave.

The plaintiff's proceedings arising out of the termination of her employment had been dismissed by the High Court. Against that order, she appealed to the Supreme Court. While the appeal to the Supreme Court was pending, the plaintiff, by way of notice of motion, sought the same relief from the High Court.

Peart J refused the reliefs sought and made an order restraining the plaintiff from making any further application to the High Court prior to the determination of the Supreme Court appeal without first making an *ex parte* application for leave to do so, holding that the application was misconceived, as the High Court was not entitled to act as any form of appeal against another order made by a different High Court judge. The High Court's function had ceased and the Supreme Court had seisin of the matter. The defendants were entitled to be protected from unnecessary exposure to costs arising on such applications pending the outcome of the appeal, and the court had to be mindful not to allow its processes to be abused.

***Sheehy v Ryan*, High Court, Mr Justice Peart, 14/12/2005** [FL12120]

TORT

Negligence

Vicarious liability – personal injuries – sexual abuse perpetrated by headmaster of school – whether school an emanation of state – whether state had effective control or management of school – whether state vicariously liable for actions of headmaster.

The plaintiff claimed damages against the defendants for personal injuries as a result of sexual abuse perpetrated by the first defendant, who was the headmaster of a school that was managed by a religious order but where the teacher's salaries were paid by the remaining defendants. The plaintiff had obtained judgment against the first defendant by default. The remaining defendants applied to have the plaintiff's claim against them dismissed on the basis that they had no case to answer in respect of the allegations of negligence arising out of the state's purported failure to put in place appropriate procedures to detect and prevent sexual abuse.

De Valera J dismissed the plaintiff's claim against the second, third and fourth defendants, holding that the functions of the remaining defendants were not management functions, as the ownership and management of the school was in the hands of the religious order who ran the school. The fact that the school was used by the state as a means of fulfilling its constitutional obligations towards some of the children therein did not automatically make the school an agent of the state.

***O'K(L) v H(L), the Minister for Education and Science*, High Court, Mr Justice de Valera, 20/1/2006** [FL 12139] G

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News from the EU and International Affairs Committee
Edited by TP Kennedy, Director of Education, Law Society of Ireland

Horns of a dilemma? Ireland, the EU and the treatment of migrant workers

Ireland, with a population of four million, has been a member of the European Communities, and now the European Union, since 1973. It has traditionally been seen as a country of emigration but, recently, has emerged as a country of immigration. With the sobriquet 'Celtic Tiger', its economy continues to grow, with high levels of employment – contrasting with many other EU member states. Indeed, recent statistics suggest that indigenous labour is not sufficient to meet the demand in certain sectors, such as construction and catering. This means that Ireland, a relatively small member state, punches somewhat above its weight in the European labour market.

Ireland enjoys strong elements of entrepreneurial culture and, like it or not, there is an increasing recognition of globalising trends. At same time, there is a corporatist approach to labour matters, seen in social partnership, which fosters a more 'protectionist' attitude.

Recent fears that an open, laissez-faire approach to immigration for employment could start what has been described as a 'race to the bottom' have influenced the debate on the free movement of persons under EU law, the right to work of new member state nationals, access to social benefits, the treatment of posted workers and negotiations on the proposed *Services Directive*.

As in other EU member states, immigration questions are part of a broader debate on European integration. They featured (though perhaps not too instrumentally) in the *Nice Treaty* referendum debate – where Ireland initially voted 'no' but eventually voted 'yes'. They may become relevant in any debate on the ratification of a European constitutional treaty, if and when this comes to pass. They may also be central to the issue of Turkish accession to the EU. More generally, in the current climate, where the idea of Europe is in a state of flux, fundamental ideas of equality and free movement in the EU are subject to challenge. Between economic nationalism and globalisation/free trade, the role of the EU continues to be uncertain.

How concerns about the admission and treatment of migrant workers are addressed – and whether equality of treatment of migrant workers can continue to be secured to the benefit of migrant and host workers – is increasingly central in the Irish debate on the future of Europe.

The principle of non-discrimination

Irish law endorses the principle of non-discrimination in relation to the treatment of workers, whether they come from Ireland, the old 15 EU member states, the new ten member states, the other EEA member states or from third countries.

As might be expected, differential treatment exists in relation to entry for the purposes of employment, where a broad distinction may be drawn between privileged EU/EEA nationals, privileged third-country nationals (including Turkish workers) and a residual class of third-country nationals. Such differences will continue once the proposed 'green card' system in the *Employment Permits Bill 2005* comes to pass. Such differential treatment in relation to access is not in itself antithetical to the idea that, once employed, there should be equality in treatment as regards pay and other conditions of employment.

A key provision, introduced "for the avoidance of doubt", is contained in section 20 of the *Protection of Employees (Part-Time Work) Act 2001*, which states that a series of enactments conferring rights on an employee applies, and shall be deemed always to have applied to, a posted worker (within the meaning of directive 96/71) and "a person, *irrespective of his nationality or his place of residence*, who:

(i) Has entered into a contract of employment that provided for his or her being employed in the state,
(ii) Works in the state under a contract of employment, or
(iii) Where the contract has ceased, entered into the contract of employment or worked in the state under a contract of employment

in the same manner, and subject to the like exceptions not inconsistent with this subsection, as it applies and applied to any other type of employee" (emphasis added).

The full range of employee protection legislation thus formally applies to foreign workers, posted or otherwise, and irrespective of origin.

What is the underlying basis for such equality of treatment? In answering this question, it is instructive to consider the rationale for the prohibition of discrimination, as applied to the treatment of EU workers, stated by the European Court of Justice in Case 167/73 *Commission v France*. The court stated that the absolute prohibition of discrimination had "the effect of not only allowing in each member state equal access to employment to the nationals of the member states, but also … of guaranteeing to the state's own nationals that they shall not suffer the unfavourable consequences which could result from the offer or acceptance by nationals of other member states of conditions of employment or remuneration less advantageous than those obtaining under national law, since such acceptance is prohibited".

This now largely overlooked case is important in the present context, because it shows two critical dimensions of the non-discrimination principle as it applies to migrant workers. (Even though it applies to the 'special' regime of free movement of workers who are nationals of the EU member states, it seems to have a broad-

er application.) On the one hand, there is the right of the migrant worker not to be discriminated against *vis-à-vis* host-state workers. On the other hand, there is the guarantee given to host-state workers that their employment position will not be undermined by employers treating migrant workers less favourably. Underlying the principle, therefore, is a certain understanding: that the host-state society will accept migrant workers for employment provided that there is a guarantee that the position of their own workers will not be undermined, that there will be no 'race to the bottom'.

This involves a certain *quid pro quo*. The guarantee to national workers is given on the basis that migration for employment on the basis of equality is accepted. The right to migrate for employment on the basis of equality is recognised on the basis that such a guarantee to host nationals is honoured. There is a 'virtuous reciprocity' that can be twisted and even sundered if national workers start questioning the right to migrate for employment or if employers treat migrants less favourably than national workers.

Some recent controversies

The principle of equality of national and non-national workers in relation to pay and other terms and conditions of employment has featured in a number of well-publicised cases or issues.

The first case involves the Turkish multinational GAMA. The facts of the case are still a matter for some speculation. Although the activities of GAMA in relation to Turkish workers posted to Ireland have been criticised by government ministers and unions, publication of the report of the Labour Inspectorate is still blocked by court injunction, so the precise nature of GAMA's failings

remains unclear. It is sufficient here to note that it was alleged that posted Turkish construction workers had been paid substantially below the national rate and that they were not paid for their overtime. It then transpired that a part of the workers' wages had been paid into a Dutch bank account, of which at least some of the workers concerned seemed unaware. A solution of sorts appears to have been brokered by means of executive action, with the Department of Enterprise, Trade and Employment refusing the grant of further work permits, negotiating with the Dutch bank concerned and securing undertakings that Turkish workers would not be sent home pending resolution of the difficulties. Whatever the facts of the matter, which may never be finally established, the GAMA incident displayed the lack of resources and inadequate staffing of the Labour Inspectorate, and measures are being taken to improve the inadequate enforcement regime.

The second case involved Irish Ferries. Over the past couple of years, Irish Ferries has developed into "the low fares ferry company" and its detractors might assert that this extends to low wages. In making the transition, it has sought to outsource the crewing of the French route, it has on occasion paid extremely low rates to third-country nationals on contract and has sought to re-flag in Cyprus, taking advantage of the EU rules on establishment and effectively removing the right to impose Irish employment rules. Towards the end of last year, there were large union-organised popular demonstrations, under the banner of halting the 'race to the bottom'. However, it is generally accepted that little can be done in legal terms to prevent re-flagging.

The third issue is that of free movement from the ten new member states. Ireland is one of the few old member states to allow full access to its labour market by new member state nationals, and this means that these nationals are fully able to avail of free movement rights, including equality with host nationals in access to, and in relation to, remuneration and other terms and conditions of employment. They are also entitled to equality in the area of social and tax advantages. In short, as EU citizens, they possess a status that is, in the prediction of the Court of Justice, "destined to be the fundamental status" of citizens of the member states.

It has not been all plain sailing. Fears of welfare immigration resulted in the introduction of a habitual residence test, ostensibly based on case law of the European Court of Justice, for access to social welfare benefits. Following pressures from the European Commission, it has now been made clear that the test does not apply to family benefits and social benefits, where equality of treatment is required under EC free movement rules.

Second, the large number of migrants from Poland and elsewhere, and widespread reports of low wages and exploitation, has led to calls for the work-permit system to be reintroduced. This has been resisted by the Irish government and by the European Commission, which in its recent report on the right to work of new member state nationals has pointed to the liberalised Irish regime as a model to be followed by the member states that have hitherto imposed restrictions.

Third, mention should be made of the recent 'scandal' surrounding the introduction of the new childcare payment, which is made to EU nationals (including those from the new member states), even where the children are resident in the country of origin. The government has correctly taken the view that this is required as a matter of EU free movement law, though there has been some querulous debate with the opposition party Fine Gael about the cost implications.

Halting the race to the bottom?

It is difficult to conclude – despite allegations made, in particular by the unions, in relation to the above controversies – that Irish law and policy has encouraged a 'race to the bottom'.

Immigration and employment statistics have not to date been sufficiently informative. There have been no reliable figures on numbers of migrants from the new member states: the high number of PPS numbers applied for gives no reliable indication of how many new

member state nationals have entered the labour force for a significant period. A recent analysis by AIB economists John Begg and Oliver Mangan finds that the 159,000 or so non-nationals working in Ireland constitute 8% of the workforce: of these non-national workers, around 31% come from the new member states. It appears from recent labour market statistics that, even if there has been some displacement of national workers in the construction and catering areas, there has been an overall increase in jobs being taken up by national and non-national workers alike. Such figures are not broken down by area and may mask significant local variations – all grist to a populist mill.

It is, however, clear from the examples given above that some employers are attracted by the idea of lower-cost labour and have breached, or been able to circumvent, the equality rule. In addition to straightforward discrimination, *de facto* employees have been treated as self-employed and workers employed by sub-contractors are often disadvantaged. The overarching principle of equality – which is still endorsed by 'official' Ireland, the EU and by a good number of 'right-thinking' people – has also undoubtedly been undermined by enforcement difficulties. The Labour Inspectorate has been undermanned. Migrants themselves have been insufficiently informed and vulnerable. Steps have been taken to remedy these shortcomings.

In the context of social partnership, which is the subject of a current round of negotiations, it has been recognised that there is a need to strengthen employment protection measures, to improve inspection and enforcement systems, to focus on the position of vulnerable workers from abroad and thereby "to secure an appropriate balance between employment protection and labour market flexibility".

Exactly how the current round of negotiations will fare is unclear. There is a clear divide between the unions, who seek a root and branch reform of employee protection legislation, and employers' bodies, who appear to favour more effective enforcement but would reject increased red tape and the introduction of 'inflexibilities' into the labour market. The government, in holding the ring, appears to have accepted the need for more effective enforcement mechanisms and sanctions. However, in broad terms, the corporatist model implied in the social partnership approach is likely to inform the Irish stance in the EU towards the proposed *Services Directive* and other measures.

Indeed, some evidence of this has already emerged. In relation to the proposed *Services Directive*, which is seen as having had a important part to play in the French rejection of the constitutional treaty, a compromise proposal agreed in the European Parliament has rejected the country of origin approach to the treatment of workers employed by migrating service providers in favour of a country of destination principle. Certain 'sensitive' economic sectors are to be kept out of the scope of the directive. To the unstated chagrin of the European Commission and to the more openly stated concern of the UK and other 'open' member states, this will have a serious impact on the market opening predicated on acceptance (as in other areas of free movement) of the country of origin approach. The Irish government is, however, probably relieved, although the future of the directive is still to be played for in the council.

Ireland has also decided to intervene in a case brought before the Court of Justice involving a Latvian company building a school in Sweden on lower rates than would apply to Swedish workers. Without apparently taking sides in the dispute, the taoiseach has been reported as stating that "the broad thrust of our intervention is designed to protect our long-standing traditions in the areas of social partnership and industrial relations from any adverse consequences arising from this case".

What of the future of the equality principle, which seems to be the acceptable face of 'national protectionism'? In Ireland and elsewhere, the protection of high living standards by a rigorous application of the equality principle is an important element of the domestic social compact and a critical element in making 'Europe' more acceptable to an increasingly critical populace. It may be key to the 'buy-in' to the constitutional structure, make-up and development of the union (as well as to eventual Turkish accession, though this is clearly less of an issue in Ireland than in Germany,

Austria and France).

In contrast to what appears to happen in relation to migration from Mexico and other labour-sending countries to North America (and it is dangerous to simplify what happens over there), the principle of non-discrimination – reflecting and extending the underlying rationale stated by the European Court of Justice in 1974 – is a cornerstone of Irish immigration policy. It is accepted as a given by most participants in the debate, whatever their differences may be on other issues. However, whether this will over time withstand the competing pressures (or horns) of globalisation and 'national protectionism' is another matter.

On the horns of a dilemma

There is no easy solution to the immigration dilemma. This is "a bull which will toss you whichever horn you take hold of".

The first horn is that of globalisation in a world economy guided by free trade principles. Grasping this horn will imperil social partnership and could well ultimately result in lower salaries, a reduced standard of living and higher levels of indigenous unemployment. Emigration could, once again, become a safety valve for the more mobile and poverty a consequence for the less fortunate. Whether in European or global terms, an open and laissez-faire immigrant employment regime in Ireland would require a radical shift in basic attitudes.

The second horn, of 'national protectionism', is perhaps even more perilous. National labour law regimes confronted – as Ireland – by the need to import labour will need, if social harmony is to be secured, to struggle long and clever to contain tendencies to a 'race to the bottom'. The 'guest-worker' model favoured by Germany in the second half of the 20th century (which can be caricatured as "in when we need you and out when we don't") is no longer sustainable in a more rights/equality-based climate. An immigration policy conceived in good times must work for bad times too. It also needs to be borne in mind that a labour market that sells itself too dear will lose out to cheaper, more cost-efficient labour markets. Even now, with all the successes of the Celtic Tiger, thousands of jobs are being lost to the leviathan economies of China, India and elsewhere.

The dilemma is not, of course, solely an Irish one, but one that is faced by the European Union as a whole. Several member states have been flexing their protectionist muscles, challenging fundamental rules on free movement and the community merger-control regime. There are disquieting signs of protectionism in relation to the free movement of persons as well, and the recent compromise on the proposed *Services Directive* is more reflective of national protectionism than the creation of an efficient and fully open internal market. Adapting to globalisation is proving a slow and painful process and setbacks in relation to the proposed constitutional treaty have revealed a potential for fragmentation of the European project.

There are signs that the European Commission is starting to take a lead in confronting these challenges. It is swiftly opening procedures against member states compromising the integrity of the internal market. It is chivvying away with some success at continued restrictions on free movement to and from the new member states. It has recently proposed the establishment of a special fund to cushion workers from the effects of globalisation, serving as a bulwark for the protection of European values: a small and tentative step in the right direction.

Member states – including Ireland – also have to define their approaches to the future of Europe. At a time of sometimes unnerving social and economic change, the middle course is sometimes hard to follow. In grasping the horns of the dilemma, a determination to apply the non-discrimination principle to the treatment of migrant workers may well be a crucial factor in the future prosperity of those who live and work in Ireland and the EU. G

John Handoll is a partner with William Fry, Solicitors. This article is based on a presentation made to the Conference on Migration and Development: Mexico and Turkey, Mexico City, 19-21 February 2006 (Migration Dialogue/Centre for International and European Law on Immigration and Asylum, with the cooperation of Ciesas Occidente and IberoAmericana University with the support of the German Marshall Fund of the US).

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(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 5 May 2006)

Regd owner: Adrian Jackson, Drumaloor, Belturbet, Co Cavan; folio: 7617F; lands: Swellan Upper; **Co Cavan**

Regd owner: Ellen C Hannon; folio: 1216L; lands: townland of 5 Griffin Road, Kilrush and barony of Moyarta; **Co Clare**

Regd owner: Fiona Hassett; folio: 32359F; lands: townland of Clonroad More and barony of Islands; **Co Clare**

Regd owner: Sean Casey; folio: 66862F; lands: plot of ground being part of the townland of Kealkill in the barony of Bantry and county of Cork; **Co Cork**

Regd owner: Christina Morrissey; folio: 22732F; lands: plot of ground being part of the townland of Ballincolly in the barony of Cork and county of Cork; **Co Cork**

Regd owner: John O'Riordan; folio: 16120F; lands: plot of ground being part of the townland of Ballybeg in the barony of Orrery and Kilmore and county of Cork; **Co Cork**

Regd owner: Sean O'Sullivan; folio: 34743F; lands: plot of ground situate to the south of Model Farm Road in the parish of St Finbar's and in the county borough of Cork; **Co Cork**

Regd owner: Gretta Ryan; folio: 25999; lands: plot of ground being part of the townland of Coolnamagh in the barony of Duhallow and county of Cork; **Co Cork**

Regd owner: Hannah Keniry; folio: 35561; lands: plot of ground being part of the townland of Seafield in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: John and Kathleen Bailey; folio: 28683F; lands: plot of ground being part of the townland of Grange (ED Lehenagh) in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Michael O'Connell; folio: 5540; lands: plot of ground being part of the townland of Clearagh in the barony of Muskerry West and county of Cork; **Co Cork**

Regd owner: John Sheehan; folio: 50515F; lands: plots of ground being part of the townland of Barrafohona in the barony of Barrynore and county of Cork; **Co Cork**

Regd owner: John Desmond Griffin and Anne Patricia Griffin, Glenfinn Road, Ballybofey, Co Donegal: folio: 39325; lands: Ballybofey; area: 0.1400 hectares; **Co Donegal**

Regd owner: James Doherty, otherwise O'Doherty, Magheracar, Bundoran, Co Donegal; folio: 14913; lands: Magheracar; area: 1.7060 hectares; **Co Donegal**

Regd owner: Mark Byrne and Michelle Bracken; folio: DN109544F; lands: property situate in the townland of Beaverstown and barony of Nethercross; **Co Dublin**

Regd owner: Francis Joseph Cooper; folio: DN23332L; lands: property situate in the townland of Newbrook and barony of Coolock; **Co Dublin**

Regd owner: Seamus Fitzsimons; folio: DN10010; lands: a plot of ground situate in the townland of Rathcoole and barony of Newcastle; **Co Dublin**

Regd owner: Harkness Electrical Company Limited; folio: DN58659L; lands: property situate to the east side of Botanic Road in the parish of St George, district of Glasnevin; **Co Dublin**

Regd owner: Robert Hogg and Brenda Hogg; folio: DN15896L; lands: property situate in the townland of Sutton South and barony of Coolock, situate to the west of Shellmartin Road; **Co Dublin**

Regd owner: John C Maxwell; folio: DN2367F; lands: property situate in the townland of Oldtown and barony of Balrothery West; **Co Dublin**

Regd owner: Julia Mary Pollard; folio: DN2583L; lands: property situate in the townland of Ballygall and barony of Castleknock, on the west side of Ballygall Road; **Co Dublin**

Regd owner: Frank Rorke; folio: DN153078F; lands: a plot of ground known as 154 Alpine Heights, Clondalkin, situate in the parish of Clondalkin and in the town of Clondalkin; **Co Dublin**

Regd owner: David Scanlan; folio: DN35579F; lands: property known as no 8 Balally Park, Dundrum, Dublin 14, situate in the townland of Balally and barony of Rathdown; **Co Dublin**

Regd owner: Noel Cooney and Kathleen Cooney; folio: DN 2136L; lands: property situate in the townland of Finglas East and barony of Castleknock, known as 16 Jamestown Road, situate on the east side of the said road; **Co Dublin**

Regd owner: Mary Farrelly; folio: DN18403; lands: a plot of ground situate on the east side of Rathlin Road in the parish and district of Glasnevin and city of Dublin; **Co Dublin**

Regd owner: Nial Darragh and Alice Darragh; folio: DN15690F; lands: property known as no 2 Hainault Lawn, situate in the townland of Cornelscourt and barony of Rathdown; **Co Dublin**

Regd owner: Daniel Hurley and Marita Hurley; folio: 24640F; lands: townland of Roscam and barony of Galway; area: 0.2177 hectares; **Co Galway**

Regd owner: the Governor and Company of the Bank of Ireland and Ian Audley James Blyth; folio: (1) 795 and (2) 8855; lands: townland of (1) Caeheennascovoge and (2) Cahererin; and (1) and (2) barony of Dunkellin; area: (1) 1.6970 hectares and (2) 2 acres, 3 roods and 38 perches; **Co Galway**

Regd owner: Matthew O'Connor and Eamonn O'Connor folio: 16303; lands: townland of Lacklea and barony of Galway; **Co Galway**

Regd owner: Alexander O'Donnell; folio: 14143; lands: townland of Barrack and Farrantooleen and barony of Corkaguiny; **Co Kerry**

Regd owner: Michael Dowling; folio: 1012F; lands: Derrydavy and barony of Portnahinch; **Co Laois**

Regd owner: Michael Dowling; folio: 1013F; lands: Derrydavy and barony of Portnahinch; **Co Laois**

Regd owner: Michael Dowling; folio: 14940; lands: Derrydavy and barony of Portnahinch; **Co Laois**

Regd owner: Bernard Dunne; folio: 4056F; lands: Pallas Big and barony of Maryborough; **Co Laois**

Regd owner: Denis Collins; folio: 2592F; lands: townland of Carrig West and barony of Pubblebrien; **Co Limerick**

Regd owner: Linda Finnamore, 'The Saltings', Cocklehill, Blackrock, Co Louth; folio: 3879; lands: Blackrock; **Co Louth**

Regd owner: the County Louth Vocational Education Committee, Chapel Street, Dundalk, Co Louth; folio: 11065; lands: Marshes Upper; area: 2.6658 hectares; **Co Louth**

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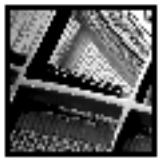

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Regd owner: Declan McCann; folio: 3998; lands: property situate at Primatestown in the electoral division of Kilbrew, barony of Skreen and county of Meath; **Co Meath**

Regd owner: Brendan Heerey, Kilmainham, Kells, Co Meath; folio: 8669; lands: Kilmainham; area: 13.8742 hectares and 0.0556 hectares; **Co Meath**

Regd owner: Aidan McGowan and Eithne McGowan; folio: 30822; lands: townland of Kilmacroy and barony of Boyle; **Co Roscommon**

Regd owner: John James and Margaret Ellen Gormley; folio: 5818F; lands: townland of Kilkilloge and barony of Carbury; area: 0.3642 hectares; **Co Sligo**

Regd owner: Jeremiah Creedon and Marie Creedon; folio: 25715F; lands: townland of Cappagh and barony of Kilnamanagh Upper; **Co Tipperary**

Regd owner: Martin Gleeson; folio: 9140; lands: townland of Millbrook and barony of Ormond Upper and county of Tipperary; **Co Tipperary**

Regd owner: Nicholas Breen (deceased); folio: 5480; lands: Myaugh and barony of Gorey; **Co Wexford**

Regd owner: Akaire Investments Limited; folio: 11688F; lands: townland of Kilbride and barony of Arklow; **Co Wicklow**

WILLS

Barry, Brendan (deceased), late of 3 Oldtown Court, Oldtown, Co Dublin, and formerly of Clonmethan, Oldtown, Co Dublin. Would any person having knowledge of a will executed by the above-named deceased, who died on 7 February 2006, please contact Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, fax: 065 684 2233

Behan, Thomas (deceased), late of Loughtown Lower (otherwise Ballscott), Celbridge in the county of Kildare. Would any person having knowledge of the whereabouts of a codicil to a will of the above-named deceased, which will was made on 18 October 1976, or any other will or codicil executed by the above-named deceased, who died on 30 July 1999, please contact Michael Martin, Solicitor, Main Street, Rathcoole, Co Dublin; tel: 01 458 0380, fax: 01 458 0105

Michael Casey (deceased), late of 3 Guiney's Terrace, Newmarket, Co Cork, and previously of Meentiflugh, Kiskeam, Mallow, Co Cork, who died on 6 November 2005. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Deirdre O'Callaghan, James Lucy & Sons, Solicitors, Kanturk, Co Cork; tel: 029 050 026

Cleary, Kathleen (deceased), late of 99 Cork Road, Waterford. Would any person having knowledge of a will dated 6 February 1992 or any subsequent will made by the above-named deceased, who died on 9 January 2002, please contact MM Halley & Son, Solicitors, 5 Georges Street, Waterford, in writing or telephone 051 874 073

Donnelly, James (deceased), late of 7 Ballynoe Court, Kilbride Lane, Bray, in the county of Wicklow. Would any person with any knowledge of the whereabouts of a will executed by the above-named deceased, who died on 14 February 2006, please contact Cullen & O'Beirne, Solicitors, 1 Castle Street, Christchurch Place, Dublin 2; tel: 01 478 9031, email: info@cullenobeirne.ie

Doyle, Mary Christina, late of 194 Dunluce Road, Clontarf, Dublin 3. Would any person with any knowledge of a will executed by the above-named deceased, who died on 26 December 2005, please contact Grainne Griffith & Co, Solicitors, Unit 13 Raheny Shopping Centre, Howth Road, Raheny, Dublin 5; tel: 01 832 7899, fax: 01 851 2085

Duke, Brigid (deceased), late of Clondra, Co Longford, who died on 14 September 1980. Would any person having knowledge of a will made by the above-named deceased please contact Thomas K Madden & Co, Solicitors, 1 Camlin View, Longford, Co Longford; tel: 043 41192, email: tkmadden@eircom.net

Kinahan, Peter (deceased), late of Kilpatrick, Ballycumber, Co Offaly (formerly of 37 Susanville Road, Drumcondra, Dublin). Would any person having knowledge of a will executed by the above-named deceased, who died on 14 February 2006, please contact Michael Byrne of Hoey & Denning, Solicitors, High Street, Tullamore, Co Offaly; tel: 0506 21105, email: hoeydenn@indigo.ie

McDonnell, John Reamon (deceased), late of Kinneagh, The Curragh, Co Kildare. Would any person having knowledge of a will executed by the above-named deceased, who died on 30 November 2001, please contact Reidy Stafford Solicitors, Main Street, Kilcullen, Co Kildare; tel: 045 432 198, fax 045 481 476

O'Leary, Cornelius Joseph (deceased), late of Knocknagree Village, Knocknagree, Co Kerry. Would any person having knowledge of a will executed by the above-named deceased, who died on 21 February 2006, please contact Padraig J O'Connell, Solicitor, Glebe Lane, Killarney, Co Kerry; tel: 064 33278, fax: 064 34286, email: poconnell@fastmail.fm

Sheehan, (otherwise Mary) Philomena (deceased), late of Flowervale, Lower Abbey Street, Cahir, Co Tipperary. Would any person having knowledge of a will executed by the above-named deceased, who died on 12 March 2006, please contact McCarthy Looby & Company, Solicitors, Church Street, Cahir, Co Tipperary; tel: 052 41355, fax: 052 41000

Teeling, William, and Teeling, Josephine (deceased), both late of 77 Lough Conn Road, Ballyfermot, Dublin 10, who died on 5 April 1999 and 2 August 2001 respectively. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased persons please contact GA Scully & Co, Solicitors, 337 Ballyfermot Road, Ballyfermot, Dublin 10; tel: 01 626 9475

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

TITLE DEEDS

Estate of the late Eileen (otherwise Ellen) Kennedy, deceased, property at 1 St Mary's Road, Cork (otherwise known as no 11 Gerald Griffin Avenue, Cork). Would any person having knowledge of the original title documents relating to the above property, please contact John Henchion & Co, Solicitors, The Bakehouse, Waterloo Road, Blarney, Co Cork; tel: 021 438 2870/438 2871 and fax: 021 438 2876

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-1997* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Bridget Young of 2 Glenablyn Road, Stillorgan, Co Dublin

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as 2 Glenalbyn Road, Stillorgan, Co Dublin (otherwise 2 Glenalbyn Cottages, Stillorgan, Co Dublin) and/or 2 Glenalbyn Terrace, Stillorgan, Co Dublin, and held under indenture of lease dated 21 September 1837 and made between Rawdon Griffiths Greene of the one part and William Medcalf for a term of 900 years beginning on 29 September

PROFESSIONAL NOTICES

1837, should give notice of their interest to the undersigned solicitors.

Take notice that Bridget Young intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the property described in the schedule hereto, and any party asserting that they hold a superior interest in the said premises is called upon to furnish evidence of title to the said premises to the undersigned within 21 days from the date of publication of this notice.

In default of such notice being received, the said Bridget Young intends to proceed with the application before the county registrar at the earliest opportunity and will apply to the county registrar for the county of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion to the said property are unknown or unascertained.

Schedule: All that and those that part of the premises demised by the above-recited indenture of lease dated 21 September 1837 and known as 2 Glenalbyn Road, Stillorgan, Co Dublin.

Date: 5 May 2006

Signed: Michael Sheil & Partners (solicitors for the applicant), Temple Court, Temple Road, Blackrock, Co Dublin

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 Sean Magann and Mary Magann of 8 Whitechurch Road, Rathfarnham, Dublin 14

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 site dwelling house erected thereon forming part of the lands at Rathfarnham and now known as Silver Acre Stores, otherwise no 8 Whitechurch Road, Rathfarnham, in the city of Dublin, held under an indenture of lease dated 10 March 1713, made between James Dymond of the first part and Niohl Peacock of the other part for the term of 900 years from 29 September 1712 and subject to a yearly rent in the sum of £37 and 10 shillings and all of the covenants and conditions contained therein, and an indenture of under lease dated 8 August 1960, made between Sheila Harold of the one part and Ellen Crimmins of the other part for a term of 250 years from 25

PROFESSIONAL NOTICES

March 1960 and subject to a yearly rent of £10.

Take notice that the applicants, Sean Magann and Mary Magann, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party or parties 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 with 21 days from the date of this notice.

In default of any such notice being received, Sean Magann and Mary Magann 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: 5 May 2006

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

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 Declan Moloney and Caroline Moloney of 22 Linden Place, Grove Avenue, Blackrock, Co Dublin

Take notice that any person having an interest in the freehold or intermediate interest of the following property: all that and those that portion of the premises comprised in and demised by an indenture of lease dated 3 April 1905 and made between Robert William Collis, William Stewart Collis, Maria Louisa Farquharson and Jessie Margaret Collis of the one part and John Warren Nolan of the other part, for a term of 500 years from 25 March 1905, subject to a yearly rent of £30 thereby reserved and the covenants on the part of the lessee and conditions therein contained and more particularly described in an indenture of assignment dated 2 November 1984 and made between Aidan Powell of the one part and Sean P Mason, Fiona McGowan and Ronan Mason of the other part, and therein described as all that the premises 68 Ranelagh in the city of Dublin, other than the residential flat on the first floor and entrance hallway on the ground floor assigned by the vendor to Kathleen Larking by deed of assignment dated 27 September 1982.

Take notice that Declan Moloney and Caroline Moloney intend to submit an application to the county registrar in the city of Dublin for acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party or parties 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, Declan Moloney and Caroline Moloney intend to proceed with the application before the county registrar in the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest are unknown or unascertained.

Date: 5 May 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 Shelbourne Hotel Holdings Limited

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 plot of ground at the rear of 23 St Stephen's Green in the city of Dublin, held under an indenture of lease dated 12 May 1934 between (1) Mary Agnes McAura and (2) Thomas Robert McCullagh for a term of 99 years from 1 November 1933 and subject to a yearly rent of £35.

Take notice that the applicant, Shelbourne Hotel Holdings Limited, 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, Shelbourne Hotel Holdings Limited, intends 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 in the aforesaid property are unknown and unascertained.

Date: 5 May 2006

Signed: William Fry Solicitors, Fitzwilton House, Wilton Place, Dublin 2, Ireland

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

Take notice that any person having any interest in the freehold estate of the following property: all that and those the property known as 70 Leinster Street, Athy, Co Kildare, and more particularly marked in red on the map annexed hereto and more particularly described in an indenture dated 25 June 1858 and made between Emily Kelly, otherwise Lynch, of the one part and Patrick Kavanagh of the other part.

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

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

Date: 5 May 2006

Signed: FB Taaffe & Company (solicitors for the applicant), Edmund Rice Square, Athy, Co Kildare

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 taken by Maureen McArdle

Take notice that any person having interest in the freehold estate or any superior interest in the property known as the stables and the out offices situate at the rear of the house no 5 Lapps Quay in the parish of the Holy Trinity and city of Cork, held under an indenture of lease dated 4 April 1898 between Caroline Elizabeth Delmege and Wilhelmina Idonea Stopford of the one part and Abraham Sutton of the other part for a term of 196 years from 1 April 1898, subject to the annual rent of £13 and subject to the covenants and conditions therein contained.

Take notice that the applicant, Maureen McArdle, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold and all interests superior to hers 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, Maureen McArdle, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 5 May 2006

Signed: O'Donnell Breen-Walsh O'Donoghue (solicitors for the applicants), Trinity House, 8 Georges Quay, Cork

To the unknown and unascertainable successors in title of Most Noble James Duke, Brocknock Viscount Thurles and Dingnell. 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 Robin Power

Take notice that any person having any estate in the freehold of, or superior interest in, the following premises: all that and those a stone house slated and another stone house slated, a waste backwards with a small brick-house in front towards the street, and a thatched house with a small garden and another small garden held by Gregory Marshall in Saint James' Street, formerly the holding of Captain Burrell, situate, lying and being in the Hightown quarter of the city of Kilkenny as fully and amply as the same word lately demised to and rightfully enjoyed by the said Ebenzer Warren, his under tenants or assigns together with the reversion and reversions, remainder or remainders, rents, issues and profits thereof, and all ways, waters, water courses, easements, profits and appurtenances whatsoever unto the said premises or any part thereof belonging or any ways pertaining (excepting out of this present grant unto the said Duke of Ormonde, his heirs and assigns, all excheats, felons and fugitive goods, waifs, strays and deodands, which now are or hereafter shall be had or found in or upon the said premises together with all seneschalships, profits of courtleet and courtsbaron and all other royalties and franchises whatsoever unto the said premises or any part thereof belonging or appertaining together also with free ingress, egress and regress for him the said Duke, his heirs and assigns, and for all and every other persons to whom the rent hereby reserved shall for the time being forever hereafter belong and for his and their servants by his or their command to take and carry away respectively all the premises, being part of the property comprised in an indenture of fee farm grant dated 20 December 1712 and made between the Most Noble James Duke and Brocknock Viscount Thurles and Dingnell of the one part and Stephen Haydock of the other part, which said premises are known as 36/38 High Street, Kilkenny.

Take notice that the applicant, Robin Power, intends to apply to the county registrar for the county of Kilkenny for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below-named solicitor within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the county of Kilkenny for directions as may be appropriate on the basis that the persons or persons beneficially entitled to the superior interest including the freehold reversion in the premises are unknown or unascertained.

Date: 5 May 2006

Signed: Timothy J Hegarty & Son (solicitors for the applicant), 58 South Mall, Cork (ref: DJH/P.17118)

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 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: 5 May 2006

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

PROFESSIONAL NOTICES

RECRUITMENT

Opportunity to purchase equity partnership in busy Co Galway practice. Available to suitably qualified solicitor. Strong background in litigation and commercial law required. Reply to **box no: 41/06**

New Ross, Co Wexford. Locum solicitor required to cover principal's holiday leave of three weeks in August 2006. Reply with full CV to: Paul A Rogers & Co, Solicitors, 34 South Street, New Ross, Co Wexford; tel: 051 425 155

Midlands-based solicitors (Longford). Due to expansion, our client requires the following: (1) solicitor with three years' post-qualification experience, (2) newly or part-qualified solicitor. Long-term opportunities for the right candidates. Flexible working conditions available (if required). Contact: Ivan Agar on 087 958 1278, email: iagar@rigneydolphin.ie. Rigney Dolphin, 11 St Stephen's Green, Dublin 2

Solicitor required for busy general practice, Limerick city. Two to three years' post-qualification experience desirable. Apply: the manager, Breen Geary McCarthy and Shee, 2 Hartstonge Street, Limerick

Locum solicitor required for a county Mayo solicitor's office to cover maternity leave from mid-August for a period of six months, covering mainly conveyancing and probate with some litigation. Minimum three years' post-qualification experience. Salary based on experience. Reply to **box no: 42/06**

Assistant solicitor required in conveyancing and probate for medium-sized general practice in Sligo. This position will suit a self-motivated solicitor with a minimum of one-year post-qualification experience in conveyancing and probate. The position offers an excellent opportunity for career development. Reply to **box no: 40/06**

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: internationallaw@consultant.com

Solicitors with an interest in education required as tutors for law schools in Leinster and Connacht. The positions would suit practising solicitors, as courses are held after office hours. Please email your letter of application and CV to info@leinsterlaw.ie or info@connachtlaw.ie. Please state clearly any preferred subject options

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Asset Finance, Ref: PP0034 — **Dublin, 4-6 yrs pqe**

Dublin-based law firm with a strong international client base is seeking an experienced practitioner with substantial expertise in the asset finance areas. You will have experience of off balance sheet leading and SPVs. Some exposure to aircraft finance would be a distinct advantage.

Cap Markets/Structured Debt, Ref: PP0035 — **Dublin, 3 yrs+ pqe**

International legal practice is seeking an experienced solicitor to join its Dublin office. You will have exposure to banking and financial services transactions and experience of structured finance. This position offers accelerated partnership prospects for the right candidate.

Commercial Litigation, Ref: PP0112 — **Munster, 4 yrs+ pqe**

Our client is an extremely successful commercial practice based in Munster. The partnership is recruiting for a commercial litigator to deal with an interesting and diverse workload. This represents an excellent opportunity for an experienced practitioner seeking a fresh challenge. An extremely competitive salary and benefits package will apply.

Commercial Property, Ref: PP0074 — **Dublin, 3-5 yrs pqe**

Well-established Dublin practice requires a solicitor with sound commercial acumen and a positive work ethic. You will have experience of good quality commercial property work coupled with proven energy and drive.

Corporate – Aircraft Fin, Ref: PP0043 — **Dublin, 0-2 yrs pqe**

This is a unique opportunity to join one of Dublin's premier firm's corporate departments. You will be an ambitious solicitor with a keen interest in aviation law, although previous experience of this particular aspect of legal practice is not an essential pre-requisite. This is a challenging role which will require a strong academic background.

EU/Competition, Ref: PP0104 — **Dublin, 2-5 yrs pqe**

Leading Irish corporate law firm is looking for a competition assistant to join their IP, Competition and Regulatory department. You will have prior experience in this practice area and will be advising on IP merger regulation as well as control issues and other related matters.

Financial Services, Ref: PP0027 — **Dublin, 2 yrs+ pqe**

Our client is a highly successful practice with a diverse client base. You will be advising on a range of transactions in the financial services sector and working with investment management houses.

Paralegal – Banking, Ref: PP0010 — **Dublin**

A top 5 firm seeks an experienced legal executive to join its busy Banking team. You will have involvement in a wide range of transactions and client work. Good opportunity for career progression.

Pensions, Ref: PP0072 — **Dublin, 1-3 yrs pqe**

A prominent Dublin-based firm is recruiting for a high calibre solicitor to work in this rapidly developing practice field. A broad spread of work is involved, including supporting commercial and corporate deals.

Practice Manager, Ref: PP0071 — **Dublin**

A progressive, Dublin-based law firm is recruiting for a Practice Manager. You will be responsible for managing and administering the firm's operations, including HR, IT and equipment requirements, MIS and assisting partners in business development. Ideally, you will have 5 years' experience in a similar position, preferably in the legal sector.

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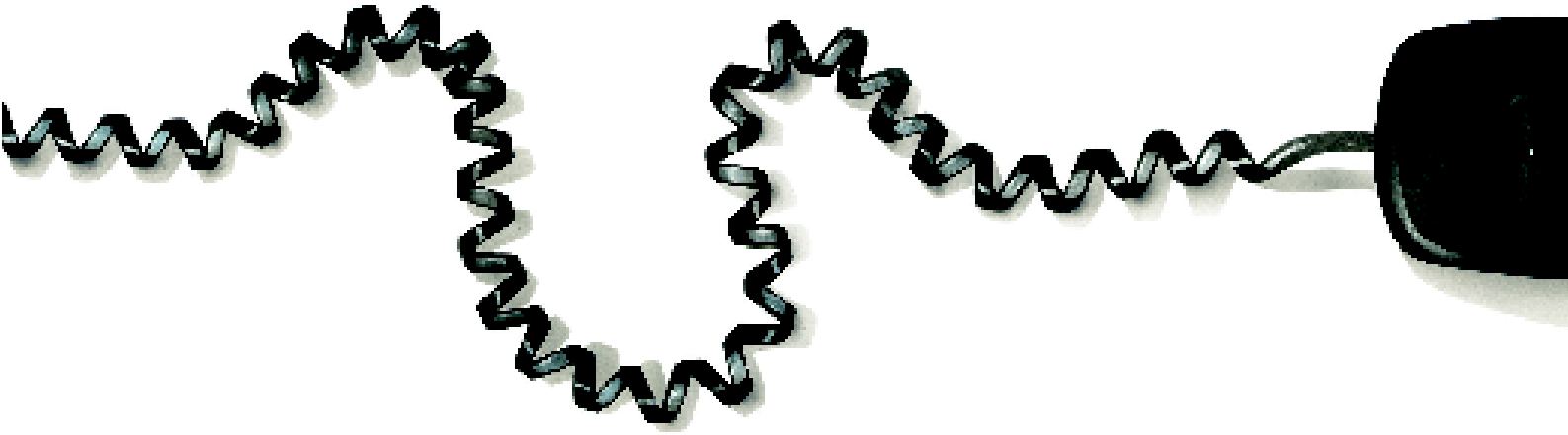

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Asset Management 1 yr + PQE
Top 5 firm requires an Assistant Solicitor to join their expanding finance team. Applicants should have a strong academic background with excellent technical and drafting skills. Relevant experience in the funds industry or asset management is essential. (ref: 1526/47)

Banking 3 yrs+ PQE
Top tier firm requires a Solicitor with 3+ years PQE to join their expanding banking practice. You will have extensive experience in general banking, securitisation, structured finance, asset finance and corporate banking work. (ref: 1526/45)

Banking 1 yr + PQE
Solicitor required to join this expanding practice within one of Ireland's leading law firms. You should have at least 1 year PQE in any area of financial law and enjoy a challenging caseload for a diverse range of clients. (ref: 1526/41)

Banking All PQE
Opportunity to join this prestigious firm in their Legal 500 banking practice. Advising Irish or international banks and financial institutions in relation to syndicated lending and project finance transactions. (ref: 1645/12)

Capital Markets 3 yrs + PQE
Leading law firm requires experienced Capital Markets Lawyers to join their leading established practice. Working directly with partners and clients you will have previous experience in a similar environment. Excellent career progression and financial package offered to the successful candidate. (ref: 1727/12)

Commercial Property Partner
Solicitor required for this progressive practice to head up their commercial property practice. Extensive experience of commercial leasing, land acquisition and development, funding and security, taxation issues, planning and environmental law. (ref: 1527/12)

Commercial Property 3 yrs + PQE
Solicitors required for this established and expanding team within leading law firm. You will have a broad knowledge and experience of commercial property including large developments. Ideally you will have at least 3 years PQE in a similar environment. (ref: 1672/12)

Construction 5 yrs+ PQE
Leading law firm requires an experienced solicitor to join their expanding construction practice. Advising a wide range of private and public bodies on all aspects of construction, you will have a minimum of 5 years PQE in a similar environment. (ref: 1526/41)

Corporate 3 - 5 yrs PQE
Corporate Solicitor required for this prestigious practice. Ideally from a large or medium firm you will have experience in M&As, joint ventures, corporate finance and corporate governance. Strong analytical and interpersonal skills are essential. (ref: 1526/46)

Dublin

Corporate 5 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 5 years PQE gained in a similar environment in the UK, Ireland or other leading jurisdiction. (ref: 1526/41)

Employment 2 yrs+ PQE
Experienced solicitor required to join the expanding team in this leading practice. Managing a broad range of non-contentious issues for an exceptional corporate client list. Experience in terms and conditions of employment, post-termination restrictive covenants and implementing redundancy programs advantageous. (ref: 1526/45)

Financial Services 3 yrs+ PQE
Prestigious law firm requires lawyers to join one of Ireland's leading Financial Services teams. Advising a wide range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref: 1526/45)

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 strong candidates from other financial and corporate practices will be considered. (ref: 1526/42)

Funds Partner
Leading practice requires a Partner to join their expanding team. You will have extensive experience in investment funds in a leading law firm or prestigious investment bank. Extensive client list and workload, but a following is welcome. (ref: 1526/21)

IP 2 yrs+ PQE
Prestigious top tier Irish law firm seeks an IP solicitor to work within their IT/IP practice. Covering a broad range of non-contentious and/or contentious IP work, you will have at least 3 years experience in a similar environment. (ref: 1526/20)

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IT 2 yrs + PQE
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Life Science & Healthcare 1 - 4 yrs PQE
Opportunity to join this leading practice acting for a large and growing number of multinational and domestic clients in the pharmaceutical, medical devices, life sciences and healthcare sectors. (ref: 15266/9)

Pensions 2 yrs+ PQE
Prestigious law firm requires an experienced Pensions Solicitor to join their expanding employment team. Advising on a wide range of pension related issues, previous experience is desirable. (ref: 15266/6)

Project Finance 3 yrs+ PQE
Project Finance Lawyer required for this leading law firm. Extensive previous experience in project finance in a similar environment essential. Outstanding opportunity to join this leading established team. (ref 17248/5)

Structured Finance 2 yrs+ PQE
Our client a top 5 practice requires Solicitors with at least 2 years PQE to join their expanding team. Solicitors of particular interest will have experience in establishing and advising on the legal issues related to bond repackaging and commercial paper programmes. (ref 16459/2)

Tax 1 yr + PQE
Globally recognised Corporate Tax practice requires 2 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. (ref: 16459/9)

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Commercial 5 yrs + PQE Carlow
Commercial Solicitor required for the Carlow practice of this renowned and dynamic practice. You will have at least 5 years PQE in a similar environment and have excellent commercial knowledge and IT skills. The position offers an excellent opportunity for career development. (ref: 16421/1)

Litigation 5 yrs + PQE Carlow
Opportunity for an Associate Solicitor to join this progressive practice in Carlow. You will have at least 5 years PQE in general litigation and have excellent client facing skills. Strong IT and interpersonal skills are essential. (ref: 16421/2)

P/T General Practice 2 yrs+ PQE Cork
County Cork general practice firm require a solicitor on a part time basis. The ideal candidate will have experience of residential conveyancing and wills & probate work. This firm is offering flexible terms for the right candidate. (ref: 17772/1)

General Practice 1 yr+ PQE Donegal
Regional general practice has an opportunity for a solicitor with at least 1 year PQE. This is an excellent opportunity for candidates with experience in residential conveyancing, wills & probate and litigation. Excellent salary commensurate with the local market. (ref: 17042/2)

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 the local market. (ref: 17042/1)

General Practice 1 - 2 yrs PQE Donegal
Regional general practice seeks a solicitor for conveyancing, probate and litigation work. The excellent salary is commensurate with the local market and offers a great lifestyle opportunity for the right candidate. (ref 17042/1)

General Practice 2 yrs + PQE Kildare
A small regional practice requires a general practice solicitor to join their expanding team. The ideal candidate will have a minimum of 2-3 years PQE for this role which will primarily involve residential conveyancing, commercial conveyancing and probate related work. (ref: 17222/1)

General Practice 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: 17220/1)

General Practice 1 yrs + PQE Waterford
Assistant Solicitor required in the Conveyancing & Probate department in this large regional practice. The position will suit a self-motivated Solicitor with a minimum of 1 year's PQE in conveyancing and probate. (ref: 16725/2)

In House Funds 1 - 3 yrs+ PQE Dublin
Opportunity for an experienced Funds Solicitor to join this international financial services company. Advising on a wide range of compliance and corporate governance issues you will have experience in a similar environment. (ref: 16225/2)

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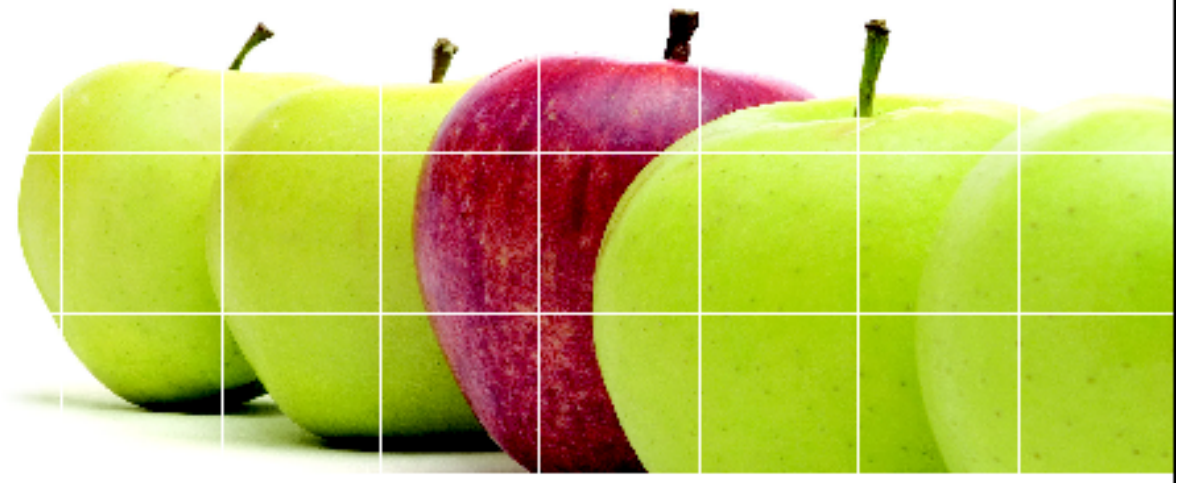

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In-House

Commercial Lawyer - 1-3 years' PQE — To €70k + Bonus

A leading funds company seeks to appoint a qualified solicitor with 1-3 years' PQE to join their in-house team. The role is a varied general commercial position which will support the asset management activities of the business. The successful candidate will negotiate and draft a variety of contracts and licensing agreements and advise on employment law and corporate governance.

Ref: JCY918960

Conveyancing Lawyer - 2-3 years' PQE — To €70k

Our client is one of the country's leading independent mortgage providers. They now require a legal adviser with a minimum of 2 years' PQE in conveyancing to join their team. Reporting directly to the Chief Operating Officer, you will act as the company's internal legal adviser on all matters and be responsible for the provision of legal advice on conveyancing to other business areas.

Ref: JCY970570

Funds Lawyer - NQ-2 years' PQE — To €60k + Bonus

This leading funds company seek to appoint a qualified solicitor with 0-2 years' PQE to join their in-house team. This is varied role and duties will include assisting the Head of Legal with fund launches, new product development and legal input into a large number of varied cross-functional projects. Exceptional opportunity for an ambitious solicitor with strong funds or other financial services experience to move in-house.

Ref: JCY918118

Private Practice

EU & Competition Solicitor - 3 years' PQE — To €70k

Our client, one of the most progressive and innovative law firms in Dublin, seeks to appoint a solicitor with circa 3 years' PQE in EU and regulatory law to advise on a range of public and private sector clients. The successful candidate will have strong analytical and drafting skills as well the potential to progress to senior level in a leading Dublin firm.

Ref: BIC0214960

Corporate/Commercial Lawyer - NQ-2 years' PQE — To €60k

An excellent opportunity has arisen for an ambitious corporate lawyer to join a niche Dublin practice. The successful candidate will have excellent technical skills and knowledge of Irish companies' legislation, strong drafting skills as well as good file management skills. This is an excellent opportunity for those seeking a career enhancing opportunity with an expanding practice.

Ref: BIC0212629

Insurance Solicitor - 3 years' PQE — To €75k

A prestigious Dublin city centre law firm seeks a lawyer with strong corporate law skills to join their insurance law team. While our client would prefer someone with experience of insurance law, they will consider candidates with a strong commercial/corporate law background. This is an excellent opportunity to join a niche area of practice.

Ref: BIC0336659

If you are interested in these or any other legal opportunities please send your Curriculum Vitae to Geraint Allen at geraint.allen@robertwalters.com or Tel: [01] 633 4111.

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Family Lawyer 3 years+ PQE
A core practice within this medium size Dublin law firm, the Family team advises an impressive portfolio of high-net-worth individuals on complex cases including pre-nuptial agreements, divorce, judicial separation, cohabitation disputes, financial provision, children and conciliation. This is a key role in the firm with clear partnership potential. MN 0604-158

Construction Lawyer(s)
A number of Ireland's leading law firms are currently seeking to recruit candidates with expertise in the area of Construction law. Partnership and senior positions are available.

Funds - Partnership Potential
A senior lawyer, with ambition and excellent business acumen is required by my client, a top 10 law firm. You will be responsible for leading a well established and successful department into the future. MN 0604-141

Commercial Litigation Solicitor 5years+ PQE
Dynamic Top 15 Dublin firm with a proven commitment to Commercial Litigation seeks a senior high-calibre Solicitor to handle a broad range of domestic and increasingly international litigation matters. MN 0604-135

Commercial Property Solicitor 2years+PQE
This mid-size, client focused, Dublin firm continues to expand and is now seeking another assistant Commercial Property solicitor. The successful applicant will be experienced in a full range of property transaction: Landlord & Tenant, leaseholds, development acquisition and disposals, advisory work. Some high-net-worth residential work will also feature. MN 0604-134

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Head of Compliance
Our client, a leading multi national company requires an experienced and professional individual to manage its Compliance team. You should have over 5 years experience with a strong academic and professional background. An excellent financial package is offered to the right candidate. MN 0604-42

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In-house Lawyer (3+ years' PQE)
Dublin €70k+
Our client is a leading commercial aircraft leasing and asset management company providing clients with specialist asset management and advisory services. They require a commercial lawyer with 3-6 years PQE 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:14396 **Contact Portia White**

Corporate Lawyer (5 years' PQE)
Dublin €85k+
Our client a hi-tech company require a senior corporate lawyer to join their legal team. This is an exciting role and will support the General Counsel in the implementation of the Company legal strategy and will also advise in all legal and company secretarial matters. You will have 5 years PQE, a corporate/commercial background with experience or an understanding of the telecommunications industry. Ref:14619 **Contact Portia White**

PPP/PFI Lawyer (3+ years' PQE)
Dublin €70k+
Our client has substantial experience in advising many leading Irish and international companies, as well as various public and private sector bodies. Primarily you will be responsible for providing advice throughout the life-cycle of PFI projects as well as procurement and outsourcing. Ref:14365. **Contact Sharon Swan**

Commercial Litigation Lawyer (1 years' + PQE)
Dublin €Negotiable
Our client a leading firm require a commercial litigator to join their team. You will advise domestic and international clients in the areas of insurance, intellectual property, insolvency and professional indemnity. Excellent terms. Ref 13734 **Contact Justin Loughnane**

Employment Lawyer (2-5 years' PQE)
Dublin €Negotiable
Our client a leading firm based in the city centre is looking to recruit an employment lawyer with 2-6 years PQE. You will work with national & multinational clients. Experience before tribunals and the EAT would be highly beneficial. Ref 11313 **Contact Justin Loughnane**

Commercial Property (3-6 years' PQE)
Cork €65k+
Our client, a leading medium sized firm, who has an excellent reputation for property matters is seeking a commercial property lawyer with 3-6 years PQE. You will provide advise to a range of clients including large institutions, private investors and developers, public and local authorities and major retailers. The firm has recently expanded into a number of practice areas and have ambitious growth plans. Ref:12263 **Contact Portia White**

Biotechnology Lawyer (3+ years' PQE)
Dublin €70k+
Our client is a leading international biotechnology company. They are seeking a corporate lawyer with experience in m&a and general commercial matters. The company is at an exciting stage in its growth and will consider lawyers from private practice seeking a move in-house. Excellent terms on offer. Ref:14428.
Contact Sharon Swan

Commercial Property (Salaried Partner)
Dublin €120k+
Our client is a leading medium practice and is seeking a commercial property lawyer. You will be responsible for developing the firms' commercial property practice. You will have at least five years experience for a leading mid-size or top practice. Excellent terms on offer for the right candidate. Ref:13897 **Contact Sharon Swan**

Family Lawyer
Dublin €Negotiable
Our client an established medium sized firm based in the city centre are looking to recruit a family lawyer to develop the unit. Experience in all aspect of family law combined with a sound knowledge of succession and estate planning desirable. Ref 12345 **Contact Justin Loughnane**

Corp/Commercial Solicitor (NQ to 6 years' PQE)
Dublin €Negotiable
Our client an established firm are looking to recruit corporate lawyers from newly qualified to 6 years PQE. You will have experience in mergers and acquisitions, joint ventures, privatisations and flotations. Excellent terms on offer. Ref 12929 **Contact Justin Loughnane**

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