

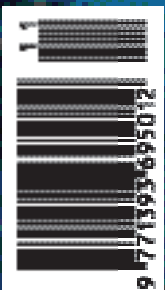
LAW SOCIETY Gazette

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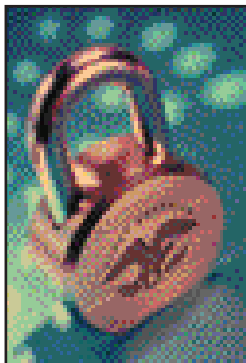
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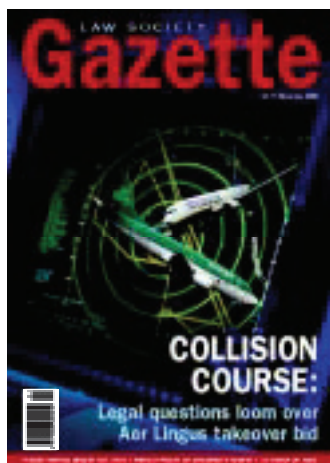


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On the cover

As Ryanair trains its guns on the newly-liberated Irish flag carrier, doubts have been raised about the legality of the invasion in terms of both Irish and European competition law

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LAW SOCIETY Gazette

November 2006

REGULARS

4 President's message

7 News

16 Rights-based child law

Children's rights are not being met by the current criminal justice system

19 Mental health and involuntary admissions

20 Viewpoint

Barnardos chief Fergus Finlay makes the case for a referendum on children's rights

23 Letters

45 Practice doctor

46 People and places

49 Student spotlight

Tales of adventure from Achill

50 Briefing

- 50 Council report
- 51 Committee report
- 52 Practice notes
- 54 Legislation update: 20 September – 17 October 2006
- 56 FirstLaw update
- 58 Eurlegal: state liability

63 Professional notices

68 Recruitment advertising

More than 16 pages of job vacancies

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An eventful year in a time

By the time you read this, my year will have ended and the Law Society presidency will have passed to my successor, Philip Joyce. I wish him well and hope that he enjoys his term in office. I would like to thank you all for the support that you have given the presidency during my term in office. It has been very much appreciated.

The year has gone very quickly – a sure sign of activity and enjoyment.

As long ago as July 2005, the Society responded to the preliminary report of the Competition Authority on the legal profession. It now appears that the final report of the authority will issue in November 2006.

Legal services ombudsman

In the meantime, the Minister for Justice introduced the *Civil Law (Miscellaneous Provisions) Bill 2006*, in February. The bill proposes to introduce a legal services ombudsman and to increase lay membership to a majority on the Complaints and Client

Relations Committee.

The Society believes these measures to be fair and understands the necessity to ensure that the public should have the utmost confidence in the Society's complaints procedures.

The Society has requested certain measures to be included in the bill. The foremost of these would allow a solicitor to limit liability contractually with a client, subject to the mandatory professional indemnity insurance cover of €2.5 million.

Such an amendment would not affect the small or less well-off client, who would still have the benefit of the statutory minimum cover of the solicitors' professional indemnity insurance. It would, however, allow the solicitor to compete in certain larger commercial transactions on an equal basis with accountants and other professionals who already have such a right.

This and other matters have been requested by the Society to be included in the bill – it is to be hoped that such are not overlooked or forgotten about by government, as the measures suggested are practical



The Law Society recently hosted a lunch for past presidents of the Society, pre-1990, and retired director general James J Ivers. Front (l to r): Bruce St John Blake (President, 1977), Walter Beatty (1980), Moya Quinlan (1981), Michael Irvine (2006), William A Osborne (1975), Michael P Houlihan (1983) and Joseph L Dundon (1978). (Back, l to r): James J Ivers (Director General, 1973-1990), Philip Joyce (Senior Vice President 2006), Thomas D Shaw (1988), Anthony E Collins (1985), Laurence Cullen (1986), Maurice R Curran (1989) and Director General Ken Murphy

of change

and would help the solicitor provide a better service to the client.

Legal Costs Working Group

The Legal Costs Working Group, chaired by Mr Paul Haran, reported last January. Extensive submissions were made to the working group and written and oral comment and suggestions have been made to the Implementation Group, chaired by Mr Desmond Miller. There is little doubt that, at the least, the manner of charging in litigation will be altered – however it appears that the notion of scale costs have been rejected, which is welcome news. The reform of legal costs will take a considerable time, during which the profession must remain vigilant regarding any proposals.

During the year, purchase of the Benburb Street site was completed by the Society. I believe that this purchase will allow the Society to develop its facilities for members in an adjoining site. Blackhall Place is a landmark building in Dublin 7 and a headquarters that all solicitors can utilise and enjoy.

Cork education centre

It was a great pleasure to announce the Society's new education centre in Cork. I am certain that the Cork facility will be a major attraction for those wishing to become solicitors.

As president, I have presided over seven parchment ceremonies, which underlines the amount of young people entering the solicitors' profession. In the last year, approximately 1,800 have received legal education in Blackhall Place. In addition to strong numbers, I believe we have a very high calibre of entrants to the profession.

The efforts of young solicitors in charitable events such as the Calcutta Run emphasises the social awareness of such practitioners and augurs well for the future. This is most heartening. It means that the profession will certainly play its role in the legal, economic and social development of our country.

'Law in the Community' initiative

I was particularly pleased that Council unanimously adopted the 'Law in the Community' initiative to assist groups who provide legal advice and assistance to those who are disadvantaged and marginalized in the community.

I believe that all solicitors can be very proud of their efforts to enhance – both economically and



PIC: LENS MEN

socially – the society we live and work in today. Usually the efforts of solicitors go unheralded – maybe that's as it should be, but it does not devalue what has been achieved.

The Society serves the profession and does its very best for its members – it, too, does not get appropriate recognition for its efforts. I personally would like to pay tribute to the staff in the Society, who give of their utmost to the profession.

I certainly would not wish my final message as president to pass without thanking all in the Society, from Ken Murphy downwards, for their efforts on our behalf.

I would also like to thank those who serve on the committees of the Society and, in particular, all Council members – the contribution all have made is very much appreciated.

It has been a great pleasure to meet with many of you during the year – that to me has been the most satisfying part of my year. I am most grateful to you all for the hospitality and courtesy shown, not alone to me but also to my wife Anne and our children.

Michael Irvine
President

"I believe that all solicitors can be very proud of their efforts to enhance – both economically and socially – the society we live and work in today"

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Left to right: Garrett Rice, Rob McCann and Séamus Sadlier

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■ CAVAN

Memorial service

Practitioners throughout the county and beyond were deeply saddened at the untimely passing of their local judge – the late Judge David Maughan, who had been the permanent judge in the area for the last four years. A memorial service was arranged by the legal profession in his honour in Ballyconnell, coinciding with the court sitting. The legal fraternity was doubly saddened at the passing of Tom FitzPatrick – former TD and government minister, and Cavan solicitor. Rich tributes were paid to both men at the local sitting of the court, presided over by Judge Sean McBride. Contributions were made on behalf of the bar association by Jacqueline Maloney, and for the Leitrim Bar Association by Gabriel Toolan.

■ DUBLIN

Groundbreaking study on ECHR Act 2003

The *ECHR Act 2003* is the legislation underpinning the European convention. It creates new statutory remedies for those affected by the actions of the state and it is fair to assess the operation of the legislation as being a 'slow burner' to date. Yet, the legislation itself is recognised as being a hugely powerful instrument for the citizen, enabling him or her to draw on a half century of European Court of Human Rights jurisprudence in the advocacy of his case.

Whether this reluctance to embrace the new order is on account of the perceived lukewarm approach to the convention by the courts or simply on account of a lack of awareness of the convention by practitioners is difficult to gauge.



Attending the DSBA seminar, 'Banking – Adding to your Bottom Line', on 28 September were (l to r): Philip Joyce (Senior Vice-President of the Law Society), Brian Gallagher (President DSBA), Kieran Finnan and Anne Neary (speakers) and John Elliot (Director of Regulation, Law Society)

However, an inspiring initiative on the part of both the Law Society and the DSBA has just come to fruition and hopes to redress this lacuna. As reported elsewhere in this edition of the *Gazette*, a root-and-branch review of the convention and the legislation underpinning it, its application before the courts and its impact to date has been undertaken. The academic study (available at a modest cost of €10 and downloadable on both the lawsociety.ie and dsba.ie websites) has been jointly commissioned by both the DSBA and the Law Society. The study was undertaken by the Dean of the Faculty of Law at UCG, Donncha O'Connell, and a team of researchers.

Changing of the guard

The October/November period in the representative sense is a time of change as bar associations elect new presidents and officers for the coming year. In Dublin, Brian Gallagher has just completed a highly successful year in office. At a well-attended DSBA AGM, he was succeeded by the prominent family lawyer David Bergin, with Michael Quinlan as his vice-president.

The DSBA was honoured to be able to meet the High Court judiciary in an informal setting recently. It was believed to have been the first occasion at which a solicitors' representative body had interacted with the High Court judiciary in this manner and was a highly enjoyable and purely social occasion. Over 26 High Court judges attended and were joined by council members of the DSBA, together with many litigation practitioners drawn from a large number of practices.

■ DONEGAL

Up here it's different!

Congratulations are due to the revival of the Bar Association Dinner in Donegal, which was held on 13 October at Harvey's Point Country Hotel. Secretary of the Association, Bernadette Smith, says: "It's been 12 years since the last dinner was held and, owing to the success of this event, we would hope to repeat it in future years".

A presentation was made to barrister Richard Lyons to mark the occasion of his taking silk. Special guests included Judge John O'Donnell, Judge Derek McVeigh, and Judge Sean McBride. In addition, a dinner to

mark the retirement of Judge O'Donnell as the judge assigned to the Donegal district will be held in Donegal Town later on in the month, to mark his decade or so on the bench in the area.

Meanwhile, an informative CPD seminar was held recently on 'Risk Management', as well as an excellent review of the drink-driving legislation by Leitrim solicitor, Kevin Kilrane.

Donegal Bar Association's AGM takes place on 22 November and will be preceded by a seminar on work/life balance for the legal profession.

■ CORK

Mediation skills

A week long Mediation Skills Training Course run by CEDR was hosted by the Southern Law Association in Cork in the last week of September. In all, 24 practitioners attended.

The annual conference of the association took place in Budapest. Judge James O'Donoghue delivered a well-received keynote address to the conference.

■ MAYO

Mammoth service

Rumours that Pat O'Connor had decided to take things a bit easier following the conclusion of his mammoth 28 years of service to the profession on the Council of the Law Society have been, perhaps, greatly exaggerated! We hear that Pat will now take on the busy mantle of president of the Mayo Bar Association, succeeding Fiona McAllister, who has been a very successful president over the last two years. **G**

Nationwide is compiled by Kevin O'Higgins, principal of the Dublin law firm Kevin O'Higgins.

■ COMPETITION REPORT DUE

The chairman of the Competition Authority, Bill Prasifka, said at a recent conference that the authority's final report on competition in the legal profession would be published "by the end of the year".

The Competition Authority commenced its study of the legal profession, together with a number of other professions, in April 2001. In March 2003, the authority's economic consultants, Indecon, published the results of their research. The authority proceeded to publish its own 'preliminary report' in February 2005 and the Society delivered a 90-page response to that (which is available on the Society's website) in July 2005.

Nothing further was heard for over a year but, in recent times, the Society has responded to requests from the authority to update certain statistics in relation to complaints against solicitors and in relation to numbers entering the profession.

Throughout the five-and-a-half years during which the authority's study of competition in the legal profession has been underway, at some times more actively than at others, the Society has engaged with it as fully and as positively as possible. It has responded helpfully to all queries put to it, as was publicly acknowledged by the previous chairman of the authority.

Many hundreds of pages of written submissions and days of oral submissions were made by the Society, with the benefit of expert legal and economic support, on behalf of the profession. The Society was critical of many of the recommendations in the authority's preliminary report. It remains to be seen whether or not the Society's reasoned arguments on that occasion have received a favourable ear.

ECHR Act 2003: A Preliminary

A new study shows that the ECHR can supplement or improve the protection of constitutional rights, explains Donncha O'Connell

ECHR Act 2003: A Preliminary Assessment of Impact was published on 23 October in City Hall, Dublin, and launched by Professor Conor Gearty of the LSE. Authored by Donncha O'Connell, Siobhan Cummiskey and Emer Meeneghan with Paul O'Connell, it was commissioned by the Law Society's Human Rights Committee and the Dublin Solicitors' Bar Association. The study considers the likely impact of the incorporation of the *European Convention on Human Rights* (ECHR) into Irish law in the first two-and-a-half years of operation of the *ECHR Act 2003*.

The ECHR was ratified by Ireland in 1953. It protects a wide range of civil and political rights but also entails positive obligations on the part of states that can involve making provision of a social and economic nature.

The convention was given "further effect" in Irish law by the *ECHR Act 2003* on foot of an undertaking given in the *Belfast Agreement* of 1998. Before that, the convention applied to Ireland but not *within* Ireland. Some of the more significant cases taken by Irish people to the European Court of Human Rights in Strasbourg included the following issues:

- Internment and emergency powers (*Lawless v Ireland*),
- Legal aid and access to the courts (*Airey v Ireland*),
- The absence of divorce and status of illegitimacy (*Johnston v Ireland*),
- Criminalisation of homosexual acts (*Norris v Ireland*),
- Discrimination in relation to planning (*Pine Valley v Ireland*),



FIG. NICK BRADSHAW/JASON CLARKE PHOTOGRAPHY

At the launch of *ECHR Act 2003: A Preliminary Assessment of Impact* on 23 October, were (l to r): Brian Gallagher, President of the Dublin Solicitors' Bar Association, Alma Clissmann (Law Society of Ireland), Donncha O'Connell, Dean of Law at the NUI, Galway and Noeline Blackwell, Chairman of the Law Society's Human Rights Committee

- Unequal treatment of birth fathers in adoption process (*Keegan v Ireland*),
- Freedom of abortion information (*Open Door v Ireland*),
- The right to silence (*Quinn/Heaney/McGuinness* cases),
- Involuntary psychiatric detention (*Croke v Ireland*),
- Delay before the courts (a number of recent cases).

Now, under the 2003 act, it is possible to seek a declaration before the Irish courts that some aspect of Irish law or practice is incompatible with provisions of the ECHR. This does not have the effect of nullifying the law in question (as the convention applies subject to the Irish Constitution), but it does act as a prompt to the Oireachtas to change the law to bring it into line with the ECHR.

The 2003 act also imposes an obligation on most state bodies ('organs of the state') to discharge their duties and functions in a manner that is compatible with the convention – and a range of remedies (including damages) are open

to a person challenging the actions of such bodies on the basis of convention-incompatibility.

Does this make any difference?

Yes, because now the Irish courts are obliged to have due regard to decisions of the European Court of Human Rights (ECtHR) whenever a lawyer raises an ECHR-based point in a case. In the past, Irish courts could ignore such ECHR-based arguments on the basis that the convention only applied to Ireland as a matter of international law.

In terms of substantive rights protection, the ECHR does not add much to the catalogue of rights protected by the Irish Constitution, but it can be used to supplement or improve the level of protection of such rights.

ECHR impact

The case currently before the Irish courts involving the post-operative transsexual, Lydia Foy, raises a very important point under the convention. The High Court decided – literally

Assessment of Impact

days before a landmark decision of the ECtHR recognising a right to registration of the new sex (*Goodwin v UK*) – to the opposite effect. The matter is still before the Irish courts, and it is difficult to see how her treatment can be viewed as compatible with the convention even if permitted by the Constitution. How the courts resolve this apparent conflict will be a matter of considerable interest.

Other areas of likely controversy are: the operations of the Criminal Assets Bureau, same-sex marriage, the independence of and institutional arrangements for administrative decision-making bodies, freedom of expression and information, and services for children and families.

Incompatibility

No declaration of incompatibility has yet been given by the courts in any case in which the act has been used. This may be attributable to a decision of the Supreme Court in a housing eviction case (*Fennell v Dublin City Council*) that the act was not retrospective and did not apply to cases already proceeding at the time of its coming into effect (31/12/2003).

At the time of writing, a decision of the Supreme Court

is awaited as to whether or not it is necessary to exhaust the option of challenging the constitutionality of laws before a declaration of incompatibility with the ECHR can be considered. If the Supreme Court decides that this is the case, it will render declarations of incompatibility quite marginal in terms of their significance as a remedy.

In the vast majority of judicial review cases pending in the High Court in which the 2003 act is being pleaded, the issue involved is asylum and/or deportation. It remains to be seen whether or not the *ECHR Act* will impact significantly on the outcomes in these cases.

In cases involving delay in the administration of justice (for example, in sexual-abuse cases), it is clear that the courts are willing to use the ECHR to bolster their reasoning on Irish law in this area, although it is arguable that the courts were, in any event, moving in this direction prior to the passing of

the *ECHR Act 2003*.

State bodies could be imaginative in using the obligation to behave in a manner that is compatible with the ECHR by factoring this requirement into risk assessment processes.

Much work could be done by the Human Rights Commission to promote strong ECHR-compatible practices by state bodies. A more frequent use of its role as *amicus curiae* (or intervener) in cases taken by others, as well as taking cases in its own name, could do much to promote the ECHR as a viable instrument of human rights litigation in the Irish courts. For this to be achieved, the commission would require much better funding from the state.

Practitioners advising clients will now have to consider the ECHR issues raised by a case, and not just the issues of domestic law. Although this may not lead to dramatic results before the higher courts, it will impact incrementally on decision-making in the lower courts and provide a rich source of inspiration for judges who wish to demonstrate a consciousness of the wider human rights dimensions of cases. **G**

Donncha O'Connell is Dean of Law, NUI Galway.

COURTS SERVICE APPOINTMENT

The Courts Service has appointed Dr Carol Coulter as a family law reporter to record and produce reports on family law proceedings for distribution to the media and the public.

The appointment is being made on a one-year pilot basis. The project will record and create reports of family law proceedings for the first time. It will gather, assess and present meaningful statistics on family-law matters before the courts and will assemble and distribute information regarding the family law process and courts.

Following public advertisements, proposals for provision of the service went through an evaluation process.

Dr Coulter has worked for the past 20 years for *The Irish Times* and has worked as its legal affairs correspondent for the last seven years, writing extensively on family law matters. In 2001 she was awarded the Law Society's Justice Media Award in print journalism for writing on family law. In 1990 she won the National Media Award for campaigning journalism for her coverage of the Birmingham Six and Guildford Four miscarriages of justice.

She has also written a number of books and essays on cultural and social issues, and edited the *Undercurrents* series of pamphlets on current issues for Cork University Press.

The ECHR study is available from Esther McCormack, Law Society of Ireland, price €12 including p+p (payment in advance, or as a free download from the Law Society's website www.lawsociety.ie).



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■ DIVORCE PROPOSALS

The Government has decided not to participate in the implementation of new EU Commission proposals on divorce and legal separation. The proposal follows a 2005 EU Green Paper on the subject. In November 2005, the Taoiseach made clear that the Government "was not in favour of extending to Irish courts jurisdiction to grant a divorce to an EU national based on a substantially different law of the state from where he/she came from".

Bar president goes to the Bar

The president for 2006 of the country's second biggest bar association, the Southern Law Association, who was also a member of the Law Society Council, has resigned both positions on her admission last month as a barrister. Sinéad Behan is almost certainly the first current holder of either of these positions to become a barrister and, as a result, is one of the most prominent solicitors ever to switch from one branch of the legal profession to the other.

Behan had practised for many years – up to last month, as a partner in the Cork firm



Martin A Harvey & Co, dealing with a wide range of litigation matters with a particular emphasis on family law. She had been, for a number of years, a member of the Society's Family

Law Committee. She will base her practice as a barrister in her native Cork.

"Everyone in the Law Society will miss Sinéad's pleasant and positive contribution in Blackhall Place and wishes her great success in this new stage of her career," said director general Ken Murphy. "Sinéad transferred to the Bar in a matter of months. The barriers to transfer between the two branches of the profession are not high, but the Society is committed to working with the Bar Council and the King's Inns to reduce them even further."

■ ONE TO WATCH: NEW LEGISLATION

EC (Eligibility for Protection) Regulations 2006

The EC (Eligibility for Protection) Regulations 2006, SI no 518 of 2006, came into effect on 10 October as required by Council Directive 2004/83/EC of 29 April 2004. According to the Minister for Justice, Equality and Law Reform, their content is already provided for in the heads of the *Immigration and Residence Bill*, which is currently being drafted. In due course, the regulations will be replaced by the act.

New ground for leave to remain

Solicitors acting for asylum seekers whose cases are already in the system should consider making supplementary applications under these regulations, to provide for the event that the asylum application is not successful. An application for subsidiary protection must be made within 15 working days from the receipt of notification of the refusal of the asylum claim and can be made in addition to section 3 representations (that is, a leave to remain application). While the regulations are not retrospective, solicitors may consider that

representations should also be made in respect of clients who have a leave to remain application pending before the minister. Pending the enactment of the proposed *Immigration and Residence Bill*, applications must continue to be made to the minister, and will be decided by the Irish Naturalisation and Immigration Service of the Department of Justice.

The regulations are particularly welcome because the definition of refugee in international law, implemented in the *Refugee Act 1996*, does not include all those who need protection. Ireland has a number of international obligations to protect those who flee. Subsidiary protection differs from refugee protection because it does not require the applicant to have any connection to the five grounds contained in the 1951 *Refugee Convention*, and shows that the persecution feared is for reasons of race, religion, nationality, membership of a social group or political opinion. The stark reality is that major internal and international armed conflicts put people in great jeopardy. Another reason for having subsidiary

protection is the prohibition against torture in article 3 of the ECHR and the *UN Convention against Torture*. For example, some unaccompanied children arriving here do not really know why they were sent away, or have fled from a situation of general violence or natural disaster, and so require considerable protection. This type of protection has been long sought and will give legal status to people in need of protection who, previously, were reliant on humanitarian leave to remain at the discretion of the minister, without any legislative guidelines.

Serious harm

The regulations provide for a subsidiary (or complementary) scheme to give permission to remain in the state to people who do not qualify as refugees, but who are in need of protection because they would face a real risk of suffering serious harm, defined as:

- Death penalty or execution,
- Torture or inhuman or degrading treatment or punishment, or
- Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of

international or internal armed conflict.

These criteria will cover generalised violence or natural disaster. The applicant will have to show that there are substantial grounds for believing that he or she, if returned to the country of origin, would face a real risk of suffering serious harm, as defined above. The threat of serious harm may originate from:

- The state,
- Parties controlling the state or a substantial part of the state's territory, and
- Non-state actors, if the state is unable or unwilling to provide protection.

Acts of persecution

The acts of persecution must be sufficiently serious to constitute a severe violation of human rights, or have an accumulative effect that is similar. Acts of persecution can take the form of:

- Acts of physical or mental violence, including acts of sexual violence,
- Legal, administrative, police, and/or judicial measures which are, in themselves,

Law societies share similar issues

As the cliché has it, ‘all politics are local’. But in the view of Law Society Director General Ken Murphy, it is at least equally true that ‘all politics are global’.

As a recently re-elected member of the executive of IILACE, the International Institute of Law Association Chief Executives, he is in regular contact with his counterparts across the globe.

“I chaired a session at the most recent IILACE conference in which national law society chief executives from many different parts of Europe, North America, Africa, Asia and



Members of the executive of IILACE (l to r): Raj Daya (South Africa), Jan Martin (South Australia), Douglas Mill (Scotland), John Hoyles (Canada) and Ken Murphy (Ireland)

Australia each in turn listed the biggest issues on the current agenda for their societies and their members,” says Murphy.

“Everyone’s agenda was

practically identical. Reviews by government and external regulators of competition in the profession, the manner in which the profession is regulated and

the level of legal costs are pretty much universal. Other issues throughout the globe include: the numbers entering the profession, the poor public image of the profession, the consumer agenda, the pressures including the ever-growing time and financial pressures of modern practice, together with the anti-money laundering requirements on the profession and, most worrying of all, a belief that many governments are consciously using some or all of the above to erode traditional core values of the profession and, ultimately, the legal profession’s independence.”

discriminatory or which are implemented in a discriminatory manner,

- Prosecution or punishment that is disproportionate or discriminatory,
- Denial of judicial redress resulting in a disproportionate or discriminatory punishment,
- Prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes, war crimes or crimes against humanity, and
- Acts of a gender-specific or child-specific nature.

Applying for subsidiary protection

The application for subsidiary protection may be made at the same time as an application for refugee status, or afterwards, but subsidiary protection will not be granted until the refugee decision is made and is negative. A grant of subsidiary protection results in permission to remain in the state generally for three years, and is renewable. Successful applicants will have the same entitlements as citizens to family reunification, travel, employment, trade and

education, healthcare and social welfare benefits.

The regulations set out what must be considered in deciding an application, and provide that the fact that the applicant has already been subject to persecution or serious harm, or threats, is to be regarded as a serious indication of a well-founded fear.

Role of the ECJ

The European Court of Justice (ECJ) will have competence to consider any questions of the interpretation of the directive, and it is expected that interesting case law will emerge to guide member states. The highest domestic courts must refer a question to the ECJ unless it concerns:

- An ‘*acte clair*’ – ECJ has already passed judgment,
- An ‘*acte éclairé*’ – there can reasonably be no doubt, or
- The issue is not relevant for the matter at hand.

Two interesting points of law that may be tested are:

- Whether a non-state or international organisation in control of territory can give protection against persecution

or serious harm. Under the *Refugee Convention*, only a state can be relied upon for protection, as it is accountable in international law, and is a party to human rights instruments. Rwanda is an example of the failure of an international organisation to provide protection.

- Certain people are excluded from the effect of these regulations, for example, those guilty of war crimes. The directive and regulations do not make clear what can be done if their removal would expose them to risk of torture, inhuman or degrading punishment, a dilemma which has already faced the British authorities. Under these regulations, they are not entitled to a residence permit.

While most welcome, the regulations do not deal with another problem that arises, particularly in relation to unaccompanied minors. As the law currently stands, until an application for asylum is made, a child has no legal status in the country. The Law Reform

Committee has recommended that provision should be made for the granting of a temporary permission to remain in these cases, with provision for periodic review. This would take a child out of legal limbo while the relevant authorities assess what is in the best interests of the child. An application for temporary leave to remain should be able to be made in its own right and not as a defence to the threat of deportation. Rather than the exhaustive list as currently set out in section 3 of the *Immigration Act 1999*, a non-exhaustive list of ‘leave to remain’ grounds should be set out in legislation, with the minister obliged to give reasons for refusing the application. The actual procedure for making the application, which is currently by way of written application, should make provision for an interview, with the child having appropriate legal representation and the input of an appropriate guardian (*Rights-based child law: The case for reform*, March 2006). **G**

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



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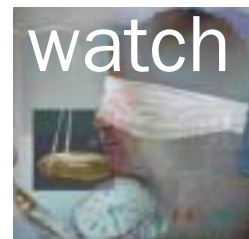
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Extraordinary rendition: Ireland's international human rights obligations



Ireland has been implicated as one of the countries involved in facilitating the extra-judicial transport of suspects, writes Suzanne Egan

The term 'extraordinary rendition' is not a term of international law but, rather, refers to a US extra-judicial procedure for transporting 'terrorist' suspects from one country to another for the purposes of interrogation or imprisonment in circumstances that give rise to a risk of torture, cruel or inhuman treatment.

In June 2006, the Parliamentary Assembly of the Council of Europe passed a resolution condemning what it termed the "spider's web" of CIA transfers and detentions involving either active or passive collusion on the part of member states. The report on which the resolution was based included Ireland as one of the countries implicated, for allowing Shannon Airport to be used as a stopover point by CIA planes and military aircraft involved in possible rendition operations.

In December 2005, the Human Rights Commission called on the Irish Government to seek agreement from the US authorities to inspect the aircraft in question on landing at Shannon or at any other Irish airport. The commission's interest in passing the resolution is based on its statutory function "to keep under review the adequacy and effectiveness of law and practice in the state relating to the protection of human rights" and to make recommendations to government about measures "to strengthen, protect and uphold human rights in the state".



Welcome to Shannon. Hope you enjoy your stay

The commission based its advice to government on the state's obligations under international human rights law. Specifically, the commission cited the *UN Convention Against Torture*, which obliges the state to take effective measures to prevent torture or other acts of cruel, inhuman or degrading treatment or punishment in its territory. This positive obligation to prevent torture is also implicit in article 3 of the ECHR. Article 3 includes an obligation to ensure that an individual is not returned to a state where there are substantial grounds for believing that she or he will be subjected to treatment in violation of article 3. The European Court of Human Rights has further ruled that article 3 contains a procedural obligation on contracting states to conduct an effective, official investigation where an individual raises an arguable claim that he or she has been seriously ill-treated in violation of article 3. Drawing on these provisions, the commission took the view that the state must conduct an official investigation where there are substantial grounds for

believing that the state's territory is being used to facilitate the transportation of any person to places where there is a real risk of torture or ill-treatment. The commission has also rejected the government's reliance on diplomatic assurances from the US that prisoners are not being transported through the territory. In the commission's view, diplomatic assurances that cannot be legally enforced are not an adequate guarantee against torture.

International enquiries

The views of the commission have been confirmed by authoritative international enquiries. An expert legal body of the Council of Europe concluded in March 2006 that the prohibition on transferring a person to a country where there exists a risk of torture or ill-treatment "...also applies in respect of the transit of prisoners through the territory of Council of Europe member states: they must therefore refuse to allow transit of prisoners in circumstances where there is such a risk".

In a comprehensive report on the subject, the secretary

general of the Council of Europe has also concluded that violations of the ECHR in connection with the process of extraordinary rendition could have taken place in virtually all Council of Europe member states. On foot of this report, the secretary general subsequently announced a series of proposals for follow-up action by Council of Europe member states. In particular, he has recommended the preparation of a Council of Europe legal instrument on the legislative and administrative framework for the functioning of security services in the territory of the member states. The opportunity still exists for the Irish Government to play a leading role in bringing this instrument to fruition and to help eradicate a practice which, in the words of the UN High Commissioner for Human Rights, is a "complete repudiation of the law and of the justice system. No state resting its very identity on the rule of law should have recourse or even be a passive accomplice to such practices". **G**

Suzanne Egan is a lecturer in international human rights law and a member of the Irish Human Rights Commission.

There is interest in a group of lawyers working on the use of Irish law to challenge breaches of international law. If you are interested in being involved, please contact Alma Clissmann, secretary to the Human Rights Committee, at a.clissmann@lawsociety.ie or 01 672 4800.



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Louise heads up support services

Louise Campbell is the new support services executive at Blackhall Place. Originally from Kiltrush in Co Clare, she has lived in Dublin since 1992. In 2001, she qualified as a solicitor and has work experience in both private practice and in-house. She joined the Law Society in June 2006.

The appointment of the support services executive followed from a review conducted by a special task force under the chairmanship of Ms Olive Braiden. The task force's

main focus was to carry out a survey of solicitors in order to clearly identify the needs of the average solicitor. As a result, the Law Society decided to appoint a solicitor with experience in private practice, dedicated to developing and delivering support services to solicitors.

Louise will liaise with local bar associations and will be an important 'point of contact' for members seeking assistance – especially for those unaware of the appropriate service or contact person. Her aims are to



develop additional structured information systems between the Society and its members.

She is also investigating the establishment of a scheme for solicitors under stress, the setting up of a practice advisory service, developing a directory of services and managing a suite of existing member services.

Louise starts a series of support services articles in this issue of the *Gazette*, beginning with 'Solicitor Link' (see below).

Anyone interested in contacting Louise about support services should phone: 01 881 5712 or email: l.campbell@lawsociety.ie.

SUPPORT SERVICES FOR MEMBERS

SOLICITOR LINK

A ONE-STOP SHOP WHEN BUYING, SELLING OR MERGING

Support services executive Louise Campbell starts a new series on the many useful services provided by the Law Society for its members

'**S**olicitor Link' is a totally confidential service co-ordinated by the Law Society's support services executive. She maintains a register of firms interested in buying, selling, or merging practices or sharing overheads. This includes solicitors interested in buying for the first time. The service helps to introduce solicitors with similar practice requirements. The identities of those using the service remains anonymous until both parties agree otherwise.

How do I register?

A registration form can be obtained from the support services executive (see contact details below) or can be downloaded from the members' area of the Law Society's website (www.lawsociety.ie, under the heading 'Solicitor Link' in the 'Grow your Business' section). The form asks for contact details and certain information on the applicant's circumstances, including: the number of partners and fee-earners in the firm, the type of work carried out, whether

you want to buy, sell, merge or share overheads, and your preferred location. The original completed form should be returned to the support services executive with a cheque for €100.

Next steps

The register is maintained in two sections – 'Dublin' and 'Rural'. Depending on whether you are interested in buying, selling, merging or sharing overheads with firms inside Dublin, or rurally, you will be sent a copy of the relevant section of the register, showing the profiles of potentially interested Dublin or rural firms and solicitors. All information at this stage is confidential, with each firm or solicitor being allocated a code. The following two examples of standard entries on the register show 1) a South County Dublin firm interested in selling or merging, and 2) a solicitor in Wexford with no current firm, seeking to buy a firm in North Wicklow or South Dublin:

- SL/D6
- South County Dublin
 - Two partners

- 50% conveyancing, 25% civil litigation, 15% probate, 10% family
 - Sell or merge.
- OR
SL/R7
- County Wexford
 - Not yet established
 - Buy (North Wicklow, South Dublin).

When you have decided which entries on the register you would like the support services executive to contact on your behalf, you should write to her, detailing all relevant reference codes. She will then write to your chosen firm(s) or solicitor(s), sending them your profile, similar to the above examples.

If your chosen firm or solicitor gives written authority to disclose their identity on a reciprocal basis, then both parties will be informed about each other's identity. The service ceases at this point, with the remaining negotiations conducted between you and your chosen firm or solicitor. Copies of the following are also available upon request from the

support services executive:

- 1) Law Society guidelines for solicitors retiring or ceasing as sole practitioners or sole principals, and for solicitors purchasing practices from them.
- 2) A list of consultants with experience of valuing and negotiating the sales and purchases of solicitor practices and who provide management consultancy and other services to solicitors' firms. Though the Society cannot recommend any individual consultant, this list of random names may be of assistance.
- 3) A practice management information leaflet, written by Charles Russell, on the valuation of practices.
- 4) Copies of *Gazette* articles on the valuation of practices.

To contact the support services executive, Louise Campbell, about this or any of the Law Society's other member services, please phone: 01 881 5712 or email: l.campbell@lawsociety.ie.

Child law conference reveals

The annual Human Rights Conference has argued that children's rights are not being met by the criminal justice system and that coordinated services must exist to meet children's needs

Achieving rights-based child law was the focus of this year's Human Rights Conference, held at Blackhall Place on 14 October. All speakers – judges, psychologists, academics and representatives of government agencies – appeared to be in agreement that children's rights are not being met by the current criminal justice system, and that earlier and better coordinated services need to exist to enable children's needs and rights to be met. The conference was co-sponsored by the Law Society's Human Rights Committee and the Human Rights Commission, in association with the Ombudsman for Children, Emily Logan.

Dr Alpha Connelly of the Human Rights Commission and Law Society Vice-President Philip Joyce welcomed the 200 people who attended. Dr Connelly described the significant findings of the UN Committee on the Rights of the Child of 29 September, which provide an action list for remedial action by the government. The vice-president paid a particular tribute to Ray Dooley, the outstanding and recently deceased CEO of the



Speakers and participants at the conference

Children's Rights Alliance, whose wife Anne Rowland BL and teenage children were present.

Dilemma

Mr Justice John MacMenamin, who deals with the Minors' List in the High Court every Thursday, spoke about the dilemma facing judges and others in relation to troubled children. Their right to liberty conflicts with their protection, raising difficult constitutional issues. The ECHR permits such detention if there is an educational purpose (widely defined), but nonetheless, there is an elision of civil and criminal

law in such cases. The ideal would be involvement of the courts only in exceptional cases, with crises averted by earlier professional intervention. Mr Justice MacMenamin referred to recent ECHR case law, identifying a duty to vindicate children's rights by all measures that may reasonably be expected of the state. He noted that this proposition has not yet been considered in this jurisdiction.

Geoffrey Shannon of the Law Society spoke about the contribution of the judiciary to finding solutions to legal problems involving children. He discussed recent innovative decisions of Judges Finlay-

Geoghegan and MacMenamin in the *Belgian family* and *Baby Anne* cases, within the limitations imposed by the Constitution on marital children's interests. He also described two English cases where judges were faced with delicate and difficult choices, and how they approached them from a rights perspective: the recent conjoined twins case and the *Gillick* case, which resulted in guidelines for doctors in relation to children's right to autonomy in healthcare.

Child psychologist Dr Pat Dolan spoke of the history of children's rights campaigning in Ireland over the past 100 years, in very different times, and the heroic work of Dr Kathleen Lynn and others. He proposed a number of principles for consideration by judges and other professionals in their dealings with children. Professor Sheila Greene outlined the development of thinking that now sees the importance of the role of children as social actors, not only influenced by their society, but also contributing vitally in those spheres in which they have real influence – particularly school and home. This strand of thinking has resulted in it being unthinkable to undertake any examination of the conditions of children

JUSTICE MINISTER ANNOUNCES EXPERT GROUP

The Minister for Justice, Michael McDowell TD, recently announced his intention to set up an expert group to advise the government on whether legislation should be introduced to allow for the recognition of pre-nuptial agreements. A prenuptial agreement is a pre-wedding contract by which a couple, intending to marry, set out how property and finances would be divided in the event of a separation or divorce.

Irish family lawyers have experienced an increase in the level of client enquiries about

pre-nuptial agreements following the recent *Miller* and *McFarlane* judgments. This is not surprising, given the fact that some 30,000 millionaires currently reside in Ireland. Neither Alan Miller nor Kenneth McFarlane had a pre-nuptial agreement.

In the *Miller* case, the Law Lords held that Melissa Miller could keep the £5 million she was awarded by the Court of Appeal, after a childless marriage lasting less than three years to Alan Miller, a multi-millionaire fund manager.

In the *McFarlane* case, the House of Lords held that Julia McFarlane was entitled to £250,000 per year from her husband for an indefinite period, rather than a mere five years as was held by the Court of Appeal.

The central purpose of a pre-nuptial agreement is that of offering certainty for the future. It is primarily about money and property but may also contain confidentiality clauses about lifestyle during the marriage. There is nothing preventing individuals intending to marry

consensus on culture change

without including their input in the process – very relevant in the current debate on under-age sex.

One-stop family courts

Mr Justice John Gillen, the senior judge in family law matters in the North, set out a comprehensive plan for what he sees as the way forward – one-stop family courts to deal with children, separation, domestic violence and child crime, operated by specially trained judges and professionals, with early intervention by social workers and mediators and recourse to the court only as a last resort. He recounted his experience in one case as the 12th judge involved with one family, most of the others unknown to each other. He advocated one judge/one family, or at least comprehensive sharing of information, and a collaborative multi-disciplinary approach in partnership with the courts. It was refreshing to hear someone of his experience and prestige make the case so cogently and persuasively for what is wished for in this jurisdiction also.

After lunch, Dr Ursula Kilkelly spoke about a dual approach to achieving legal rights for children. The first involves auditing systems (for example, the District Court, or healthcare in hospitals) against international standards, such as



Dr Pat Dolan, Prof Sheila Greene, and Mr Justice John Gillen

the *Convention on the Rights of the Child*. The second approach, when gaps are identified by an audit and not remedied, is to engage in litigation to have the gap formally acknowledged and remedied. She echoed Dr Alpha Connelly in stressing the importance of the recent findings by the UN Committee on the Rights of the Child in relation to Ireland, which include 86 specific recommendations.

Skinner principles

Director of the Probation Service Michael Donnellan spoke about attitudes to children in the recent past, his experience with detained children and the eight 'Skinner principles', which in his experience, work well, finishing an attractive slide presentation with a teenager

talking about her relationship with horses: "You respect me, and I'll respect you." National director of the new Youth Justice Unit Michelle Shannon outlined the steps being taken and plans being made to bring all of the *Children Act 2001* into effect, stressing the need to build cooperation and stable systems over time.

The conference was attended by a wide range of the people interested in the question of children and their rights from many different perspectives. They included judges, senior civil servants, professionals and members of NGOs. Two participants who spoke from the floor were fathers who were suffering estrangement from their children, one of whom emphasised the bad effect of the *in camera* rule.

Judge Michael Patwell spoke about his problems on the District Court bench in relation to representation for children. Solicitor Catherine Ghent spoke about her problems in securing proper care for some of her clients passing through the Children's Court, and their unnecessary criminalisation. Dr Pauline Conroy recounted her experience of the lack of out-of-hours social-worker support for children, and the breakdown in some crucial services. Overall, there was considerable consensus among the speakers and those attending about the reality of a failure of children's rights and corresponding duties, and the need for coordinated, multi-disciplinary and re-thought approaches – removed as much as possible from the criminal justice system. The challenge was to achieve the necessary culture change and the political will to implement it. The conference itself, by revealing a broad consensus, made its own notable contribution to this essential culture change.

Papers from the conference are available at www.lawsociety.ie under 'Society Committees', 'Human Rights', 'Conference Papers', or through the link on the home page in 'Current News'. **G**

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

TO ADVISE ON PRENUPTIAL AGREEMENTS

from signing a pre-nuptial agreement. The difficulty is that the Irish courts are not obliged to enforce such an agreement should the parties separate or divorce.

Irish family law gives judges a wider discretion over the distribution of a separating or divorcing couple's assets than their counterparts virtually anywhere else. It is likely that the unfettered discretion afforded to the courts, in light of constitutional and statutory obligations, will continue to remain an integral

part of Irish family law. It is because the court has a wide discretion to determine ancillary relief following a judicial separation or divorce that pre-nuptial agreements are believed to be unenforceable in Ireland.

With the enactment of the *Family Law (Divorce) Act 1996*, the path is now clear for giving effect to the enforceability of pre-nuptial agreements in limited circumstances. No longer does article 41 of the Irish Constitution obstruct the enforceability of such agreements. The time

is therefore ripe for the matter to be addressed in a comprehensive manner by the legislature. The law should be clarified to ensure that pre-nuptial agreements are valid and enforceable to the extent that they support and foster the interests of children and spouses. It should be noted, however, that even if, following Minister McDowell's review, the legislature steps in to support pre-nuptial agreements, the judiciary should be allowed to retain a wide discretion to vary their terms.



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Major changes to mental health involuntary admissions

November 2006 marks an important milestone for Irish mental health services and the associated legal framework for the admission of patients without their consent

The Minister for Health and Children announced 1 November as the date for the remaining parts of the *Mental Health Act 2001* to commence. This will result in major changes for many aspects of mental health services as the current provisions of the *Mental Treatment Act 1945* are replaced with a modern framework for involuntary admission that recognises new human rights standards in this area. There has been tremendous interest by professionals working in this area and many welcome the changes associated with the long-awaited 2001 act.

Deficiencies in the 1945 act have long been recognised and unsuccessful attempts at reform have been made in the past. Scotland started similar legislative changes in 2005, and Northern Ireland is currently conducting an extensive review of its legislation, as it is broadly based on that of England and Wales, where reform is also being discussed. The 2001 act will place Ireland's mental health legislation far in advance of current arrangements in terms of protecting the rights of people involuntarily admitted. It introduces mental health tribunals that have the power to review cases and, where appropriate, discharge patients. Some parts of Britain have been operating a similar form of tribunal for some time, but the mental health tribunals to be introduced in Ireland as a result of the 2001 act are more progressive, in that they provide an automatic review process in each case and legal



Health minister Mary Harney: the new act is more progressive than recent British reforms

representation is arranged at the outset for the patient.

The 2001 act requires the Mental Health Commission to appoint mental health tribunal members and provide administrative support. The changes will be challenging for mental health services but will, in turn, lead to more innovative resources in terms of meeting patients' needs. The services have been very proactive in preparing for commencement, and the level of commitment at all levels towards ensuring Irish mental health services comply with the act's provisions on best interests and human rights is impressive. The commission's training officer, Rosemary Smyth, has led an extensive programme of training with those selected for the commission's panels. These include chairpersons of the mental health tribunals, who must be practising barristers or solicitors, lay members and

consultant psychiatrists, some of whom will sit as tribunal members and others who will provide independent medical examinations and reports. In addition, a large number of solicitors have applied and been appointed under the commission's Mental Health Legal Scheme, and they have also received training.

Following commencement, the Mental Health Commission must be notified of every patient

admitted on an involuntary basis. Once notified, the commission arranges legal representation by a solicitor, an independent medical examination and report, and review by a mental health tribunal. The review takes place at the hospital or psychiatric unit where the patient is receiving care. These are now referred to as approved centres in the 2001 act and must be registered with the commission.

It is hoped the 2001 act will improve patient confidence in the involuntary admission procedures and stimulate increased focus on the needs of patients at what can be a very stressful time for them and their families.

Further details are available from the Mental Health Commission website, www.mhcirl.ie.

(The Law Society intends to publish a practice note to assist solicitors on the tribunal panel shortly.) **G**

Gerry Cunningham is Director of Mental Health Tribunals at the Mental Health Commission.

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Constitutional change is needed

The Constitution should be amended to enshrine the rights that children are entitled to as citizens, argues Fergus Finlay

In Barnardos, we believe that the time has come for a referendum on the rights of the child. Later this month, we intend to publish a possible wording for a new constitutional provision, and we hope at the same time to be able to demonstrate that there is a considerable body of public opinion in support of such a change.

Earlier this year, we welcomed the appointment by the government of independent experts to monitor and report on the law as it affects children, but we are convinced that any independent oversight of that law will immediately detect a glaring gap. And that gap is the position of children within the entire legal framework.

The most recent changes affecting the law in relation to sexual abuse of children, for instance, have within them the potential to make abused children, once more, the victims of an adversarial system. It's interesting to note that at the heart of recent controversies was a report by the Law Reform Commission dating from 1990, which cast doubt on the constitutionality of statutory rape provisions. There has been much comment since about how that report has been ignored all through the intervening years. But that report also proposed mandatory reporting in all cases of suspected abuse, and it proposed a way of dealing with the victims of abuse in the legal setting, including the idea of cross-examination by trained children's guardians instead of



Fergus Finlay: it's time for a referendum

lawyers. These recommendations have also been systematically ignored over the years, an illustration, perhaps, that the rights of children are always regarded as being of secondary importance.

Commitment to change

That must end. In the course of the campaign we intend to launch, we will be asking each of our political parties, in the context of their preparations for the next general election, to include a commitment to change in their election manifestos. And we will attempt to spell out in detail the kind of changes that we believe are necessary.

Until we have completed the legal and other research we are undertaking, we can't be definitive about a proposed new set of words for the Constitution. We believe, however, that the following broad principles should apply:

- That humanity owes to its children and to the state of childhood, the best that we

have to give,

- That our fundamental law should be committed to the principle that we shall seek to promote the welfare of all our children equally, but that we should be especially committed to safeguard with special care the interests of children who are disadvantaged by economic, social or cultural exclusion, or by disability,
- That we should be prepared to set out a number of specific legal, educational and material rights, based on the fundamental principle that in any situation where the interests of a child are involved, those interests will be the first and paramount consideration,
- That we should recognise the family as the natural environment for the growth and well-being of children, and that we should be prepared to support families, and all those who are trying to provide a family environment, accordingly.

Social engineering!

An American intern working in Barnardos this summer told me about a city in the US – she couldn't remember which one – that had a problem with a sprawling urban ghetto. The ghetto pretty much encompassed all the social issues of the day: huge unemployment rates, intense poverty, guns, drugs, and early school leaving. Significantly, it was also crawling outwards and now intersected the main

commuting route to the city's primary employment hub. The city counsellors convened and tackled with energy this growing problem. They built a bridge across it.

It is, I'm told, a fine feat of engineering. People no longer have to drive through the decay; they can 'sail' above it. I can't but wonder what the outcome might have been if the same funding and ingenuity that it took to build the raised highway had been invested in the ghetto.

Since the start of this century, Ireland's economic commentators have regaled us with tales of the rising tide. What we don't hear about is the detritus left beneath the swell. As our recent 1916 celebrations confirmed, we are a mature, self-confident nation who can look back without bile or rancour. But we're done with looking down. In Ireland we build motorways, look straight ahead and cruise past our deprivation and disadvantage at 120km per hour. Yet what we can't get away from is the cost of ignoring our problems.

Every day, Barnardos works with children and their families who struggle with poverty, who feel alienated and forgotten, whose expectations are neutered through lack of access to the support networks they need to lift them out of the poverty trap.

The home environment is oftentimes chaotic, and parents battle to make ends meet. Any extra, unanticipated costs – such as a school trip or a new



to protect children's rights

pair of shoes – can tilt the burden to an unmanageable level.

Child poverty exists in Ireland. Yet it is only in the past 12 months, and following much campaigning on Barnardos' and many others' part, that this realisation has slipped into the political consciousness. This year's budget was the first in a decade that the words 'children' and 'poverty' were banded together in the same sentence. It's heartening to see the awakening, but it begs the question how the one in ten children who are living in consistent poverty in Ireland* could have slipped past unnoticed: 100,000 children should make a lot of noise. But these children, like every child in Ireland, have no political voice and, under the Constitution, no rights.

One in ten children in today's Ireland go to bed at

night without having had a substantial meal. One in ten children can't concentrate in school because they're cold and under-nourished*. One in ten children is a conservative estimate. These figures don't include children who are homeless or who are in public accommodation such as hospitals, hostels or direct provision centres.

The impact of poverty on our children in Ireland is far-reaching. Many of those on low incomes cannot afford to bring their child to the doctor, dentist or optician. School-work suffers because the child has nowhere to do their homework in a house that is oftentimes over-crowded, damp and without central heating. Chest infections are rife and stress levels among families are spiralling.

I spoke to one young mother recently who talked of the

anguish and feeling of helplessness as her child was kept on a two-year waiting list for speech therapy. And this is at a time when Ireland has never been wealthier.

Listening to debates that range from barring children wearing hoodies in supermarkets to the increasing and distressing costs of childcare, I have to question where our children fit into the frame. It seems increasingly that the weight is shifting from our children being our responsibility to being our nation's burden. If we are really serious about protecting, cherishing and valuing all children in Ireland, we must accord our children the rights that they should be entitled to as a citizen of our state. We must ensure that all children are provided with the support they need to maximise the opportunities offered by

education. It seems ludicrous that the most vulnerable members of society are accorded the least protection.

We have a new motto in Barnardos, and it is that 'No child gets left behind'. That means that we believe that every child has inalienable rights, and that these rights entitle every child in Ireland to protection, to education, to health services and to freedom from poverty. I don't think that this is an awful lot to ask. The political system agrees with us in principle, because an Oireachtas committee has already advanced the proposition that our Constitution should be changed. It's time to put principle into practice.

*(EU SILC study, Central Statistics Office, 2005) **G**

Fergus Finlay is Chief Executive of Barnardos

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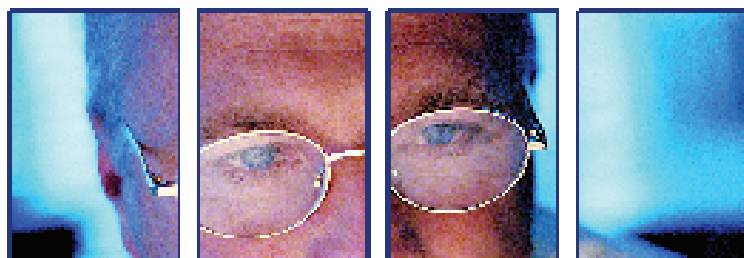
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Not so civil review of 'liability'?

From: Anthony Kerr MA, LL.M, BL, senior lecturer in Law at UCD

I refer to the review of the third edition of *The Civil Liability Acts* published by Thomson Round Hall, which was contained in your October 2006 issue at p49. The chairman of your editorial board was censorious of both my failure to include "no more than a passing reference to the *Civil Liability and Courts Act 2004*" and my disregard of the *Civil Liability (Amendment) Act 1996*. I am also accused of failing to grasp how the 1961 and 1964 acts might be seen "in the grand scheme of things", whatever that is supposed to mean. The reviewer was also critical of the "inexplicably small print", responsibility for which is laid at my door!

I would like to take the opportunity to respond to these criticisms, which are either unfair or misplaced or both.

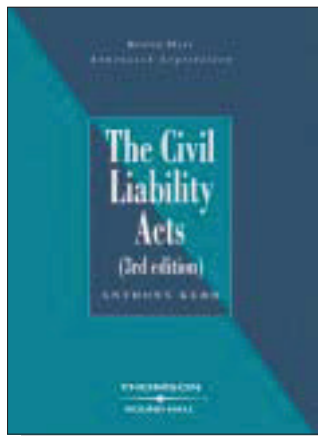
The reviewer is correct in saying that the 2004 act is a piece of legislation that is "seminal in its importance to personal injuries litigation" but he is incorrect in saying that it is "in part" a civil liability act. The principal purposes of the *Civil Liability Act 1961* (as amended by the 1964 act) are:

- To amend and consolidate the law relating to the survival of causes of action on death,

- To amend and declare the law concerning concurrent fault, and
- To re-enact the statutory provisions in regard to damages for the benefit of dependants of persons fatally injured.

The only section of the 2004 act that applies to any of these areas is section 27, which amends section 50 of the 1961 act and section 2 of the 1964 act to provide for the deductibility of charitable donations made by a defendant in the assessment of damages (see the third edition at pp67-68 and pp83-88). Given that the 2004 act does not provide that it shall be construed together with the 1961 and 1964 acts as one act and may be cited together, there was no reason to include it, save to that extent. The reviewer might note that the 2004 act is, in fact, referred to on no less than nine occasions throughout the third edition.

As regards the 1996 act, the reviewer's attention is drawn to sections 47 (which was amended by section 1 of the 1996 act); 49 (which was amended by section 2 of the 1996 act); and 49A (which was inserted by section 3 of the 1996 act) of the 1961 act, which can be found at pp60-67 of the third edition. He will note that the 1996 act is mentioned on no less than eight occasions in that



extract and on a further two occasions elsewhere.

The complaint that the third edition lacks "practical insight" is not only contradicted both by Dr Eamonn Hall and Professor William Binchy when reviewing the first edition in this *Gazette* and the *Dublin University Law Journal* respectively, but also ignores the fact that the third edition (as were the first and second) is part of Round Hall's *Annotated Legislation* series. The book was never intended, and it made no claim, to deal with "personal injury actions" generally. I would assert, therefore, that the book does exactly what it says on the cover, and it is precisely because the 1961 and 1964 acts are "of relevance to the proliferation of personal injury actions" that the publishers thought it worthwhile to include those acts in its series.

The fact that it is part of the *Annotated Legislation* series dictates its format. To criticise the author as to matters such as font size and spacing betrays an ignorance of the author-publisher relationship. Unless both are one and the same, no responsibility can be laid at the door of the former as to publishing decisions the latter takes.

Finally, I would like to comment on the reviewer's description of the subject matter of the 1961 and 1964 acts as "turgid", an adjective that is defined in the *Concise Oxford Dictionary* as "1. swollen, inflated, enlarged; 2. (of language) pompous, bombastic." The reviewer is perfectly entitled to describe my prose style in that manner, which thankfully he does not, but to describe the issues of concurrent fault, survival of actions on death and fatal injuries in that way is astonishing. I accept that the draftsmanship in the 1961 act has been criticised judicially (see, for instance, *McCarthy J in Murphy v J Donohoe Ltd* [1992] ILRM 378, 394), but the act has also been described by a leading Canadian academic as being a statute of "unique detail and complexity" (see Kutner (1985) 63 Can Bar Rev 1, 3).

I trust that this letter will be given as much prominence as the review was given. **G**



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AIR WARS

As Ryanair trains its guns on the newly-liberated Irish flag carrier, doubts have been raised about the legality of the invasion in terms of both Irish and European competition law. Imogen McGrath takes aim

The proposed takeover of Aer Lingus by Ryanair represents what could be the first acquisition of a traditional national airline by a low-cost carrier in Europe.

According to an ABN Amro report, the combined airline would have 26 overlapping city pairs at present and a market share of 80% in the top five European markets from Ireland: Britain, France, Spain, Germany and Italy. But what is the likelihood of regulatory approval by the relevant competition authority of an acquisition of a controlling stake in Aer Lingus by Ryanair?

The phantom menace

The proposed takeover meets the turnover thresholds for examination by the European Commission under the EC *Merger Regulation* (ECMR), and is thus a transaction with a European dimension. It must be referred to the commission prior to the implementation of the offer, but following the announcement of the public bid. Generally, when the European Commission is notified of a large merger, pursuant to the ECMR, the commission has exclusive jurisdiction over the merger. However, the commission may decide to remit part of the merger that affects the member state back to the appropriate national merger control authorities under article 9 of the ECMR. A member state may inform the commission that a merger threatens competition in a market that presents all the characteristics of a distinct market. In order to be considered distinct, the geographic market must be national, or narrower than national, in its scope. The commission approaches such referrals with reluctance, on the basis that they fragment the system and undermine the objective of a 'one-stop shop' for merger control.

Given that it has been held that an airport, in itself, constitutes a substantial part of the common market (see, for example, *Brussels Airport* and *Aéroports de Paris v Commission*), it would appear difficult for the Competition Authority to effectively argue that a deal between two European airlines with a pan-European effect constitutes a distinct market. If the European Commission

decides not to exercise its right of referral, then the Competition Authority may still play a role in the investigation as part of an advisory committee.

Until recently, consolidation in the European airline industry has generally taken the form of alliances that do not involve a change in ownership. It could be said that Air France/KLM was the first real merger in the European airline industry.

The empire strikes back

Under the ECMR, the commission asks whether the proposed concentration would "significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or the strengthening of a dominant position". On initial investigation of a notification (phase I), the commission assesses whether the proposed transaction raises "serious doubts" as to its compatibility with the ECMR. If there are serious doubts, then the commission proceeds to a phase II investigation. The commission can prohibit the transaction, approve it subject to certain conditions, or approve it unconditionally. In phase II, the commission sends a statement of objections to the parties, setting out the reasons why it believes the proposed transaction may be incompatible with the ECMR. The parties have the option of a formal hearing before the commission, and third parties may be invited to attend and make written submissions, provided they have sufficient interest.

In order to assess whether a concentration creates or strengthens a dominant position, the commission must first define the relevant market (Case 6/72, *Europemballage*). The *Air France/KLM* decision provides the basic framework for a competition assessment of the proposed takeover. To define the relevant product market in *Air France/KLM*, the commission carried out an analysis of demand-side substitution. Its view was that, in the case of passenger air transport, the product market should be defined according to the origin and destination method, whereby each route between a point of origin and a point of destination is treated as a separate market (see also Case 66/86, *Ahmed Saeed Flugreisen*).

MAIN POINTS

- Ryanair and Aer Lingus
- EC merger control and the air transport industry
- The Antipodean experience



MERGER AUTHORISATIONS IN OTHER JURISDICTIONS

Given the global nature of the airline industry, merger authorisations outside the EU can also be useful in gauging competitive effects. In particular, the *Qantas/Air New Zealand* decisions are relevant, in that they show the potential effect of airline mergers in countries greatly dependent on air transport. In December 2002, Qantas and Air New Zealand applied to the Australian Competition and Consumer Commission (ACCC) for authorisation of Qantas' proposed acquisition of a 22.5% voting interest in Air New Zealand, and for Qantas and Air New Zealand to enter into agreements to coordinate their activities with respect to all passenger and freight services on Air New Zealand flights, and all Qantas flights to, within and from New Zealand. In order to proceed, the parties needed regulatory approval from both the Australian and New Zealand authorities. Ultimately, the transaction was approved, with conditions, in Australia but prohibited by the New Zealand Commerce Commission (NZCC), and a subsequent appeal to the High Court of New Zealand was unsuccessful.

In September 2003, the ACCC refused the request for authorisation and the parties applied to the Australian Competition Tribunal for a review of the decision. The tribunal used a 'future with or without test' to consider the public benefits and anti-competitive detriments that would be likely to flow from authorisation. In relation to the trans-Tasman air passenger services market, the tribunal found that, notwithstanding the substantial combined market share of approximately 80%, there would be little anti-competitive detriment. The tribunal considered that, with the exception of the time-sensitive passenger, any attempt by Qantas and Air New Zealand to act jointly in an anti-competitive way would be constrained by two airlines in particular – Pacific Blue and Emirates. The tribunal was satisfied that

Pacific Blue and Emirates, holding only relatively small but increasing market shares, would act as a constraining influence upon the parties, as they had available capacity and cost advantages that would enable them to attract travellers. The tribunal emphasised that competition in the relevant markets had changed significantly since the ACCC's refusal to authorise due to the increased presence of Emirates and Pacific Blue.

At the same time as Qantas and Air New Zealand applied to the ACCC for authorisation, they also made similar applications to the NZCC. The NZCC had to determine whether the share purchase agreement would be likely to have the effect of substantially lessening competition. The NZCC's approach was similar to that of the ACCC, in that it assessed the factual (the future with) and the counterfactual (the future without). The NZCC held that, in most of the markets, the main anti-competitive effect stemmed from the reduction in the number of competitors from three to two or from two to one. The NZCC conducted quantitative economic modelling of individual markets that showed that the travelling public could face airfares that were up to 19% higher, as well as reduced quality of service and fewer flights. The NZCC found that an increase in the price of airfares would result in a net decrease in foreign tourists. In terms of inefficiencies, the NZCC determined that:

- The value of travellers who would no longer take a flight because of the fare rise would be lost to the economy (allocative inefficiency),
- The joint airline would be less efficient in reducing costs without a real competitive restraint (productive inefficiency), and
- The combined airline would less likely to be innovative in purchasing new products or finding lower-cost ways of producing existing products (dynamic inefficiency).

It is interesting to note that the commission did not find that the possibility of dividing the product market further between time-sensitive and non-time-sensitive travellers affected the overall finding of substitutability. Time-sensitive travellers require convenient time schedules and greater ticketing flexibility, such as business customers. Non-time-sensitive travellers tend to travel for leisure purposes, are flexible and attracted to lower fares rather than convenient schedules, making them more amenable to travel with low-cost carriers.

In terms of the geographic market, the commission observed in *Air France/KLM* that what determines the geographical substitutability is not the distance of two airports from a particular city, but rather the time taken to reach the city centre. The commission found that Charles De Gaulle (CDG) and Orly were substitutable destinations, despite the applicant's arguments that CDG is used mainly for long-haul flights whereas Orly concentrates on short-haul flights.

The commission considered that the Air France/KLM merger affected potentially all city pairs between the Netherlands and France. One of the central city pairs that fell to be analysed was the Paris/Amsterdam route, which has the Thalys train as a form of inter-modal substitute. The commission ultimately found that, although the deal would create the largest airline group in Europe, the companies'

networks were largely complementary: Air France was present in Southern Europe and Africa, whereas KLM was prominent in Northern Europe and the Far East.

However, despite the merger being largely complementary, the commission found that the transaction would eliminate or significantly reduce competition on 14 routes on which the parties competed actively or potentially. Accordingly, the parties offered undertakings to remedy the anti-competitive effects of the merger.

The commission's experience in the field of airline alliances shows that the main barrier to market entry lies in the scarcity of take-off and landing rights at the highly congested European airports. In *Air France/KLM*, the parties surrendered 47 pairs of slots (that is, 94 single take-off and landing slots) per day to overcome the commission's concerns. The undertaking on slots was also accompanied by measures requiring the airline partners to refrain from increasing their offer of flights ('frequency freeze') on the affected routes to give new entrants a fair chance to establish themselves as credible competitors. The Court of First Instance upheld the commission's approval of *Air France/KLM* in *Easy Jet v Commission*.

A new hope

At this stage, it is not possible to definitively predict the outcome of a notification of the proposed takeover

to the commission. It is understood that Ryanair intends to retain the separate corporate identities of the airlines and does not envisage partaking in the management of Aer Lingus. Nonetheless, the commission is likely to rigorously examine the proposed transaction during the course of a lengthy phase II investigation, due to the high market shares in certain markets.

In terms of market definition, the commission may find that, considering destinations from a demand side, Ryanair and Aer Lingus are competitors on the London routes. Accordingly, competition on those markets could suffer in the absence of behavioural and structural remedies if both airlines were owned by the same entity. Similar considerations apply to other overlapping routes.

The major hurdle that Ryanair would face is convincing the commission that market entry was possible post-acquisition. The shortage of slots and airport infrastructure in Dublin would undoubtedly be a significant problem for new entrants. Even in the present market structure, it is difficult to obtain terminal capacity at Dublin Airport on appropriate commercial terms as well as gaining access to gates, check-in counters, maintenance facilities, baggage-handling facilities and slots. If Ryanair were the dominant carrier at Dublin, it could rearrange take-off and landing schedules to its own convenience. This would increase Ryanair's hub dominance in Dublin Airport and strengthen its position for the purchase of airport services (for example, catering and ground handling).

In terms of any pro-competitive effects of the proposed takeover, Ryanair may argue that it would combine purchasing of aircraft with Aer Lingus to drive down costs, which would be passed on to consumers. However, it is suggested that it may be difficult to obtain reliable economic evidence of these trickle-down benefits to consumers.

As distinct from the *Air France/KLM* decision, the commission may consider that the fact that the proposed takeover is of a national carrier by a low-

LOOK IT UP

Cases:

- Case 6/72, *Europemballage and Continental Can v Commission* [1973] ECR 215
- Case 66/86, *Ahmed Saeed Flugreisen and Others* [1989] ECR 803,
- Case T-30/89, *Hilti v Commission* [1991] ECR II-1439
- Case T-128/98, *Aéroports de Paris v Commission* [2000] ECR II 3929
- Case T-177/04, *Easy Jet v Commission*, judgment of CFI of 4 July 2006
- Case No COMP/M 3280, *Air France/KLM*
- *Qantas Airways Limited* [2004] ACompT9, judgment of 16 May 2005

Legislation:

- Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the *Merger Regulation*)

Literature:

- *Brussels Airport*, OJ 1999 L216/8
- Commission notice on case referral in respect of concentrations, OJ C 506 p 02-23

cost carrier increases the anti-competitive effects. Low-cost carriers are particularly effective in exerting price constraints on national carriers with legacy costs, and the loss of this constraint could be taken into account by the commission. Equally, the commission might decide that the effect on the time-sensitive passenger is more influential when the proposed takeover is of a national carrier by a low-cost carrier.

It would be open to the Competition Authority and interested third parties to adopt arguments before the commission similar to those offered by the NZCC in *Qantas/Air New Zealand* regarding the potential anti-competitive effects of the proposed takeover (see panel). On the proposal at present, it seems that the commission would either prohibit the transaction or require both airlines to enter into a package of remedies, divesting slots and reducing frequencies to encourage effective new entrants. **G**

Imogen McGrath is a Dublin-based barrister.



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Justice DENIED?

The courts have become less tolerant of delays in litigation, and all those involved need to be aware that delays in progressing cases may prove to have fatal consequences for the proceedings. Martin Canny starts his stopwatch

The consequences of delays in litigation have greatly exercised the judiciary in recent years. While the decision of the Supreme Court in *Primor plc v Stokes Kennedy Crowley* effectively settled the law in this jurisdiction a decade ago, the passing of the *European Convention on Human Rights Act 2003* has led to established precedents being reopened and previously accepted norms challenged.

Applications to dismiss

The *Rules of the Superior Courts 1986* set out the basic time limits for progressing civil claims in the High Court. After a plenary summons is issued and served and an appearance entered, order 20, rule 3 of the *Rules of the Superior Courts 1986* stipulates that a statement of claim must be delivered within 21 days, upon the defendant's request. Thereafter, the plaintiff must seek the consent of the defendant for late delivery of his statement of claim or apply for an extension of time pursuant to either order 63, rule 1(5) or order 122, rule 7.

Running in parallel with these, order 27(1) provides that if a statement of claim is not delivered within the time allowed, a defendant may apply to dismiss the action for want of prosecution. This rule (as amended by the *Rules of the Superior Courts (Order 27 Amendment) Rules 2004* [SI no 63 of 2004]) provides that, on the hearing of the first motion to dismiss, the court may make such order as it sees fit, but that if a second motion to dismiss is necessitated, then the court may only grant a further extension of time if it is satisfied that "special circumstances (to be recited in the order) exist which explain and justify the failure". This new rule has been interpreted as requiring that such circumstances be contained in a replying affidavit. While the *Civil Liability and Courts Act 2004* now requires a single personal injury summons in personal injuries cases, all other cases will still require both a plenary summons and statement of claim.

The rules also provide that a defendant may apply to dismiss proceedings for want of prosecution for failure to serve a notice of trial within six weeks of the close of pleadings (order 36, rule 12) or if there is no proceeding for two years (order 122, rule 11). The Master of the High Court has jurisdiction to entertain any of the above motions to dismiss for want of prosecution by virtue of order 63, rule 1(8).

The modern test

Notwithstanding the above time limits, the courts have always retained for themselves the ultimate power to decide on whether a case should be dismissed for want of prosecution. In *Primor*, the Supreme Court held that for proceedings to be dismissed on this ground, the applicant must show that there had been "inordinate and inexcusable" delay in progressing the case, and that the "balance of justice" lay in favour of dismissing the proceedings.

The factors relevant to the "balance of justice" gave the court a wide discretion to decide on the application before it; however, they have also made the result of such a balancing act hard to predict. Ultimately, unless the delays imperilled a fair trial, the starting point was always that the dismissal of a plaintiff's case was *prima facie* unjust. A defendant who had a good defence would not lose the case no matter when the trial occurred: taken together, it was often the case that more injustice would occur if a culpable defendant was let escape from the consequences of his acts. But times move on, and the courts have a new rigour in dealing with delays in litigation.

In assessing whether proceedings should be dismissed, many factors have been relied on by the courts. Several of the factors found to be relevant are:

- **The nature of the claim and the probable issues to be determined by the court.** It is perhaps a truism to say that in considering an application to dismiss, the particular facts of the case must be examined. Two elements are particularly important:



first, whether factual issues will have to be determined or only legal issues and, second, whether the hearing of the case will focus primarily on documentary evidence or oral evidence. The fact that liability had been admitted, and that the case would proceed as an assessment only, was perhaps crucial to the Supreme Court not dismissing the plaintiff's claim in *Gilroy v Flynn*.

- **Prejudice to the defendant.** If a defendant can establish that delays since the commencement of proceedings have prejudiced him, he stands a strong chance of having the proceedings dismissed. Such delays can, in particular, relate to witnesses who have died and documents that are lost. A general prejudice in respect of fading memories is also recognised. Thus, in *Rogers v Michelin Tyre plc*, Clarke J dismissed such part of the plaintiff's claim as would depend on the court having to decide on competing versions of conversations that had occurred ten years previously (including more than six years of total inactivity from late 1997). However, the part of the claim that would be based

on an interpretation of documents that were still in existence was allowed to proceed.

- **The importance of the case to the plaintiff and the relative financial strength of the parties.** The "dire consequences" of dismissing his claim was perhaps the crucial factor relied upon by Finlay P in *Rainsford v Limerick Corporation* when he allowed the plaintiff's claim to proceed. This factor has somewhat fallen out of favour in recent years, with the Supreme Court, in *Keogh v Wyeth Laboratories Inc*, saying that "the fact that the defendants may be large multinational pharmaceutical companies does not mean that they are not entitled to a consideration of fairness by the court".
- **Whether a plaintiff should be held vicariously liable for delays caused by his legal advisers.** This is another factor that was relied upon in several of the earlier cases as weighing against the dismissal of proceedings. In *Rainsford*, a five-year delay in delivering a statement of claim was found not to be so excessive to justify dismissing proceedings, as the plaintiff's solicitor was in very poor health for most of that period. However, the effectiveness of this excuse may be waning and, in *Rogers*, Clarke J said: "In a case where the entire responsibility for delay rests upon a professional advisor, the court can and should take into account the fact that the plaintiff may have an alternative means of enforcing his or her rights."
- **The conduct of the defendant in 'letting sleeping dogs lie'.** While some cases have held that the failure to apply to have proceedings dismissed at an earlier stage is a factor that weighs against acceding to the application, in *Rogers* a distinction was drawn between "active delay", for example, delays by a defendant in replying to particulars and so on, and "inactive delay". As regards the latter, Clarke J said that this "is a factor to which much less weight attaches".

MAIN POINTS

- Delay
- New approach of the courts
- Applications to dismiss for want of prosecution

THE CHANGING LANDSCAPE

The *European Convention on Human Rights Act 2003* has already started to make a difference to how delays in litigation are dealt with. The right to a fair trial is guaranteed by article 6 of the convention, which states: "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal."

In some ways *Gilroy v Flynn* may be seen as the last of the 'old' cases that were sympathetic to dilatory plaintiffs. Despite extending time for the delivery of a statement of claim in the case before him, Hardiman J said that "comfortable assumptions on the part of a minority of litigants of almost endless indulgence must end. [The older cases] will fall to be interpreted and applied in light of the countervailing considerations ... and may not prove as easy an escape from the consequences of dilatoriness as the dilatory may hope. The principles they enunciate may themselves be revisited in an appropriate case".

More recently, Clarke J in *Stephens v Paul Flynn Ltd* said: "The weight to be attached to various factors in the assessment of the balance of justice may need to be significantly re-assessed and adjusted in the light of the conditions now prevailing. Delay which would have been tolerated may now be regarded as inordinate. Excuses which sufficed may no longer be accepted. The balance of justice may be tilted in favour of imposing a greater obligation of expedition and against requiring the same level of prejudice as before."

In *Crowley v Roche Products (Ireland) Ltd*, Master Honohan

discussed the effect of the convention in some detail, and several decisions of the European Court of Human Rights were discussed. It may come as something of a surprise to the ears of Irish lawyers to hear that in *Zimmerman v Switzerland*, proceedings that took from April 1977 to October 1980 were held to have violated article 6(1). Similarly, in *Guincho v Portugal*, the length of proceedings up to judgment of three years and ten months was held to have been *prima facie* unreasonable.

The crucial question of 'how long is too long' is not easy to answer. Each case depends on its own facts, its own difficulties and complexities. However, an examination of the decided cases is still of some use. In *Gilroy v Flynn*, a delay in delivering a statement of claim of four-and-a-half years after the accident and one-and-a-half years after the plenary summons was issued (during which time a motion to dismiss was brought and time extended on consent) was accepted as being inordinate and inexcusable.

Some guidance as to what may in future be regarded as unacceptable delay was offered in *Crowley*, where Master Honohan said the following: "It would be difficult to argue that 'delay' for the purposes of article 6 of the convention ought to be measured by some entirely different yardstick. In short, updating *Rainsford/Primor* to 21st century litigation conditions, I propose to regard a delay of three years from the accrual of the cause of action as a *prima facie* breach of the defendant's rights under the convention, no matter what the excuse is."

LOOK IT UP

Cases:

- *Biss v Lambeth, Southwark and Lewisham Health Authority* [1978] 1 WLR 382
- *Crowley v Roche Products (Ireland) Ltd* [2006] IEHC 6 (unreported, Master Honohan, 20 January 2006)
- *Gilroy v Flynn* [2004] IESC 98, [2005] 1 ILRM 290
- *Guincho v Portugal* (1984) 7 EHRR 223
- *Keogh v Wyeth Laboratories Inc* [2005] IESC 46, [2005] 2 ILRM 508
- *Primor plc v Stokes Kennedy Crowley* [1996] 2 IR 459
- *Rainsford v Limerick Corporation* [1995] 2 ILRM 560 (31 July 1979)
- *Rogers v Michelin Tyre pl.* [2005] IEHC 294 (unreported, High Court, Clarke J, 28 June 2005)
- *Stephens v Paul Flynn Ltd* [2005] IEHC 148 (unreported, High Court, Clarke J 28 April 2005)
- *Zimmerman v Switzerland* (1983) 6 EHRR 17

Legislation:

- *Civil Liability and Courts Act 2004*
- *European Convention on Human Rights Act 2003*
- *Rules of the Superior Courts 1986*

- **Whether the conduct of the defendant has caused the plaintiff to incur further expense.** While this factor was expressly referred to in *Primor*, it has provided little succour to plaintiffs either in that case, where extensive and costly discovery had been made, or in other cases such as *Rogers*, where expenses incurred in re-activating a dormant case were excluded from the consideration of the balance of justice.
- **Prejudice to a defendant by reason of proceedings being ongoing.** This kind of prejudice recognises that the mere fact that litigation is ongoing can amount to prejudice, and has been found to apply with particular force to professional defendants against whom litigation is outstanding for a long period (see *Biss v Lambeth, Southwark and Lewisham Health Authority*).

Fatal consequences

In recent years, the courts have become less tolerant of delays in litigation, a trend that has been accelerated by the passing of the *European Convention on Human Rights Act 2003*. Even if a defendant cannot point to any prejudice, the recent case law shows progressively less tolerance to delays in litigation, and convention case law may require the courts, after a certain cut-off period, to accede to the application unless a plaintiff can show good reason to the contrary. **G**

Martin Canny is a Dublin-based barrister.



Division of LABOUR

An increasing number of employment malpractice claims have been brought by foreign workers. So what should solicitors who are not specialised employment or tax lawyers look out for? Richard Grogan has the answers

When acting for an employer in a claim by a foreign worker, it is worth asking three simple questions. First, does the foreign worker have a legitimate claim?

This may appear self-evident, but an understanding of the relevant employment legislation and the appropriate registered employment agreements (REA) and Joint Labour Council orders (JLCs) are required to answer this. If the answer is 'yes', a second question arises: are you acting for an employer who is simply incompetent and did not know his/her obligations? Before answering that question, it is worth considering the third question: namely, are you acting for a serial discriminator and possibly a tax evader/social welfare fraudster?

When acting for an 'incompetent' employer, the practitioner should be aware of the more common tax evasion/social welfare frauds being perpetrated,

and the employment malpractices that result. (For obvious reasons, the more sophisticated schemes are not set out here.) It is evident that some of the more 'bargain basement' schemes are being widely used and are being missed by some practitioners. Failing to recognise these can result in significant extra sums in compensation when acting for what is simply an 'incompetent' employer. If you are unlucky enough to act for a serial discriminator, you could be entering into the murky area of tax evasion and social welfare fraud.

Wages of labour

When dealing with a claim by a foreign worker, a starting point is to assume the employee has a good claim. Foreign workers who do not come from an English-speaking background are paid, on average, 19% less than a comparable Irish worker. Where the foreign worker has poor English, they are generally

MAIN POINTS

- Employment malpractice claims
- Exploitation of foreign workers
- The employer's defence

“It is always better to be the ex-solicitor of a tax evader to whom you showed the door, than opening your door to a Revenue investigation”

paid 29% less than an Irish worker with similar skills. These are the facts. There is also a general misconception by employers that, because a foreign worker may have poor English, they do not understand their rights. A recent article in the *LRC Review* highlighted the fact that foreign workers in Ireland are twice as likely to have a third-level qualification than Irish workers. Even where the foreign worker has poor English, they will have access to the internet. The Department of Enterprise, Trade and Employment website has a number of publications in different languages explaining basic employment-law rights. The workers themselves, because they are part of a tightly-knit group, easily find out which lawyers and other advisors have acted for friends. The industries where abuse is most rampant are in the areas of construction, security, hospitality and transport.

This article looks at the issues from the point of view of a solicitor who is not a specialised employment or tax lawyer acting in the defence of an employer, but a solicitor bringing a claim for a foreign worker should generally be looking for similar information. The starting point of any case is to ask to see a copy of the employee's contract. The fact that there might be no employment contract is never conclusive. Irish employers are notoriously bad at issuing contracts. Saying that, if the employment is covered by an REA or a JLC, ask where this is exhibited in the workplace. Go through section 3 of the *Terms of Employment (Information) Act*. The answers to these questions should identify to you whether you are dealing with simply an incompetent employer or a serial discriminator. The longer an individual has been in business, the more likely they are to have contracts of employment and the more it should worry you if these are not readily available.

Next, look for the payroll records. By this, I mean copies of P60s, P45s and the P35 returns. You should also be looking for all the payslips of the employee in question and checking the figures off against the tax and PRSI returns. If acting for the employee, check with the Revenue and the social welfare department. If the employee is covered by any of the provisions of an REA or JLC, you should be checking what the hourly rate of pay is and whether they are, at a minimum, receiving the minimum payment for the standard minimum number of hours. If they are not covered by any of these, you need to check whether the employee has received at least the national minimum wage of €7.65 per hour.

Where an employer is covered by an REA or JLC, a common excuse or justification for paying less is that the employee agreed a lesser rate with the employer. This ‘excuse’ is regularly trotted out by those representing employers. It is important to understand that this is *not* a defence. A JLC or REA rate of pay is legally enforceable. Ignorance of the law is no defence. Some continue to believe that this

is a novel excuse. The new method of underpaying foreign workers, used extensively in the construction industry, is to claim that the individual was not an employee but rather was a self-employed contractor. Running this particular defence is not one for the faint of heart. I like to term this the new ‘bargain basement evasion scheme’ for both employment law rights and tax and social welfare legislation.

If you are asked to run this defence, look at the case of *Henry Denny & Sons Limited* and the Revenue publication IT63, *Guide for Principal Contractors*, along with the case of *BATU v The Labour Court*, before you jump into the abyss. Run the ‘self-employed contractor defence’ without being absolutely clear you can prove the case, and a competent solicitor on the other side will probably get enough to get a reclaim of the relevant contracts tax deducted, along with landing your client in an investigation for tax evasion and social welfare fraud, on top of an award for lost pay.

Profit of capital

Messing about in boats may have become popular due to the prosperity of the Celtic Tiger. Messing about with payslips is also a common occurrence, particularly where certain payments can be made tax-free. This form of abuse has a financial benefit to the employer. It involves describing part of the wage as a non-taxable expense. In certain industries, and, in particular, the construction industry, there are certain expenses that can be paid tax-free. The employer can thereby reduce the hourly rate of pay so as to give the foreign employee the same ‘net’ as if the person had been paid the proper rate of pay and, in addition, can save the PRSI at 10.5% on the amount that is falsely classified as a non-taxable payment. In, for example, the REA for the construction industry, there is a requirement to pay an amount at various rates for a minimum of 39 hours per week. Non-taxable amounts are not included in calculating this gross figure. If you are asked to claim on behalf of a client that this should be included, then you effectively have to admit tax and social welfare fraud. If the employer is not inclined to admit tax and social welfare fraud, then you are left in a situation of having an underpayment of wages. The lesser evil for the employer is clearly to admit an underpayment. This particular fraud is endemic.

Another area of abuse is the issue of employees working in excess of 48 hours per week. The ‘48-hour per week’ week is not just start-to-finish times: break times are excluded. For an employee working five days a week, 50 hours a week (for the purposes of the *Organisation of Working Time Act*) they will be at work for in excess of 11 hours a day. If you see a claim under the *Organisation of Working Time Act* for having worked excessive hours, or not having received appropriate breaks, it is important to look for the working-time records. There is a

legal obligation to maintain these records, but Irish employers are very bad at keeping them. Saying this, most employers have some record. A check of the payslips may be useful. Checking the hourly rate of pay as against the gross may indicate excessive working hours.

Employers who underpay statutory rates of pay will normally pay the hours worked. They may believe that the foreign worker will not know what the proper rate of pay is, but rarely will they believe that the employee will not know how many hours they worked. A usual defence that is put forward is that the worker "requested extra hours". This is not a defence. There is no opt-out provision unless covered specifically in the legislation, or by way of a collective agreement registered with the Labour Court.

The evidence to date is that a lot of foreign workers will bring a claim against the employer after the job has finished. An employer is more likely to face a discriminatory dismissal claim than an unfair dismissal claim. There are two reasons for this: first, in many cases, the foreign worker may not have the requisite length of service. Second, the foreign worker may obtain a new job relatively quickly after leaving their original employer. There is, however, a worrying trend: when a foreign worker who is still in employment brings a claim, a number of them will be immediately dismissed. For this reason, a number of solicitors acting for foreign nationals will, nearly as a matter of course, issue an equality claim. If the employer then reacts by firing the worker, a victimisation dismissal claim will issue.

Estranged labour

There are a huge number of foreign nationals working in this country. Some 200 are coming every day. In 2005, some 5,000 cases were submitted to the Rights Commissioner Services. I understand that, as of September 2006, more than 5,000 cases have been submitted this year alone. An increasing number of these claims have been brought by foreign workers. This reveals an epidemic of abuse, fuelled by greed, incompetence or both.

As solicitors, we may come across employers who are involved in tax evasion and social welfare fraud by virtue of their incompetence in structuring matters properly. More often than not, tax evasion and social welfare fraud is premeditated by its very nature. For solicitors defending against claims by foreign workers, it may be an area that the solicitor does not specialise in. The employer may be a big client of the firm. The solicitor may be more used to dealing with licensing issues for a hotel or conveyancing issues for a builder. Failing to identify whether you are dealing with a simple incompetent or a serial discriminator, and possibly a tax evader and social welfare fraudster, is often a fine dividing line. If you are dealing with an incompetent, you should be educating your client as quickly as possible, admitting the default at the earliest



Abuse is rampant in the hospitality industry

possible date, recalculating the employee's entitlement, and communicating this in open correspondence to the other side and to the Rights Commissioner Service.

The Rights Commissioner Service is part of the industrial relations process. They are there to resolve disputes. Defending the indefensible or putting forward some form of 'novel' defence is probably not going to do the employer any good at all. Most of the defences are tried, tested and have already failed. If you are involved with an employer who is involved in serial discrimination of foreign workers, then, before you act or decide to continue to act, it might be worthwhile asking what remedial action the employer wishes to take to ensure that issues such as this do not happen again. Depending on the answer you receive, it may determine whether this is a client that you really want in your office. If you are dealing with an employer who is involved in tax evasion and social welfare fraud, then you need to consider the guidelines on money-laundering legislation and how they affect you. If they are involved in tax evasion involving employees, you can be assured that this is not the only evasion they are involved in. You can never be sure with an evader just how they will try to draw you into their evasion scheme.

My advice is to give the employer two choices. The first is to rectify the abuse, compensate the employee and disclose the practises to the relevant tax authorities, discharge the underpayments and regularise issues for the future. The second is to change solicitors. There is legislation as to what your obligations are. It is not as draconian as my advice, but we – as a profession – really only have our good names to trade on. No client is worth your good name. It is always better to be the ex-solicitor of a tax evader to whom you showed the door, than be the solicitor that opens the door to a Revenue investigation that you may get sucked into. **G**

Richard Grogan is a partner in PC Moore & Co Solicitors, Dublin.

LOOK IT UP

Cases:

- *Building and Allied Trades Union and Scott, Valentine v Labour Court* [2005] IEHC 109; unreported
- *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare* [1998] 1 IR 34

Legislation:

- *Organisation of Working Time Act 1997*
- *Terms of Employment (Information) Act 1994 and 2001*

Literature:

- Revenue publication IT63, *Guide for Principal Contractors*

ELECTRIC picnic

The idea of secure, paperless, electronic conveyancing transactions is surely the stuff of science fiction? Gabriel Brennan defies the sceptics and argues that e-conveyancing transactions are in the offing

Given the amount of paperwork inherent in any conveyance, the idea of secure, paperless, electronic end-to-end conveyancing transactions seems like a fairytale. However, electronic conveyancing – or e-conveyancing – is now a reality in some countries.

Ontario has successfully implemented a system of electronic conveyancing called e-reg. The system deals with 42 million transactions a year, and 98% of documents are now submitted electronically to Teranet – the private partner in the public/private partnership in operation in Ontario. As BearingPoint (consultants to the Law Reform Commission) have pointed out, Ontario's system is recognised as the most progressive electronic conveyancing solution currently in operation. It is widely acknowledged as a reference source for new e-conveyancing solutions in other jurisdictions. It is the closest 'end-to-end' e-conveyancing operation in existence and incorporates all the essential elements required for such a system. These include online searching and mapping, online interaction with lenders and other solicitors, and online payment of tax and purchase money. All documents in the process are created, modified, submitted, registered and maintained in electronic form.

Other jurisdictions are attempting to emulate this system. A system of electronic conveyancing is currently being developed in England and Wales – though, unlike Ontario, this project is being led and

financed entirely through the Land Registry. The Land Registry and the Law Society of England and Wales have entered into a memorandum of agreement, agreeing to co-operate and work together on the project and to run joint education and training programmes. Key to their system is the creation of a 'notional register'. This enables the stakeholders to preview what the land register will look like if registration proceeds. Thus errors in the documentation or unresolved issues can be identified and remedied prior to closing.

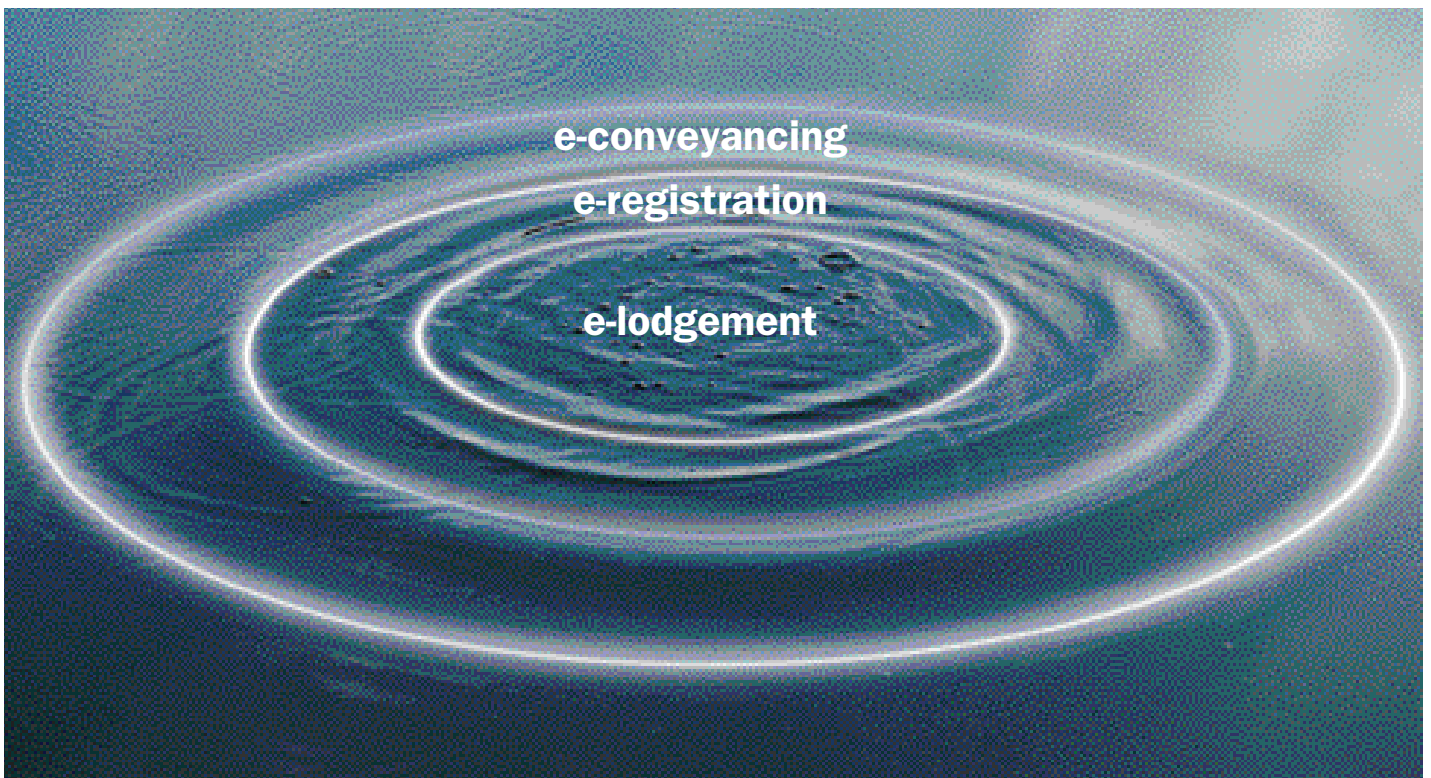
New Zealand and Australia have taken the view that the development of an end-to-end e-conveyancing process may not be possible and, instead, have developed only some elements of an electronic system. In South Africa, e-conveyancing has been driven by the private sector. A company called L@W is the leading firm with the largest number of subscribers in its sphere. It provides an electronic platform for communication and interaction between solicitors, lenders and other stakeholders. This firm is currently in negotiations with some Irish lenders about the possibility of introducing electronic mortgage packs and making it easier for solicitors to communicate with lenders.

Simple minds

Some jurisdictions have carried out a fundamental review and simplification of the whole conveyancing process as the essential prerequisite for an electronic conveyancing system to work effectively. Others

MAIN POINTS

- **Electronic conveyancing**
- **Ireland's e-conveyancing strategy**
- **Current progress**



have merely put existing processes into electronic form. Many have converted parts of their conveyancing process to electronic means while others have electronified their entire conveyancing process. As a result, how electronic conveyancing operates varies from place to place. Some allow the lodgement of documents online (e-lodgement), others apply computer technology to the registration of title (e-registration). Some systems, such as Ontario's, have a broader scope and are true systems of e-conveyancing: applying technology to all aspects of the conveyancing process.

Despite the varying forms of e-conveyancing being adopted around the globe, many jurisdictions have encountered similar issues when developing an e-conveyancing strategy. These include:

- How to ensure stakeholder involvement and confidence in the process,
- How to balance the public and private interests,
- Whether to carry out a fundamental review and simplification of the whole conveyancing process and, if so, how to do this,
- How to finance the process,
- How and when to roll out the project,
- When to make the process compulsory.

These issues and many other factors are examined in some detail in the BearingPoint report, appended to the Law Reform Commission Report *eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006).

The genesis of this report lies in a review by the Law Reform Commission of its work on the reform of land law and conveyancing law carried out in 2001. At that time, the LRC decided to build on its previous work by developing a comprehensive project of reform and modernisation of land and conveyancing law that would ultimately lead to a system of electronic conveyancing. In 2002, the LRC established a working group to look at the feasibility of introducing such a system in Ireland and launched its e-conveyancing project in 2003. This project involves three strands: substantive law, administrative issues, and procedural matters.

Promised you a miracle

In late 2003, the LRC established a joint project with the Department of Justice, Equality and Law Reform to review substantive land law and conveyancing law with a view to its reform and modernisation. This project identified over 150 pre-1922 statutes requiring reform. The proposed changes were set out in a consultation paper entitled *Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004). This paper suggested that many statutes be repealed and others re-drafted to reflect current practice. The consultation process resulted in the publication of the LRC report of the same title, published in July 2005 (LRC 74-2005). This report included a draft *Land and Conveyancing Bill 2005*. This bill, when enacted, will repeal or replace, in a single piece of legislation, the law contained in over

PROPOSED 'VISION STATEMENT' FOR E-CONVEYANCING IN IRELAND



150 pre-1922 statutes, the earliest of which is the *Statute of Westminster II 1285 (De Donis Conditionalibus)*. This draft bill is now the *Land and Conveyancing Law Reform Bill 2006* (no 31 of 2006), which is currently before the Seanad.

The administrative strand involves an examination of the administrative aspects of the conveyancing process. It examines how information technology is used in current conveyancing transactions and how information is transmitted between the various stakeholders. The procedural strand is examining the procedural aspects of the conveyancing process – it overlaps considerably with the administrative strand. It means looking at each step in the conveyancing process to see how that step could be carried out electronically.

In order to progress these strands of the e-conveyancing project, the LRC decided to carry out a thorough analysis of current conveyancing practice and examine the state of readiness of stakeholders for electronic conveyancing. In 2005, BearingPoint were appointed consultants to carry out this study. The

result, published in April this year, is *eConveyancing: Modelling of the Irish Conveyancing System*. The report contains three main elements:

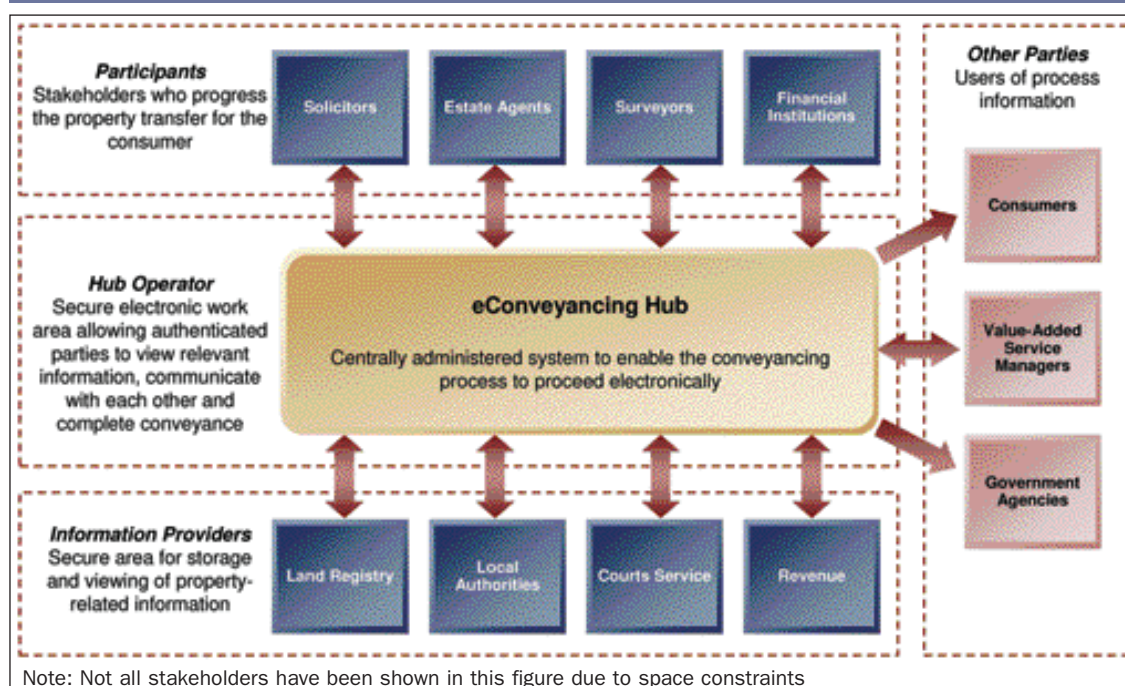
- A process module of the entire conveyancing transaction,
- An analysis of the role of the various stakeholders and their state of readiness for e-conveyancing, and
- A vision and strategy for e-conveyancing, together with a roadmap of how to achieve it.

While the LRC report only runs to 48 pages, the BearingPoint report (appended) contains 180 pages of detailed information and multi-level process maps. These maps represent the current conveyancing process, roadmaps for change and process models for developing an Irish system of electronic conveyancing. BearingPoint proposes both a vision and a model of e-conveyancing for Ireland.

At the centre of this model is an e-conveyancing hub. This would act as a central operator, with individual stakeholders providing services to it, in order to support the operation of the complete

“BearingPoint has identified that the Law Society will have a vital role to play in improving and endorsing changes to the current conveyancing processes”

OVERVIEW OF THE FUTURE E-CONVEYANCING MODEL



Note: Not all stakeholders have been shown in this figure due to space constraints

transaction by electronic means. In other jurisdictions, this role is filled by the Land Registry, a commercial entity or a combination of these, with some stakeholder or state participation.

Glittering prize

From the experience in other jurisdictions with e-conveyancing projects, BearingPoint states that it is imperative the existing conveyancing process be enhanced through improvements in processes as part of the overall programme. Thus, BearingPoint is not proposing to make the existing conveyancing process electronic. Instead, it proposes identifying, organising and implementing improvements to the current process, based on the findings set out in the report. The roadmap refers to this as the 'process improvements workstream'. There are also two additional workstreams: the 'legislative changes workstream', which involves initiating the legislative changes required, and the 'e-conveyancing development workstream'. This will lead to the design of the actual e-conveyancing model to be implemented, reporting on the investment, benefits, risks and organisation required and, ultimately, if the project is approved, the design, development and implementation of the new e-conveyancing system. This would occur in parallel with process improvements and legislative changes. BearingPoint is proposing e-conveyancing then, rather than e-lodgement or e-registration.

Some of the required legislative changes are already in hand. Much of the *Registration of Deeds and Title Act 2006* has now been enacted (SI 271 of 2006 and SI 511 of 2006) and 4 November was the establishment day for the new Property Registration Authority (SI 512 of 2006). This authority will manage and control the Registry of Deeds and the Land Registry. It also has a specific mandate in section 10 of the act to promote and extend the registration of ownership of land. The act also includes substantive changes to the law relating to the registration of title and registration of deeds. It brings the two systems closer and thus facilitates the closing of the Registry of Deeds and the extension of the Land Registry system to the rest of Ireland. The first extension of this system since 1969 has already taken place. On 1 April last, compulsory first registration was extended to Longford, Roscommon and Westmeath (SI 605 of 2005). Internationally, it is recognised that a complete system of electronic conveyancing can only occur in a jurisdiction where all ownership of land is registered. So this is a vital element in moving towards e-conveyancing.

Don't you forget about me

In advance of a permanent organisation being identified to lead this programme, BearingPoint has recommended that the government establishes an e-conveyancing project board to manage the project for a period of 12-18 months. It has recommended that this should occur without delay to ensure continuity

and to build on the momentum of the work done to date. BearingPoint has recommended that membership of the project board should include the key stakeholders, including the legal profession. In addition, BearingPoint has identified that the Law Society will have a vital role to play in improving and endorsing changes to the current conveyancing processes and in communicating these changes to practitioners.

The LRC has generally supported the content and analysis of BearingPoint's report and has recommended also the early start of the next phase of the process, with incremental developments occurring continually on the road to e-conveyancing. It points out that international experience shows that e-conveyancing is successful where there is clear government commitment and involvement. Despite welcoming the LRC report and initiating the *Land and Conveyancing Law Reform Bill 2006*, the government has yet to appoint this project board.

However, other key stakeholders are already focused on making improvements in the current conveyancing process. Revenue is currently looking at the implementation of a system of e-stamping while the Land Registry is continuing to utilise technology with a view to ultimately facilitating e-conveyancing. Its new service, landdirect.ie, replaces the previous 'Electronic Access Service' and extends the range of online services available to solicitors. New facilities allow for searching and locating a property anywhere in the country, using digital mapping and the property index to find an address and locate a folio. As the Land Registry website points out, this is the first national database of land-related information available online in Ireland.

A complete system of electronic conveyancing may not be in place for five to seven, or even ten years. However, due to the multitude of changes required to facilitate e-conveyancing, all of this time will be needed. As BearingPoint states in its report, technology alone will not improve efficiency: traditional roles and practices will need to change to make a success of e-conveyancing.

There is no doubt that the traditional role and practice of solicitors in the conveyancing process will change with the advent of e-conveyancing, but experience from other jurisdictions shows that e-conveyancing can be successfully implemented for the benefit of all stakeholders, including solicitors. It is likely to be the solicitor that provides the electronic signature on behalf of purchasers and vendors, and it is likely to be the solicitor who authenticates the transaction. The Law Society embraces the move towards a system of electronic conveyancing, while acknowledging that the vital role of solicitors in the process must be reflected in any e-conveyancing solution. **G**

Gabriel Brennan is secretary of the Law Society's eConveyancing Task Force.

LOOK IT UP

Legislation:

- *Land and Conveyancing Law Reform Bill 2006*
- *Registration of Deeds and Title Act 2006*
- *Statute of Westminster II 1285 (De Donis Conditionalibus)*

Literature:

- Law Reform Commission, *Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004)
- Law Reform Commission, *Report on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74-2005)
- Law Reform Commission, *eConveyancing: Modelling of the Irish Conveyancing System* (LRC 79-2006)

Breaking AWAY

Ireland in the 1970s was on the verge of joining the EEC and an air of optimism was evident, despite the fact that the Troubles were moving from the wings to centre stage. Mark McDermott continues this celebration of 100 issues of the *Gazette*

A surprising air of optimism pervades the pages of the *Gazette* from the early 1970s. Ireland's impending membership of the European Economic Community (EEC) was probably most responsible for the upsurge in national confidence. In hindsight, this seems somewhat misplaced, given the fact that the Troubles had started and were about to get a whole lot worse, a world oil crisis was looming, strikes would become endemic and employment would hit rock bottom. But then, imperial pounds, shillings and pence were about to get dumped in favour of decimalisation – so there were some positives – especially for children of school-going age!

One issue that received significant coverage during the early '70s was legal aid:

"In our criminal courts the accused, who is of course innocent until proved guilty, is seated in court near his professional representatives and can confer with them in the same way as any civil litigant.

Nevertheless the persistent question remains, are the courts, like the Savoy Hotel open to everyone (who can pay) or is legal protection of the Courts available to all citizens alike on reasonable terms?..."

"A comparison of the figures in the published report on legal aid in Northern Ireland and in the Republic suggests the following alternative conclusions. The amount of crime in Northern Ireland may be very much higher than in the Republic. It is however difficult to understand how it could be six times as high. Alternatively, persons entitled to avail of the legal aid service prefer to retain solicitors outside the scheme. The only remaining inference is that a number of persons who should

receive legal [aid] and the protection of solicitors and counsel are deprived of that assistance. If legal aid in criminal matters is a desired social objective it is difficult to defend the present system as satisfying the need" (*Gazette*, March 1970, p125).

The number of new solicitors joining the profession continued to be a matter of concern for the Society at its AGM in May 1970. The concern of then president, James RC Green, was that there simply wouldn't be enough work to go around:

"It is occasionally suggested that we operate a closed shop. This is simply not true particularly now that everyone has the opportunity to obtain a secondary education. We have certainly had to raise the standard of our preliminary examinations. One reason for this is that the number of prospective entrants to the profession has been steadily increasing and without some restriction we would be faced with serious overcrowding. It should always be remembered that the Solicitors' profession is one that does not train young men and women for export and even in an expanding economy it may be difficult to absorb about 100 new Solicitors every year when the average number [of] deaths and retirements does not exceed about 35 per annum. I do believe however that there will arise more and more opportunities for qualified Solicitors in commerce and industry ..." (*Gazette*, May 1970, p2).

Gazette revamp

The *Gazette* received a mention in the same issue. The president wrote:

"I hope that that [sic] members will appreciate the changes being made in the *Gazette*. Soon you will

MAIN POINTS

- Legal aid in the Republic
- *Gazette* revamp
- Trouble across the Border



PIC: AFP/GETTY IMAGES

find that it will have a new cover and we hope that this is symbolic of a fresh approach under the editorship of Mr Colm Gavan Duffy who has been to London to discuss the whole project with the Editor of the English Law Society Gazette. Mr Gavan Duffy has been provided with an Assistant in the Library which relieves him of certain routine administrative duties which I hope improves the service of members" (*Gazette*, May 1970, p4).

Colm Gavan Duffy's name first appears as editor on the cover of the *Gazette* in November 1969. The new cover referred to by James RC Green didn't appear until May 1971 (vol 65, no 1), when, in a bold leap of faith, the journal featured a purple-coloured image of the Four Courts on its cover. This remained a characteristic for many years, with the colour changing for each issue. The following president, Brendan A McGrath, in a special message announcing the new-look publication, said: "I am very glad to welcome this new volume of the *Gazette* with its pristine new cover, which I feel sure will receive general approval. Law is ever becoming a more complex subject. The *Gazette* is to be commended in so far as it tries to foster ideas based on jurisprudence and also encourages members and other lawyers to express them, while at the same time giving full expression to more

practical legal problems. The *Gazette* in its new format deserves to be carefully read by all, because it tries to present the driest legal problems in an interesting and readable way. Long may it flourish!" (*Gazette*, May 1971, p2).

The journal's format was now bigger in size and in pagination. It featured a comprehensive list of contents and dealt with proceedings of the Council, case law, reports from the Solicitors' Apprentices Debating Society of Ireland (SADSI), practice tips, reports on addresses by legal luminaries, 'miscellaneous legal news', book reviews and a look-back at what was in *The Solicitors' Journal* one hundred years ago. The more things change...! The *Gazette's* first photograph appeared in an advertisement for a 3M 254 Dry Copier in the June 1971 issue (p57). The first president whose photo appeared in the *Gazette* was TV O'Connor in 1973, while the first photo to appear on the front cover was in August 1976, when a group of members involved in planning the Society's new education programme, along with Australian consultant Kevin O'Leary, were featured.

The Troubles

The outbreak of hostilities in Northern Ireland were covered in the July/August issue in 1970 in a case extract from the *Law Digest*. Headlined

Ireland signs the Treaties of Accession to the European Communities on 22 January 1972 in Brussels, at a ceremony it shared with Denmark, Norway and Britain

'Alleged Riotous Behaviour in the Bogside', the piece ran as follows:

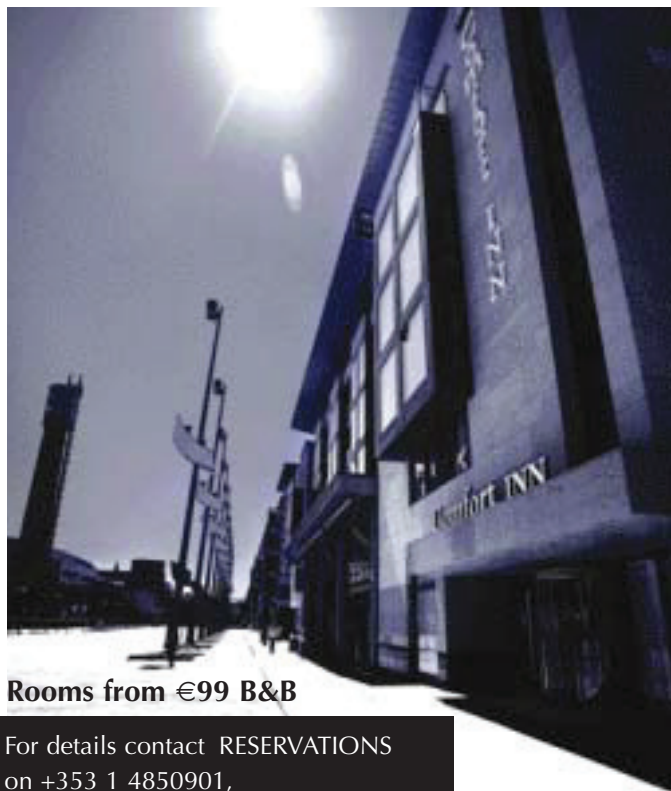
"Miss Bernadette Devlin, M.P., was summoned despite the presence of hundreds of rioters apparently on a selective basis by District Inspector Armstrong in the Bogside in Derry on 13th August, 1969. She was ultimately convicted by Resident Magistrate Shearer on four counts and was sentenced to the maximum term of six months imprisonment without the option of a possible maximum fine of £100 on 22nd December, 1969. On the application of her Counsel, Sir Dingle Foot, the Resident Magistrate stated a case to the Northern Ireland Court of Appeal, but all the arguments of the appellant, Miss Devlin, were dismissed by that Court (Lord MacDermott C.C.J., Curran and McVeigh L.J.J.) on 22nd June 1970. Furthermore, on 26th June, 1970, on apparent grounds of bias, the Court of Appeal refused leave to appeal to the House of Lords to determine questions of Law which had never been considered by it before. The judgment of the Court was delivered by Lord MacDermott, and can be criticised by its omissions rather than its arguments. As these omissions had been made [the] subject of official reports, such as the Cameron Report and the Bailey Report, into the conduct of the police in respect of incidents in the Derry Bogside in August 1969, in which no less than 12 policemen were suspended from duty for deliberately attacking people and damaging property, this judgment can only be approached with cynical

scepticism ... (*Gazette*, July/August 1970, p63).

The "possible entry of Ireland, Britain and others into the Common Market" (*Gazette*, September/October 1970, p88) inspired several interesting articles on the issue, among them a Dublin conference on 'Legislation of European Communities'. The then taoiseach, Jack Lynch, "spelled out to the conference some points in the Irish Constitution which would need amendment, and added there were other provisions which a constitutional lawyer would ponder carefully. He then commented:

"... it would be surprising if the position were otherwise, in view of the fact that our Constitution has been in force since before the Second World War, and was drafted at a time when the developments which have led to the international situation as it exists today could not have been foreseen. Indeed, this is a classic demonstration that, in a progressive society, law must evolve to adapt to changing circumstances.

Earlier Mr Lynch had said: "Ireland is like Britain and unlike the other applicant countries and the existing member states of the Communities in having a common law system. Conversely, she is unlike Britain and like the others in having a written Constitution. We are, therefore, in a unique position among the ten. Indeed it is from the combination of these factors that the more obvious legal implications peculiar to Ireland arise" (*Gazette*, September/October 1970, p89/89). **G**



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Adrienne Regan: "there is no substitute for a good reputation"

Marketing your X FACTOR

Solicitors tend to find it difficult to achieve a proper balance between their professional and home lives. This is made harder by differing demands of clients on the one hand, and the sometimes unpredictable demands of home life on the other. The aim is to ensure that the hours worked give you time to satisfy the other requirements of your life.

The same applies to the time invested in recruiting new talent. After all, striving to achieve your business goals does not always go hand in glove with the work/life balance sought after by today's generation.

So how do you convince potential employees that your firm is a modern, progressive and innovative firm that offers them the work/life balance they desire? On the flip side of this argument, how do you ensure that you're getting the quality of personnel you seek?

The right fit

Defining the career employee package to a prospective new recruit, as well as informing them

about your expectations, is essential in attracting the most suitable candidates. Will they have the right experience and personality to fit in with your firm's ethos and client base?

For example, take the following line from a leading international law firm recruitment advert: "Successful candidates will have a practical and flexible approach, high levels of initiative and a desire to enjoy the camaraderie of a stimulating and team-working environment."

Clearly communicating your firm's values and ethos (as this ad does) is imperative in influencing candidates, irrespective of the size of the firm. When embarking on recruitment advertising, you need to make sure that the firm's brand is visible – sometimes recruitment adverts are placed without any brand identity and very bland language. This does the firms in question – and their reputations – no favours at all.

Marketing your reputation

Ultimately, however, the best recruitment ad in the world is no substitute for a good reputation. Fortunately, there are many ways to build one. It just takes time – time spent writing and submitting articles to relevant publications; time spent conducting independent proprietary research among students, clients and other advisors to identify the external perception of the firm and how it might be enhanced; and time spent developing positive 'word of mouth'.

Remember, each dealing you have with every client is at the core of your marketing. At the end of the day, they are your most important ambassadors, so if you do nothing else, make sure that they're saying good things about you! **G**

SO, WHAT'S YOUR X FACTOR?

When it comes to recruiting, you'll find that candidates are looking for something that sets your firm apart. That something is not necessarily very obvious – offering an excellent salary package can also denote a requirement to work around the clock, for instance. This is not always the key attraction for employees. However, establishing yourself as a dynamic, forward-thinking firm that provides a progressive career path, one that demonstrates a willingness to invest in personal development, could be the vital factors that set you apart. Or you could embrace a niche within the market. You know your firm best, so it's up to you to decide your key differentiator. Whatever it is, you'll find that, when the time comes to recruit – at any level – these key messages will have a significant role to play in attracting the right people to your firm.

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



'Independent Day'

Attending a dinner in honour of Sir Anthony O'Reilly and his wife Lady Chryss O'Reilly at Blackhall Place were President of the Law Society Michael Irvine, and some of their colleagues from Matheson Ormsby Prentice

HEALTHY DEVELOPMENT

A new organisation, the Health and Safety Lawyers' Association of Ireland (HSLAI), has been launched. HSLAI brings together specialist solicitors and barristers to help them tackle the complexities of the *Safety, Health and Welfare at Work Act 2005*.

The chairperson of HSLAI is Aisling Butler, who is an expert in health and safety law at William Fry Solicitors. She says that the organisation will provide a forum at which experts can discuss complex

issues arising from the legislation. "It will assist them in finding practical solutions for their clients in order to help them comply with their duties and responsibilities under health and safety law."

At the launch, special guest Mr Justice Peter Kelly said: "It is vital that we continue to address the number of accidents and breaches of this legislation by ensuring that the legislation is properly understood and applied in the workplace."



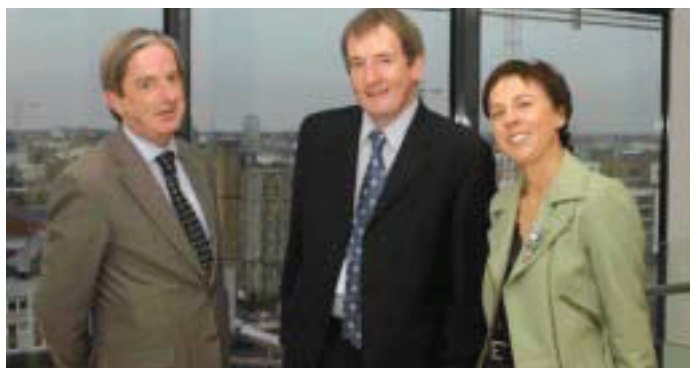
Celebrating the launch of the Health and Safety Lawyers' Association of Ireland were (l to r): Siobhra Rush, MOPs (secretary), Mr Justice Peter Kelly, Aisling Butler (chair), Michael O'Neill, HSA in-house legal advisor (vice-chair) and Alison Fanagan, A&L Goodbody (treasurer)



PIC: ROBERT ALLEN PHOTOGRAPHY

Turn on the wireless!

Signing the contract to supply wireless internet access to the Law Society in our Four Courts consultation rooms are (l to r): Achim Möhrlein (Chairman, GlobalAirNet), Tom Blennerhassett (IT Manager, Law Society), Paddy Caulfield (Manager, Law Society Consultation Rooms) and Galen Bales (Managing Director, GlobalAirNet). The service is expected to go live on 1 January 2007



Hallmarks of excellence

A Professional Marketing Forum event was held in the offices of Mason Hayes & Curran on 5 October. Brody Sweeney spoke on the hallmarks of service excellence for professional service firms and is seen here with the firm's managing partner, Declan Moylan and Adrienne Regan of Regan Lowey

Law Society committees' end-of-year dinner



Enjoying the Law Society committees' end-of-year dinner were (l to r): Geraldine Clarke, President Michael Irvine and Frank Daly



Fascinating! (L to r): former president Michael V O'Mahony, retired judge John F Buckley and Judge Brian Sheridan



At the end-of-year dinner were (l to r): former and current family law committee chairs, Joan O'Mahony and Sinead Kearney



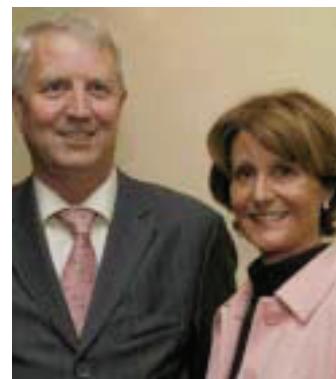
That's a good one! (L to r): Patrick Groarke, Carol Plunkett and Ian Moore



Attending the Law Society committees' end-of-year dinner were (l to r): Mary Fenelon, Therese Clarke and Fiona Ní Cheallaigh



The Captain Birdseye look is catching on – John P O'Malley (back) and Justin McKenna



Michael Quinlan and Mary Cantrell were at the committees' end-of-year dinner



John Glynn, Michael Greene and Michele O'Boyle of the Client Care Task Force



Enjoying the genial atmosphere at the dinner on 5 October were Boyce Shubotham and Orla Coyne

ALL PICS: LENS MEN

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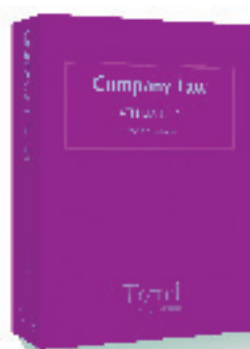
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student spotlight



Rosemary takes the laurels

The Legal Work Experience Project for trainees is now in its second year. Its aim is to encourage student solicitors at Blackhall Place to get involved with local voluntary agencies. This helps raise awareness of the significant contribution such organisations make to local communities. It also allows law school trainees to witness, firsthand, the difference *pro bono* work (or work carried out for the public good) can make.

The year's project was launched by the Law School on 28 September, in conjunction with leading voluntary agencies. Those taking part included the Ballymun Community Law Centre, Northside Community



PIC: MARK RUSSELL HILL

The winner of the Legal Work Experience Project for law students is Rosemary Wall, trainee solicitor with Malcomson Law. Rosemary is congratulated by prize sponsor Lisa Weston, of Osborne Recruitment Consultants, and Evelyn Hanlon, chairperson of the Ballymun Community Law Centre

Law Centre, Irish Commission for Prisoners Overseas and the Legal Aid Board.

The project is sponsored by Osborne Recruitment

Consultants, who generously offered a prize to the trainee who made the biggest difference to the organisation they supported. The prize – a

weekend for two to a European destination – was won by Rosemary Wall, whose project work was carried out with Frank Murphy at the Ballymun Community Law Centre. This centre offers a unique service to Ballymun – it's the only source of legal advice or assistance available in the entire district, which has a population of over 15,000 people.

The level of interest generated among trainees at the project launch was overwhelming, and all organisations taking part were pleased that so many trainees were willing to give so generously of their time and expertise.

Dukes of Hazzard head 'Wesht'!

On Friday 13 October 2006, 50 trainee solicitors from the PPC1 course, under the guise of the Outdoor Pursuits Society (organisers Edel Kennedy and Gavin Hinchy), leapt into their vehicles in a Dukes of Hazzard-style manner and headed 'Wesht'! The resulting convoy, which was clearly visible from space, snaked towards our refuge for intellectual and spiritual reflection for the weekend: Achill Island. The ideally-located Keel Holiday Cottages are nestled in the heart of the island, with the beach a mere jig away. The rolling hills provided the perfect backdrop to this idyllic haven.

The itinerary included surfing, kayaking, rock-climbing and hill-walking, followed by an evening of traditional 'diddle-idle' tunes and a few tanoras in the local.

On Friday evening, we sampled some of the local cuisine



Penguin-like, trainees in the wild huddle together for warmth

on offer ... a great Chinese take-away. The evening should perhaps have been one of relaxation in advance of Saturday's planned sports activities. Well we *did* stay in that night – in an attempt to be fresh-faced for an action-packed Saturday. However, what followed was a night of entertainment by the talented Fullam Morgan and his guitar

at the 'hot-spot venue', Cottage Number 6. The singing and dancing continued until the dawn chorus.

At 8.30 on Saturday morning, the only real motivation for surfacing was the promise of a fry-up, which worked wonders! Before long, we were struggling into wetsuits at the activity centre. Miraculously, the sun shone in a

cloudless sky as we ventured into the waves at Keel Beach.

It was fabulous – think 'Summer Bay'. We even managed to get a photo of someone actually standing on a surfboard (unsure if it was, in fact, an instructor). The rest of the group went kayaking, rock-climbing and 'diving' into bogs.

A disco-nap was urgently required on the Saturday evening before yet another Chinese take-away. We descended on Main Street, Keel, that evening for the trad session. Enquiries about the nearest night club elicited the response: "Night club? There's no such thing here ... you mean 'the dishco'!" Some '80s tunes and the national anthem went down well, followed by "olé, olé, olé" while waving an Irish flag. A superb weekend, definitely to be repeated. **G**

BRIEFING

council report



Report of Law Society Council meeting held on 1 September 2006

Report from the eConveyancing Task Force

Dan O'Connor briefed the Council in relation to the report of the task force, emphasising that the introduction of e-conveyancing was an inevitability and that it was important that the solicitors' profession was fully engaged with the process and played a key role in the delivery of e-conveyancing services.

The Council approved the recommendations of the task force:

"That the Law Society:

- Formally welcome the Law Reform Commission Report *eConveyancing: Modelling of the Irish Conveyancing System*,
- Encourage discussion with the various Law Society committees about the impact of an electronic conveyancing system,
- Promote discussion among solicitors about electronic conveyancing by way of seminars to be held at local and national level through CPD, bar associations and other means, and
- Be proactive by promoting at a political level the early

appointment of the project board and the appointment of members of the profession to that board."

Circuit Court Rules Committee

The Council approved the re-appointment of Joseph Deane as one of the Society's representatives on the Circuit Court Rules Committee.

Government working group review of legal costs

Gerard Griffin briefed the Council on the Society's submission to the Government Implementation Group on Legal Costs, which had been circulated. Mr Griffin noted that the Society had recommended that there should be a regulatory impact assessment prior to any decision to establish a legal costs regulatory and assessment structure. In addition, the submission had drawn attention to the likely costs of replacing the existing functions of the taxing masters and the country registrars, which had been calculated on the basis of a need for 25 assessors.

The director general noted

that the Society had also highlighted the internal inconsistencies and contradictions between some of the key objectives and recommendations of the Haran Working Group, in particular the objective of creating prescribed guidelines for recovery of costs that would not be *de facto* fixed scales of costs.

Competition Authority Study

The Council noted correspondence from the Competition Authority requesting further information in relation to complaints and in relation to fees for attendance at the Law School.

rateyoursolicitor.com

The Council discussed the content of the website rateyoursolicitor.com, which was regarded as insulting, baseless and defamatory in relation to many solicitors practising throughout the country. It was noted that an individual, who had been conducting a campaign against lawyers for some time, was named on the site and appeared to be connected with its establishment. It was also noted that

the site contained defamatory remarks about named members of the judiciary.

The director general confirmed that he had been invited to participate in the *Pat Kenny Show* on RTÉ Radio 1 on the following Tuesday to discuss the matter. In his view, the site was the technological equivalent of writing on the back of a toilet door.

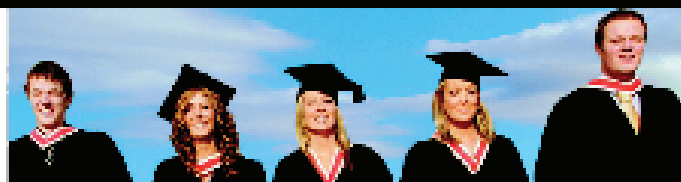
James MacGuill said that there was a possibility that the incitement to hatred and harassment provisions of Irish legislation would be applicable. Anne Colley suggested that the Society might also take the opportunity to indicate that anyone with a genuine complaint had a number of means of having it dealt with, rather than having to resort to sites of this nature.

International Bar Association

The Council considered, and approved, a proposal from Geraldine Clarke that the Society and the Bar Council should invite the International Bar Association to consider hosting its 2012 conference in Ireland. **G**



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committee report



LEGAL AID

Civil legal aid – revision of the means test

Civil legal aid is available at Legal Aid Board Law Centres throughout the country to all those who satisfy the board's means test and merits test. Successful applicants are entitled to civil legal aid for a wide category of civil law cases, apart from nine specific types of action, detailed in the *Civil Legal Aid Act 1995*. These include defamation, some cases relating to interests in land, and actual representation at most tribunals or the small claims court.

While there used to be long delays in accessing legal aid, this is no longer the case. Now, no centre has a waiting list of more than four months and half of the 30 centres nationwide have a

waiting time of two months or less. The Family Law and Civil Legal Aid Committee would like to draw the attention of solicitors to changes in the means test for civil legal aid from 1 September 2006, as set out in SI no 460 of 2006. The principal changes are:

- The disposable income limit to qualify for the service has risen from €13,000 to €18,000. Disposable income is income net of tax and PRSI and net also of certain allowances.
- The allowances or deductions from actual income, in order to calculate disposable income, have also increased. The allowance for actual childcare expenses has risen from €1,100 to €6,000 per child. The dependent spouse's allowance has increased from €1,900 to

€3,500 and for each child dependant from €1,100 to €1,600. The allowance for actual accommodation costs – mortgage or rent payments – has gone from a maximum of €4,900 to a maximum of €8,000.

- The value of the applicant's family home is to be disregarded both for the purposes of qualifying for the service and in terms of calculating the contribution that a person must pay for legal aid.
- Civil legal aid is never free. Applicants' contributions – or fees – are linked to their disposable income, to capital other than the family home, and, occasionally, to any cash award made in the course of a case. For those on social welfare only, or with a disposable income of less than

€11,500, the new minimum fee for legal advice will be €10 and for legal aid will be €50. Those with a disposable income between €11,500 and €18,000 may pay up to €150 for legal advice and, based on a formula, up to €1,675 for legal aid. The formula is €50 plus a quarter of the difference between €11,500 and the applicant's disposable income. In addition, those with capital in excess of €4,000 may have to pay an additional fee called a capital contribution. Anyone with capital in excess of €320,000 will be excluded from legal aid. It is worth remembering that the family home will not constitute capital in calculating the contribution and that the board can be asked to waive the fee in cases of hardship. **G**

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BRIEFING

practice notes



NEW CAPITAL ACQUISITIONS TAX CA11 (CERTIFICATE OF DISCHARGE FROM CAT) FORMS AVAILABLE

Condition six: potential claw-back of capital gains credit

The Probate, Administration and Trusts Committee would like to advise practitioners that a new version of the Capital Acquisitions Tax Form CA11 (Certificate of Discharge) – which takes account of clawback of credit allowed for capital gains against gift tax on the sale of the property within two years, as introduced by section 119 of the *Finance Act 2006* – is now available.

The form is available for download from the Revenue website, www.revenue.ie, and hard copies are available from the Revenue Warehouse, Forms and Leaflets

Section, Shanowen Road, Santry, Dublin 9; lo-call telephone number: 1890 306 706.

This form should be used in all cases, not involving development land, where agricultural or business relief has been claimed since 21 February 2006.

Condition seven: development land and agricultural and/or business relief

In addition, the Revenue Commissioners would like to advise practitioners that a new Form CA11, Certificate of Discharge from Capital Acquisitions Tax, is now available and is required to be submitted

where a gift or inheritance consists of “development land”, which is defined in the section as land in the state, the market value of which at the date of the gift or inheritance exceeds the current use value of the land at that date and includes shares deriving their value in whole or in part from such land.

The new certificate Form CA11 (Develop) should only be used where:

- 1) The gift/inheritance consists in whole or in part of “development land”, and
- 2) Agricultural relief or business relief has been claimed in respect of that property, and

- 3) The gift/inheritance has been taken on or after 2 February 2006.

The form is available on the Revenue website or as a hard copy as outlined above.

If a personal representative/practitioner submits the standard Form CA 11, but should have used the Form CA 11 (Develop), Revenue will return the relevant papers and will request the personal representative/practitioner to submit the development land version of the certificate.

Probate, Administration and Trusts Committee

WILLS, PROBATE & ESTATES

A NEW ADDITION to the Law Society of Ireland series, this manual has been written to give trainee solicitors and practitioners a clear and thorough understanding of current practice and procedure in the area of wills, trusts, probate, and the administration of estates. It outlines the basic elements of a will and familiarises trainees with the common law and statutory background, so that they are able to draft documentation exactly in accordance with their clients' informed instructions and statutory requirements.

The manual deals fully with how to extract an appropriate grant of representation; grant of probate where the deceased has left a will and an executor who is will-

ing to act; grant of administration intestate, where the deceased has left no will; and grant of administration with will annexed, where the deceased has left a will but there is no executor able or willing to act. The text goes on to outline those less frequent occasions where a further type of grant is necessary, whether a second or subsequent grant, or a grant limited as to purpose or duration.

This practical and user-friendly book also covers in full how to advise the personal representative of their responsibilities and duties to beneficiaries, family members, creditors, and the State in terms of any taxation liability either outstanding or arising.



Wills, Probate & Estates provides succinct and practical advice, tackling questions of practice and procedure that are of central importance, not only to students on the Society's professional practice course, but also to practitioners who deal with any area of wills, trusts or probate.

Volume editor and authors: Padraic Courtney, (solicitor, Law Society of Ireland) is both the editor and an author. Other authors: Nuala Casey (solicitor, Daly, Lynch, Crowe & Morris), Anne McKenna (solicitor, FJ Irvine & Co), Annette O'Connell (BL, probate officer), and Anne Stephenson (solicitor, Stephenson & Co). All the authors tutor and lecture on the Law Society, PPC I and PPC II in wills, trusts, probate and administration, and to the profession in CPD, STEP, and the various diplomas run by the Law Society of Ireland.

The Law Society is now selling *Wills, Probate & Estates*, published by the Law Society of Ireland/Oxford University Press. Price: €70. Contact Julianne Ward: email: j.ward@lawsociety.ie or phone: 01 672 4942 if you wish to order a copy.

PURCHASERS' SOLICITOR'S FEE PAID OR SUBSIDISED BY BUILDER: CONFLICT OF INTEREST?

This is an issue that has arisen in the context of certain arrangements that individual builders are making with solicitors.

A typical arrangement involves a builder who is developing a housing estate. He has his own solicitor. He approaches a second solicitor in the locality, suggesting that the second solicitor makes himself/herself available to act on behalf of all the purchasers of the houses in the estate. The builder wants to have this arrangement in place to avoid, as the builder sees it, unnecessary delay. Undoubtedly, when each purchaser has a different solicitor, each solicitor may raise at least some different queries in relation to the title and other matters, so that, in total, there are numerous queries to be dealt with by the builder's own solicitor. If every purchaser could be encouraged to go to the one solicitor, it would mean that the number of queries is minimised. Crucially, part of the arrangement is that the builder will pay the pur-

chasers' solicitor all the legal fees for the individual purchases.

Such an arrangement does not contravene any regulation. It is to be distinguished from SI 85 of 1997, which places a restriction on solicitors acting in a conveyancing transaction on behalf of both the builder and purchaser of residential units. In the arrangement under discussion, the builder has his own solicitor.

However, the view of the Guidance and Ethics Committee is that solicitors who enter into such arrangements may be placing themselves in an impossible position. In the event that their purchaser-clients become dissatisfied, solicitors may not be in a position to demonstrate that they have been professionally independent, and it may be difficult to argue against a conclusion that a conflict of interest existed to the extent that the interests of the clients were compromised.

When a purchaser instructs a solicitor, it is implied in the instructions that the purchaser is, firstly, asking the solicitor to

take the necessary steps to achieve a proper conveyance of the property; secondly, to advise, as necessary, as to the best course of action in particular circumstances, especially if difficulties arise in the course of the transaction; and thirdly, that the solicitor has no conflict of interest in accepting instructions. It is in the context of advice that the potential conflict lies.

Solicitors who enter into such arrangements say that they will have no difficulty in carrying out their clients' instructions. They must be sufficiently independent to pursue their clients' interests as necessary. They must stand their ground against the builder and delay the completion of any sale should this be necessary.

Such arrangements undoubtedly appeal to the consumer because of the possible saving in legal fees. However, purchasers require the protection that, arguably, the employment of an independent solicitor of their choice would give. There should be some recognition of the fact

that most purchasers are not legal experts and, accordingly, will be attracted to the arrangement on the basis of the reduced fees only, with no appreciation of difficulties that might arise.

Currently, there is no prohibition in relation to these arrangements. Solicitors are free to make their own professional judgement in relation to the matter. However, solicitors who enter into one of these arrangements should consider the matter very carefully and, if they decide to proceed, do so fully aware of the potential pitfalls.

In those circumstances, the solicitor for the purchasers should have no communication with the builder in relation to any of the individual transactions, either verbally or in writing.

Solicitors must realise that their professional duty is to the purchaser, their own client, and they must represent the client's interest without taking into account the interest of the builder.

Guidance and Ethics Committee

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BRIEFING

legislation update



20 September – 17 October 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.

ACT PASSED

Road Traffic and Transport Act 2006

Number: 28/2006

Contents note: Amends and extends part III of the *Road Traffic Act 1994* in relation to drink driving and makes provision for the Minister for Transport to grant licences to road haulage and road passenger transport operators and provides for connected matters.

Date enacted: 4/10/2006

Commencement date: 4/10/2006

SELECTED STATUTORY INSTRUMENTS

Child Care (Pre-School Services) Regulations 2006

Number: SI 505/2006

Contents note: Set out the various requirements to be complied with by persons carrying on pre-school services for the purposes of securing the health, safety and welfare and promoting the development of pre-school children. Revoke the *Child Care (Pre-School Services) Regulations 1996* (SI 398/1996) and the *Child Care (Pre-School Services) Regulations 1997* (SI 268/1997).

Commencement date: 2/1/2007

Companies (Fees) Order 2006

Number: SI 502/2006

Contents note: Introduces a 'nil' fee for the electronic filing of form B73 (nomination to the

Registrar of Companies of a new annual return date for a company).

Commencement date: 27/9/2006

European Communities (Eligibility for Protection) Regulations 2006

Number: SI 518/2006

Contents note: Give effect in Irish law to the 'qualification directive', directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Commencement date: 10/10/2006

European Communities (Milk Quota) (Amendment) (No 3) Regulations 2006

Number: SI 508/2006

Contents note: Amend the *European Communities (Milk Quota) Regulations 2000* (SI 94/2000) to provide for a milk-quota trading scheme.

Commencement date: 3/10/2006

European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006

Number: SI 507/2006

Contents note: Implement directive 2000/79/EC on the organisation of working time of crew members on board a civil aircraft.

Commencement date: 29/9/2006

Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2006

Number: SI 509/2006

Contents note: Provide for future garda recruitment boards to take into account satisfactory service by candidates who have served in the Garda Reserve.

Commencement date: 9/10/2006

Garda Síochána (Promotion) Regulations 2006

Number: SI 485/2006

Contents note: Set out the procedures to be followed in relation to the promotion of members of An Garda Síochána.

Commencement date: 22/9/2006

Mental Health (Criminal Law) Review Board (Establishment Day) Order 2006

Number: SI 499/2006

Contents note: Appoints 27/9/2006 as the establishment day for the Mental Health (Criminal Law) Review Board under the *Criminal Law (Insanity) Act 2006*.

Private Security (Licence Fees) Regulations 2006

Number: SI 470/2006

Contents note: Prescribe the fees payable for licences issued under the *Private Security (Licensing and Qualifications) Regulations 2006* (SI 468/2006).

Commencement date: 1/9/2006

Private Security (Licensing and Qualifications) Regulations 2006

Number: SI 468/2006

Contents note: Provide for the issue of licences to individuals who perform security services as door supervisors at licensed premises or as security guards, and for the qualifications to be obtained by them.

Commencement date: 1/9/2006

Private Security (Licensing Applications) Regulations 2006

Number: SI 469/2006

Contents note: Prescribe the form of application for licences issued to individuals under the *Private Security (Licensing and Qualifications) Regulations 2006* (SI 468/2006).

Commencement date: 1/9/2006

Registration of Deeds and Title Act 2006 (Commencement) (No 2) Order 2006

Number: SI 511/2006

Contents note: Appoints 4/11/2006 as the commencement date for the following provisions of the act: (a) section 4 (except insofar as it applies to part 1 of the schedule to the act; (b) part 2 (sections 7 to 31); (c) sections 46 to 48; (d) sections 50(e), 51, 52(b), 52(d), 53 to 57, 61, 62, 64, 67, 71 and 72; (e) sections 74, 75 and 78; (f) part 2 of the schedule. Appoints 1/1/2007 as the commencement date for section 73 of the act.

Registration of Deeds and Title Act 2006 (Establishment Day) Order 2006

Number: SI 512/2006

Contents note: Appoints 4/11/2006 as the establishment day for the Property Registration Authority under part 2 of the act.

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

Number: SI 504/2006

Contents note: Prescribe the main requirements for the protection of the safety, health and welfare of persons working on construction sites and give fur-

ther effect to directive 92/57/EEC on the minimum safety and health requirements at temporary or mobile construction sites. Replace and revoke the *Safety, Health and Welfare at Work (Construction) Regulations 2001* (SI 481/2001) and the *Safety, Health and Welfare at Work (Construction)*

(Amendment) Regulations 2003 (SI 277/2003), except for regulations 80 to 123 (lifting appliances and lifting equipment) and regulations 4 and 6 insofar as they apply to project supervisors appointed prior to the commencement of these regulations. **Commencement date:** 6/11/2006

Social Welfare Law Reform and Pensions Act 2006

(Section 40)

(Commencement) Order 2006

Number: SI 437/2006

Contents note: Appoints 24/7/2006 as the commencement date for section 40 of the act. Section 40 inserts a new section 26A into the *Pensions Act 1990* to

provide that the minister may, in consultation with the Minister for Finance, indemnify the Pensions Board members and the staff of the board against liability for damages or costs where they have discharged their functions in good faith. **G**

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GREETING PRINTED INSIDE EACH CARD:

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Each card sold in packets of 50 costing €70 (including overprinting of your firm's name). Minimum order 50 cards. Add €5.50 for postage and packaging for **each** packet of 50 cards.

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Text to be overprinted: _____

SAMPLE OF OVERPRINTED TEXT WILL BE FAXED FOR CONFIRMATION BEFORE PRINTING.

I enclose cheque for € _____ payable to Santry Printing Ltd.

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SBA Christmas Cards, Santry Printing Ltd, Unit 5, Lilmar Industrial Estate, Coolock Lane, Dublin 9. Tel: 842 6444. Contact: Amanda

BRIEFING

firstlaw update



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

CONSTITUTIONAL LAW

Legal representation

Judicial review – whether the content of the notice published by the respondents infringed the right to a fair trial – Competition Act 2002 – article 40.3 of the Constitution.

The applicant sought an order of *certiorari* quashing a notice, published by the respondents, that contained a general prohibition on the same lawyer representing more than one client in any matter under investigation by the respondents. The applicant submitted that the notice was *ultra vires* the powers and functions of the respondents and infringed the right to choose a lawyer and to basic fairness and procedures guaranteed by article 40.3 of the Constitution.

O'Neill J granted an order of *certiorari*, holding that, notwithstanding the fact that the respondents had a power that was incidental to or consequential upon the functions and powers conferred upon them under ss30 and 31 of the 2002 act to publish notices of the kind impugned in these proceedings, the notice in question impermissibly infringed the right of a person appearing before the respondents to choose their own legal representation, and therefore breached fair procedures.

Law Society of Ireland v Competition Authority, High Court, Mr Justice O'Neill, 21/12/2005 [FL12765]

CONTRACT LAW

Interpretation

Circumstances in which terms should be implied into agreement

– consent form – vague in respect of material terms – whether consent given to implantation of frozen embryos.

The plaintiff and first defendant decided to undergo *in vitro* fertilisation treatment and signed a consent form to embryo freezing further thereto, whereby they agreed to the cryopreservation of three of the six embryos that were produced. The first three embryos were implanted in the plaintiff, which produced a child for the couple. The parties subsequently legally separated. The plaintiff then decided that she wished to have the remaining frozen embryos implanted so that she could have one or more further children. The first defendant submitted that he had only given consent to the implantation of the first three embryos and not the frozen embryos, particularly in circumstances where he had separated from the plaintiff and did not want further children with her. The plaintiff brought proceedings alleging that she had a right to have the embryos implanted in her.

McGovern J held that there was no agreement, express or implied, as to what was to be done with the frozen embryos in the circumstances that arose, holding that the consent forms signed by the plaintiff and first defendant were vague in important aspects and did not cover contingencies that arose. There was no evidence that the first defendant gave his express consent to the implantation of the three frozen embryos in the plaintiff's uterus. A term could be implied into a contract because of the presumed intent of the parties or because of a

rule of law. To imply a term, the contractual provisions alleged had to be necessary, capable of being formulated with precision, and be terms that both parties would have agreed if suggested at the time of the conclusion of the contract. In light of the evidence, it was not the presumed intention of the parties that the frozen embryos would be implanted in the plaintiff following the success of the first implantation and the legal separation of the parties. It was not established that, to give effect to the agreement between the parties, it was necessary to imply a term that the frozen embryos would be implanted in the plaintiff. Rather, the agreement to participate in the treatment indicated that the frozen embryos would be used if the first implantation failed.

R(M) v R (T), High Court, Mr Justice McGovern, 18/7/2006 [FL12774]

CRIMINAL LAW

Discovery

Criminal procedure – evidence – whether applicant entitled to discovery of all correspondence between the DPP and gardaí as to progress of investigation – Offences Against the Person Act 1861.

The applicant biochemist, charged with offences pursuant to the *Offences Against the Person Act 1861*, had obtained discovery of all communications between the prosecuting authorities and the Blood Transfusion Service Board as to the criminal investigation resulting in the prosecution of the applicant. The applicant sought to appeal a refusal of an

order for discovery of all correspondence between the office of the DPP and the gardaí in respect of the progress of the criminal investigation of the applicant, alleging that it would be impossible to effectively cross-examine certain deponents without sight of the correspondence.

The Supreme Court allowed the appeal, holding that the applicant must have the opportunity of satisfying herself that what the opposite party has chosen to refer to represents material and relevant matters. The DPP had to list all relevant documents.

Cunningham v President of the Circuit Court, Supreme Court, 26/7/2006 [FL12758]

PLANNING AND DEVELOPMENT

Judicial review

Planning and Development Acts 2000 to 2004 – Roads Act 1993 – *whether the applicant established substantial grounds for contending that the decisions of the respondent were invalid.*

The applicant sought leave to apply for judicial review of a determination by the respondent refusing to approve an application for an Athy inner relief road made pursuant to section 57 of the 1993 act, and an ancillary decision to annul a compulsory purchase order made by the applicant for the purpose of the road. The applicant submitted that the respondent's determination was unreasonable and irrational and that the respondent erred in law in determining that the project would have an adverse effect on the environment. The applicant also con-

tended that the respondent breached fair procedures by failing to request additional information in connection with the environmental impact assessment and, consequently, the applicant was deprived of the opportunity to submit additional information in order to remedy the purported deficiency in the environmental impact statement (EIS). Furthermore, it was submitted that the respondent's decision that the EIS was deficient was irrational.

MacMenamin J refused the application for leave, holding that the applicant failed to establish a legal or evidential basis for its contention that the respondent's determination was unreasonable or that it erred in law. The respondent's decision that the EIS was deficient was not irrational: there was material before the respondent to enable it to come to the conclusion it arrived at. The respondent did not breach fair procedures. The applicant was aware that the adequacy or inadequacy of the EIS was in question and therefore it was not necessary for the respondent to raise that issue.

Kildare County Council v An Board Pleanála, High Court, Mr Justice MacMenamin, 10/3/2006 [FL12730]

PROBATE

Costs of application

Succession law – whether costs to be paid by special administrator – Rules of the Superior Courts, order 99, rules 1(1), 1(4), 1(5). The special administrator of an estate applied to court to resolve a dispute arising in the course of the administration of an estate. The first-named defendant had been ordered to indemnify the estate as to debts that were the subject matter of the application. The first-named defendant now claimed that the entire costs of

all the parties to the application should be paid out of the assets of the estate. The second-named defendant claimed, among other things, that her costs and those of the special administrator should be paid out of the estate with an order over against the first-named defendant or that the first-named defendant was obliged to personally indemnify the estate against the debts.

Herbert J applied order 99, rule 1(5) of the *Rules of the Superior Courts*, holding that the costs of the special administrator were to be paid out of the administration of the estate. This was a hostile *lis inter partes* between the beneficiaries under a will and the special administrator was only a nominal plaintiff. The second-named defendant was entitled to an order for costs, against the first-named defendant personally, of all previous applications and the present application, excluding legal submissions.

O'Connor v Markey & Markey, High Court, Mr Justice Herbert, 14/7/2006 [FL12751]

REFUGEE AND ASYLUM LAW

Fair procedures

Credibility – finding that asylum application manifestly unfounded – whether error of law on face of decision – whether decision should be quashed – Refugee Act 1996, section 13(6).

The applicant sought leave to bring judicial review proceedings challenging a decision of the Refugee Appeals Tribunal that refused his appeal against a recommendation of the Refugee Applications Commissioner that he not be declared a refugee. The applicant alleged, among other things, that the tribunal erred in law and acted in breach of fair procedures in determining that the application for asylum

was manifestly unfounded on the basis of an assessment of the applicant's credibility. He contended that the respondent failed to properly consider country of origin information and apply a forward-looking test in determining whether he had a well-founded fear of persecution.

Feeney J refused the applicant leave, holding that there was material available to the respondent to allow him to determine that the applicant had made statements or provided information in support of his application of such a false contradictory, misleading or incomplete nature as to allow the conclusion that the application was manifestly unfounded. The applicant's lack of credibility in turn fundamentally infected the subjective element of an alleged well-founded fear of persecution.

Botan v Refugee Appeals Tribunal, High Court, Mr Justice Feeney, 30/6/2006 [FL12792]

TORT

Damages

Injuries sustained in fall – assessment of complaints resulted from accident as matter of probability – appropriate level of damages to be awarded.

The plaintiff sought damages in respect of injuries she alleged she suffered as a result of a fall on the defendant's premises. Those injuries included ones alleged to have occurred to her knees and shoulder. The defendant admitted liability.

Mr Justice Finnegan awarded the plaintiff €58,500 for pain and suffering to date and into the future for the injuries sustained in the accident, holding that damages should be awarded on the basis of the injuries actually sustained rather than on the basis of the subjective impression of the

plaintiff as to how serious the said injuries were.

Corbett v Quinn Hotels Ltd, High Court, Mr Justice Finnegan, 25/7/2006 [FL12784]

Personal injuries

Fraudulent claim – assessment of damage – affidavit of verification – PLAB – whether claim for damages for continuing care fraudulent – Civil Liability and Courts Act 2004, ss14 and 26.

The defendant alleged that the plaintiff's claim for damages for personal injury as to the necessity for continuing care was fraudulent, pursuant to s26 of the *Civil Liability and Courts Act 2004*. The defendant alleged that the elderly plaintiff did not require the assistance of a carer, had provided false and misleading evidence, and that the affidavit of verification provided pursuant to s14 of the 2004 act was false and misleading.

Feeney J (*ex-tempore*) awarded a sum of €40,000 to the plaintiff, holding that the onus of proof of proving the applicability of s26 on the balance of probability rested on the defendant. The plaintiff had not knowingly given false or misleading evidence and the contention as to her increased need for care or minding had not been exaggerated. The affidavit of verification as provided pursuant to s14 had not been established to be false or misleading.

Ahern v Bus Eireann, High Court, Mr Justice Feeney, 16/5/2006 [FL12753] G

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eurlegal

News from the EU and International Affairs Committee

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

Member state liability for infringements of community law by a supreme court

The decision of the European Court of Justice in Case C-224/01, *Gerhard Köbler v Republik Österreich*, 30 September, and its more recent decisions in Case C-173/03, *Traghetti del Mediterraneo SpA v Repubblica Italiana*, 13 June 2006, and Case C-234/04, *Rosemarie Kapferer v Schlank & Schick GmbH*, 16 March 2006, offer an instructive guide as to the status of the principle of *res judicata* in the context of state liability for breaches of community law.

In *Köbler*, the court was asked whether the principle, according to which member states are obliged to make good the damage caused to individuals by infringements of community law for which they are responsible, is also applicable where the alleged infringement stems from a decision of a supreme court. Mr Köbler, a professor at the University of Innsbruck in Austria, applied for the award of a special length of service increment, which professors are entitled to receive if they have worked at Austrian universities for 15 years. Mr Köbler had worked in the higher education sector for 15 years, but part of this time had been in other EC member states. He had claimed that account must be taken of the time that he had spent in the public service of other member states and that, were no such account to be made, this would amount to indirect discrimination unjustified under EC law. Following the refusal of his application, Mr Köbler brought an action before the

Verwaltungsgerichtshof, the administrative court of last instance in Austria. The Verwaltungsgerichtshof decided first to refer to the European Court of Justice a request for a preliminary ruling but subsequently withdrew its request, having been notified of a previous decision of the court in Case C-15/96, *Schöning – Kougebetopoulou* ([1998] ECR I – 47). The Verwaltungsgerichtshof then dismissed Mr Köbler's application on the ground that the special length-of-service increment was a loyalty bonus that objectively justified a derogation from the EC law provisions on freedom of movement for workers. Mr Köbler brought an action for damages before the regional civil court in Vienna for reparation for the loss he suffered as a result of the non-payment to him of a special length of service increment. He contended that the judgment of the Verwaltungsgerichtshof infringed directly applicable provisions of community law, as interpreted by the court in judgments in which it held that a special length of service increment does not constitute a loyalty bonus. The regional civil court in Vienna referred to the court for a preliminary ruling under article 234 of the *EC Treaty*.

Submissions

France, Britain and the Republic of Austria argued that liability of a member state could not be incurred in the case of a breach of EC law attributable to a court. They submitted arguments based on the principle of

res judicata, the principle of legal certainty, the independence of the judiciary, the judiciary's place in the EC legal order and the comparison with procedures available before the court to render the EC liable under article 288 EC.

Austria claimed, in particular, that a re-examination of the legal appraisal by a court adjudicating at last instance would be incompatible with the function of such a court, since the purpose of its decisions is to bring a dispute to a definitive conclusion. Moreover, Austria maintained that, since the Verwaltungsgerichtshof had conducted a detailed examination of EC law in its judgment, it would be consonant with EC law to preclude another possibility of bringing proceedings before an Austrian court. Moreover, it maintained that the conditions for rendering a member state liable could not differ from those applicable to the liability of the EC in comparable circumstances. Since the second paragraph of article 288 EC cannot be applied to an infringement of EC law by the ECJ, because in such case it would be required to determine a question concerning damage that it itself had caused, so as to render it judge and party at the same time, neither can the liability of member states be incurred in respect of damage caused by a court adjudicating at last instance.

Germany, the Netherlands and the commission considered that a member state could be rendered liable for breach of EC

law owing to a fault attributable to a court. However, those governments and the commission considered that that liability should be limited and subject to different restrictive conditions additional to those already laid down in *Brasserie du Pêcheur* and *Factortame*. Germany and the Netherlands submitted that there is a sufficiently serious breach for the purposes of *Factortame* only if a judicial decision disregarded the applicable law in a particularly serious and manifest way. According to the German government, breach of a rule of law by a court was particularly serious and manifest only where the interpretation or non-application of EC law is, first, objectively indefensible and, second, must be subjectively regarded as intentional. Such restrictive criteria are justified in order to safeguard the principle of *res judicata* and the independence of the judiciary. Moreover, a restrictive regime of state liability for damage caused by mistaken judicial decisions is in keeping, in the German government's view, with a general principle common to the laws of the member states as laid down in article 288 EC.

Austria submitted that article 234 EC is not intended to confer rights on individuals. In the context of a preliminary reference procedure pending before the court, the parties to the main proceedings can neither amend the questions referred for a preliminary ruling nor have them declared irrelevant – Case 44/65, *Singer* ([1965] ECR 965). Moreover, only the

infringement of a provision intended to confer rights on individuals is capable in a proper sense of rendering the member state liable. Accordingly, that liability could not be incurred in the case of an infringement of article 234 by a court adjudicating at last instance.

Britain stated that, as a matter of principle and, save where a judicial act infringed a fundamental right protected by the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, no action in damages could be brought against the crown in respect of judicial decisions. It added that the principle on which state liability is based, namely that rights conferred by EC rules must be effectively protected, was far from absolute and cited in that regard the application of fixed limitation periods. That principle would be capable of founding a remedy in damages against the state only in rare cases and in respect of certain strictly defined national judicial decisions. The advantage to be obtained in respect of judicial decisions would be, therefore, correspondingly small. Britain considered that that advantage must be weighed against certain powerful policy concerns.

In this regard, Britain cited, first, the principles of legal certainty and *res judicata*. The law discourages re-litigation of judicial decisions except by means of an appeal. This is both to protect the interests of the successful party and to further the public interest in legal certainty. It submitted that the court had, in the past, shown itself willing to limit the principle of effective protection in order to uphold the basic principles of the national judicial system, such as the principle of legal certainty and acceptance of *res judicata*, which is an expression of that principle – Case C-126/97, *Eco Swiss* ([1999] ECR I – 3055, paragraphs 43 to 48).

Acknowledgment of state liability for a mistake by the judiciary would throw the law into confusion and would leave the litigating parties perpetually uncertain as to where they stood.

Second, Britain submitted that the authority and reputation of the judiciary would be diminished if a judicial mistake could, in the future, result in an action for damages. Third, it maintained that the independence of the judiciary within the national constitutional order was a fundamental principle in all the member states, but one that could never be taken for granted. Acceptance of state liability for judicial acts would be likely to give rise to the risk that that independence might be called in question. Fourth, inherent in the freedom given to national courts to decide matters of community law for themselves is the acceptance that these courts will sometimes make errors that cannot be appealed or otherwise corrected. This, it submitted, was a disadvantage that had always been considered acceptable. In that regard, it pointed out that, in the event that the state could be rendered liable for mistake by the judiciary, with the result that the court could be called upon to give a preliminary ruling on that point, the court would be empowered not only to pronounce upon the correctness of judgments of national supreme courts but to assess the seriousness and excusability of any error into which they had fallen. The consequences of this for the vital relationship between the court and the national courts would clearly not be beneficial. Fifth, it pointed to the difficulties in determining the court competent to adjudicate on such a case of state liability, particularly in Britain, where there is a unitary court system and a strict doctrine of *stare decisis*. Sixth, it maintained that, if state liability for a mistake by the judiciary can be incurred, the same condi-

tions for the liability of the EC for mistakes by the EC judiciary would have to apply.

Principle of state liability

The court stated that, as had been repeatedly held, the principle of liability on the part of a member state for damage caused to individuals as a result of breaches of EC law for which the state is responsible is inherent in the system of the treaty. The court noted that it had also held that that principle applies to any case in which a member state breaches EC law, whichever is the authority of the member state whose act or omission was responsible for the breach (*Brasserie du Pêcheur* and *Factortame*).

The court noted that, in international law, a state that incurs liability for breach of an international commitment is viewed as a single entity, irrespective of whether the breach that gave rise to the damage is attributable to the legislature, the judiciary or the executive. That principle must apply *a fortiori* in the EC legal order, since all state authorities, including the legislature, are bound in performing their tasks to comply with the rules laid down by EC law that directly govern the situation of individuals (*Factortame*, paragraph 34).

In light of the essential role played by the judiciary in the protection of the rights derived by individuals from EC rules, the full effectiveness of those rules would be called in question and the protection of those rights would be weakened if individuals were precluded from being able, under certain conditions, to obtain reparation when their rights were affected by an infringement of EC law attributable to a decision of a court of a member state adjudicating at last instance. The court stated that it must be stressed, in that context, that a court adjudicating at last instance is by definition the last judicial body before

which individuals may assert the rights conferred on them by EC law. Since an infringement of those rights by a final decision of such a court cannot thereafter normally be corrected, individuals cannot be deprived of the possibility of rendering the state liable in order, in that way, to obtain legal protection of their rights.

Further, it is in order – to prevent rights conferred on individuals by EC law from being infringed – that, under the third paragraph of article 234, a court against whose decisions there is no judicial remedy under national law is required to make a reference to the ECJ. It followed from the requirements inherent in the protection of the rights of individuals relying on EC law that they must have the possibility of obtaining redress in the national courts for the damage caused by the infringement of those rights owing to a decision of a court adjudicating at last instance.

Regarding the principle of *res judicata*, the court observed that the importance of the principle of *res judicata* could not be disputed and that to ensure both the stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions, which have become definitive after all rights of appeal had been exhausted or after expiry of time limits, could no longer be called into question. However, the court stated that it should be borne in mind that recognition of the principle of state liability for a decision of a court adjudicating at last instance does not *in itself* have the consequence of calling in question that decision as *res judicata*. The applicant in an action to establish the liability of the state will, if successful, secure an order against it for reparation of the damage incurred, but not necessarily a declaration invalidating the status of *res judicata* of the judicial decision that was responsible for

the damage. In any event, the court stated, the principle of state liability inherent in the EC legal order requires such reparation, but not revision of the judicial decision that was responsible for the damage. It followed that the principle of *res judicata* does not preclude recognition of the principle of state liability for the decision of a court adjudicating at last instance.

In relation to the arguments based on the independence and authority of the judiciary, the court stated that the principle of liability in question concerned not the personal liability of the judge but that of the state. The possibility that, under certain conditions, the state could be rendered liable for judicial decisions contrary to EC law did not appear to entail any particular risk that the independence of a court adjudicating at last instance would be called into question.

In relation to the argument based on the risk of diminution of the authority of a court adjudicating at last instance, owing to the fact that its final decisions could by implication be called in question in proceedings in which the state could be rendered liable for such decisions, the court stated that the existence of a right of action that afforded, under certain conditions, reparation of the injurious effect of an erroneous judicial decision could also be regarded as enhancing the quality of a legal system and thus, in the long run, the authority of the judiciary.

As regards the argument that application of the principle of state liability to decisions of a national court adjudicating at last instance was precluded by the difficulty of designating a court competent to determine disputes concerning the reparation of damage resulting from such decisions, the court stated that it was for the member states to enable those affected to rely

on the principle of state liability by affording them an appropriate right of action. Application of the principle of state liability in order to secure protection for individuals of the rights conferred on them by EC rules could not be compromised by the absence of a competent court.

The court stated that according to settled case law, in the absence of EC legislation, it is for the internal legal order of each member state to designate the competent courts and lay down the detailed procedural rules for legal proceedings intended fully to safeguard the rights that individuals derive from EC law (Case 33/76, *Rewe* [1976] ECR 1989, paragraph 5; Case 45/76, *Comet* [1986] ECR 2043, paragraph 13; Case 68/79, *Just* [1980] ECR 501, paragraph 25; *Francovich and others*, paragraph 42; Case 312/93, *Peterbroeck* [1995] ECR I – 4599, paragraph 12). Subject to the reservation that it was for the member states to ensure in each case that those rights are effectively protected, the court stated that it was not for it to become involved in resolving questions of jurisdiction to which classification of certain legal situations based on EC law may give rise in the national judicial system.

The court added that, although considerations to do with observance of the principle of *res judicata* or the independence of the judiciary had caused national legal systems to impose restrictions, which may sometimes be stringent, on the possibility of rendering the state liable for damage caused by mistaken judicial decisions, such considerations had not been such as absolutely to exclude that possibility. The court noted that application of the principle of state liability to judicial decisions had been accepted in one form or another by most of the member states, even if subject to restrictive and varying condi-

tions. Further, it could also be noted that the *European Convention on Human Rights* and, more particularly, article 41 thereof, enables the European Court of Human Rights to order a state that had infringed a fundamental right to provide reparation of the damage resulting from that conduct for the injured party. The case law of that court showed that such reparation could also be granted when the infringement stemmed from a decision of a national court adjudicating at last instance (*Dulaurans v France*, European Court of Human Rights, 21 March 2000).

The court accordingly ruled that the principle according to which the member states are liable to afford reparation of damage caused to individuals as a result of infringements of EC law for which they are responsible is also applicable where the alleged infringement stemmed from a decision of a court adjudicating at last instance. It is for the legal system of each member state to designate the court competent to adjudicate on disputes relating to such reparation.

Conditions for liability

However, the court noted that, having regard to the specific nature of the judicial function and to the legitimate requirements of legal certainty, state liability in such a case was not unlimited and could be incurred only in the exceptional case where the national court adjudicating at last instance had manifestly infringed the applicable law. In order to determine whether that condition is satisfied, the national court hearing a claim for reparation must take account all of the factors that characterise the situation put before it, which include, in particular, the degree of clarity and precision of the rule infringed, whether the infringement was intentional, whether the error of

law was excusable or inexcusable, the position taken – where applicable – by a community institution, and non-compliance by the court in question with its obligation to make a reference for a preliminary ruling under the third paragraph of article 234.

In *Traghetti*, the limitation of state liability under Italian law for damage sustained as a consequence of judicial conduct was considered by the court. While the Italian legislation provided for compensation as a result of acts or measures on the part of a judge who was guilty of intentional fault or serious misconduct in the exercise of his functions, this was qualified by the condition that, in the exercise of judicial functions, the interpretation of provisions of law or the assessment of facts and evidence would not give rise to liability.

Traghetti del Mediterraneo SpA (TDM) was a maritime transport undertaking that, along with Tirrenia di Navigazione, another maritime transport undertaking, ran regular ferry services in the 1970s between mainland Italy and Sardinia and Sicily. In 1981, when it had entered into an arrangement with its creditors, TDM brought proceedings against Tirrenia before the Naples district court, seeking compensation for the damage that it claimed to have suffered as a result of the low-fare policy operated by Tirrenia. TDM also submitted that its competitor had failed to comply with article 2598(3) of the Italian civil code relating to acts of unfair competition and had infringed articles 85, 86, 90 and 92 of the *EEC Treaty* (now articles 81, 82, 86 and, after amendment, 87 EC respectively), since, in its view, Tirrenia had infringed the basic rules of the treaty and, in particular, abused its dominant position on the market in question by operating with fares well below cost, owing to its having obtained public subsidies, the

legality of which was doubtful under community law.

The action for compensation was dismissed at first instance and subsequently by the Naples court of appeal, on the ground that the subsidies granted by the authorities of that state were legal, since they reflected public interest objectives in connection with the development of the Mezzogiorno and did not adversely affect the operation of sea links other than, and competing with, those objected to by TDM. Accordingly, it could not be held that Tirrenia was responsible for acts of unfair competition.

TDM lodged an appeal on the basis that the decisions were vitiated by errors of law, since they were based on an incorrect interpretation of the treaty rules on state aid, requesting the Corte Suprema di Cassazione to submit the relevant questions of interpretation of EC law to the Court of Justice under article 117 of the *EC Treaty* (now article 234). However, the Corte Suprema di Cassazione refused to accede to that request on the ground that the approach adopted by the court ruling on the substance followed the relevant provisions of the treaty and was perfectly consistent with the court's case law, in particular its judgment in *Parliament v Council* ([1985] ECR 1513).

TDM, taking the view that the supreme court judgment was based on an incorrect interpretation of the treaty rules and on the erroneous premise that there was settled case law of the Court of Justice on the matter, instituted proceedings against Italy before the Genoa district court for compensation for the damage suffered as a result of the errors of interpretation committed by the Corte Suprema di Cassazione and of the breach of its obligation to make a reference for a preliminary ruling pursuant to the third paragraph of article 234.

Relying on commission deci-

sion 2001/851/EC of 21 June 2001 on the state aid awarded to Tirrenia by Italy (a decision relating to subsidies granted after the period at issue in the main proceedings, but adopted following a procedure instituted by the commission before the hearing before the Corte Suprema di Cassazione in the case that gave rise to the judgment of that court), TDM submitted that, had that court made a reference to the Court of Justice, the outcome of the appeal would have been entirely different. The court would have, in TDM's submission, laid emphasis on the community dimension of the maritime cabotage and the difficulties inherent in assessing the compatibility of public bodies with the treaty rules on state aid, which would have led the Corte Suprema di Cassazione to declare that the aid granted to Tirrenia was unlawful.

Italy disputed even the admissibility of that action for damages, basing its arguments on the Italian legislation, particularly an article pursuant to which the interpretation of provisions of law in the context of the exercise of judicial functions could not give rise to state liability. However, it submitted in the alternative that if the action could be held admissible by the referring court, that the action must be dismissed, since the conditions governing references for a preliminary ruling were not met and the judgment of the Corte Suprema di Cassazione, being *res judicata*, could no longer be challenged.

In reply to those arguments, TDM raised the question of the compatibility of the Italian legislation with the requirements of community law. In particular, it submitted that the conditions governing the admissibility of actions laid down by Italian law and the practice of the Italian courts (including the Corte Suprema di Cassazione) were so restrictive that they made it

excessively difficult, indeed virtually impossible, to obtain compensation from the state for damage caused by judicial decisions. Consequently, that legislation disregards the principles laid down by the court in joined cases C-6/90 and C-9/90, *Francovich and Others* ([1991] ECR I-5357) and joined cases C-46/93 and C-48/93, *Brasserie du Pêcheur and Factortame* ([1996] ECR I-1029). The Tribunale di Genova decided to stay the proceedings and to refer questions to the court for a preliminary ruling.

The court noted, first, that the aim of the proceedings pending before the referring court was to have the state held liable in respect of a decision of a supreme court that was not subject to appeal. The question referred must therefore be understood as concerning, in essence, the question of whether community law and, in particular, the principles laid down by the court in *Köbler* precluded national legislation that excludes all state liability for damage caused to individuals by an infringement of community law committed by a national court adjudicating at last instance, where that infringement is the result of an interpretation of provisions of law or of an assessment of the facts and evidence by that court, and also limits such liability solely to cases of intentional fault and serious misconduct on the part of the court.

The commission and TDM were of the view that that question called clearly for an affirmative answer. Since assessment of facts and evidence and interpretation of provisions of law are inherent in the judicial function, the exclusion, in such cases, of state liability for damage caused to individuals by reason of the exercise of that function amounted, in practice, to exonerating the state from all liability for infringements of community law attributable to

the judiciary. Further, with regard to the limitation of that liability solely to cases of intentional fault or serious misconduct on the part of the court, that would also likely lead to *de facto* exclusion of all state liability since, firstly, the court called upon to rule on an action for compensation for damage caused by a judicial decision is not left free to construe the actual concept of 'serious misconduct' itself but is bound by the strict definition laid down by the national legislature, which sets out in advance – and exhaustively – what constitutes serious misconduct.

Italy, supported by Ireland and Britain, submitted that national legislation such as that at issue was perfectly compatible with the very principles of community law, since it created a fair balance between the need to preserve the independence of the judiciary and the essential requirements of legal certainty, on the one hand, and the provision of effective judicial protection of individuals in the most flagrant cases of infringement of EC law attributable to the judiciary, on the other.

Interpretation of provisions of law

Regarding the compatibility of the Italian legislation's limitation of liability in respect of the interpretation of provisions of law, the court stated that it was not inconceivable that a manifest infringement of community law might be committed precisely in the exercise of such work of interpretation if, for example, the court gave a substantive or procedural rule of EC law a manifestly incorrect meaning, particularly in the light of the relevant case law on the subject, or where it interpreted national law in such a way that in practice led to an infringement of the applicable EC law. As the Advocate General had observed in his opinion, to exclude all state liability in such circumstances on

the ground that the infringement of community law arose from an interpretation of provisions of law made by a court would be tantamount to rendering meaningless the principle laid down by the court in *Köbler*. The court considered that remark all the more apposite in the case of courts adjudicating at last instance, which were responsible, at national level, for ensuring that rules of law are given a uniform interpretation.

Facts and evidence

Similarly, legislation that, in a general manner, excluded all state liability where the infringement attributable to a court of that state arose from an assessment of the facts and evidence could also render meaningless the principle laid down by the court in *Köbler*. An assessment of the facts and evidence, which sometimes would require complex analysis, could lead to a manifest infringement of the applicable law, whether that assessment would be made in the context of the application of specific provisions relating to the burden of proof or the weight or admissibility of the evidence, or in the context of the application of provisions

that would require a legal characterisation of the facts. To exclude, in such circumstances, any possibility that state liability might be incurred where the infringement allegedly committed by the national court related to the assessment it made of facts or evidence would also amount to depriving the principle set out in *Köbler* of all practical effect. As the Advocate General had observed in his opinion, that was especially the case in the state-aid sector. To exclude, in that sector, all state liability on the ground that an infringement of community law committed by a national court was the result of an assessment of the facts would be likely to lead to a weakening of the procedural guarantees available to individuals, in that the protection of the rights that they derive from the relevant provisions depends, to a great extent, on successive operations of legal classification of the facts.

Were state liability to be wholly excluded by reason of the assessments of facts carried out by a court, those individuals would have no judicial protection if a national court adjudicating at last instance committed a manifest error in its review

of the operations of legal classification of facts.

Regarding the limitation of state liability to cases of intentional fault and serious misconduct on the part of the court, the court recalled the criteria under which a manifest infringement of the applicable law was to be assessed, as set out in *Köbler*, and stated that, although it remained possible for national law to define the criteria relating to the nature or degree of the infringement that must be met before state liability could be incurred for an infringement of community law adjudicating at last instance, under no circumstances could such criteria impose requirements stricter than that of a manifest disregard of the applicable law.

Both *Köbler* and *Traghetti* show that, while the court recognises the importance of the principle of *res judicata* both for the EC legal order and national legal systems, neither the principle of the independence of the judiciary nor that of *res judicata* can justify general exclusion of state liability for an infringement of EC law attributable to a court adjudicating at last instance. Further, EC law precludes national legislation

from excluding liability, in a general manner, for damage caused to individuals by an infringement of EC law attributable to a court adjudicating at last instance, by reason of the fact that the infringement results from an interpretation of provisions of law or an assessment of facts or evidence carried out by that court. That the court does recognise the importance of the principle of *res judicata* was confirmed in *Kapferer*, where it ruled that, as a general rule, EC law does not require a national court to disapply its internal rules of procedure in order to review and reopen a final judicial decision if that decision should be contrary to EC law. It is where there has been a manifest infringement of the applicable law, the rule of law infringed is intended to confer rights on individuals and it has been established that there is a direct causal link between the breach of the obligation incumbent on the state and the loss or damage sustained by the injured parties, that there is a right to obtain redress. **G**

James Kinch is a senior executive solicitor in the Law Department of Dublin City Council.

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(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 3 November 2006)

Regd owner: Urban District Council of Ennis; folio: 19753; lands: townland of Drumbiggil and barony of Islands; **Co Clare**

Regd owner: Catherine Garde; folio: 3128F; lands: townland of Noan (ED Rath) and barony of Inchiquinn; area: 0.2453 hectares; **Co Clare**

Regd owner: Michael Keane; folio: 2259F; lands: (1) Trough, (2) Coolycasey, (3) Cloonsheerea and barony of (1) and (3) Tulla Lower and (2) Bunratty Lower; area: (1) 31 acres, 2 roods, 13 perches, (2) 20.313 acres, (3) 29 acres, 2 roods; **Co Clare**

Regd owner: Michael Scanlan and Mary Scanlan; folio: 4744; lands: townland of Clooncolman and barony of Islands; area: 21.3640 hectares; **Co Clare**

Regd owner: James John Collins (deceased); folio: 849F; lands: plot of ground situate in the townland of Lisnacunna in the barony of Carbery East (east division) and county of Cork; **Co Cork**

Regd owner: Patrick J Hurley (deceased); folio: 23995; lands: plot of ground being part of the townland of Reenrour West in the barony of Bantry and county of Cork; **Co Cork**

Regd owner: Florence Ainscough (deceased), Peter Ainscough and Rosemary Sosted; folio: 55283; lands: plot of ground situate in the townland of Coolflugh, known as Shournagh View, Kerry Road, Tower, in the barony of Muskerry East and county of Cork; **Co Cork**

Regd owner: Geraldine Harrington and Martin Buckley; folio: 7575L; lands: plot of ground being part of the townland of Carrignafof, known as 38 Belmont Place, situate in the parish of Templarobin and Urban District of Cobh and the county of Cork; **Co Cork**

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Regd owner: Liam O'Regan; folio: 34282F; lands: plot of ground situate in the townland of Kilmoon, known as Kilmoon, Sherkin Island, Skibbereen, in the barony of Carbery West (east division) and the county of Cork; **Co Cork**

Regd owner: William Casey (deceased); folio: 35776; lands: plot of ground being part of the townland of Carrigyknaveen in the barony of Muskerry East and the county of Cork; **Co Cork**

Regd owner: Michael J Cronin; folio: 21962; lands: plot of ground being part of the townland of Ballydesmond in the barony of Duhallow and the county of Cork; **Co Cork**

Regd owner: Nora Cronin (deceased); folio: 3384L; lands: plot of ground situate to the south side of the Cork Road in the parish and Urban District of Mallow and the county of Cork; **Co Cork**

Regd owner: Patrick Hurley (deceased); folio: 18222; lands: plot of ground being part of the townland of Newtown in the barony of Bantry and the county of Cork; **Co Cork**

Regd owner: Donnacha Keane; folio: 49990; lands: plot of ground being part of the townland of Dromdaleague in the barony of Carbery West (east division) and the county of Cork; **Co Cork**

Regd owner: John O'Brien; folio: 24951F; lands: plot of ground being part of the townland of Pillmore in the barony of Imokilly and county of Cork; **Co Cork**

Regd owner: Joanne Willis and Pat O'Brien; folio: 67130F; lands: plot of ground situate in the townland of Ballyellis (Fermoy By) in the barony of Fermoy and the county of Cork; **Co Cork**

Regd owner: Denis Madden; folio: 41137; lands: plot of ground being part of the townland of Ballindillanig in the barony of Orrery and Kilmore

and county of Cork; **Co Cork**

Regd owner: Patrick O'Donoghue and Deirdre O'Donoghue; folio: 15787F; lands: plot of ground being part of the townland of Ballinaspig Beg, known as 29 Laburnum Park, situate in the parish of St Finbar's and the county of Cork; **Co Cork**

Regd owner: Bernard Collins, Castle Street, Ramelton, Co Donegal; folio: 7719; lands: Ballylin; area: 4.2441 hectares; **Co Donegal**

Regd owner: Hugh McDevitt, James McDevitt, Dominic McGlynn, Michael McGeehan and Seamus O'Connell, Bellanamore, Lifford, Co Donegal; folio: 43277; lands: Bellanamore; area: 0.2276 hectares; **Co Donegal**

Regd owner: Michael Connolly and Bernadette Veronica Connolly; folio: DN9823; lands: property situate in the townland of Rathcoole and barony of Newcastle; **Co Dublin**

Regd owner: Michael Foley; folio: DN74258L; lands: property known as no 20 Norfold Road, situate in the parish of Grangegorman and North Central; **Co Dublin**

Regd owner: Patrick J Gilson, 5 Carpenterstown Road, Castleknock, Dublin 15; folio: 67437F; lands: property situate in the townland of Castleknock and barony of Castleknock; **Co Dublin**

Regd owner: Caroline Hurley; folio: DN78301F; lands: property situate in the townland of Balcarrick and barony of Nethercross; **Co Dublin**

Regd owner: William Browne and Margaret Browne; folio: DN18358L; lands: property situate on the east side of Tymon Crescent in the town of Tallaght; **Co Dublin**

Regd owner: Barry Smith; folio: DN100267L; lands: the leasehold interest in the property being an apartment known as no 218 First Floor and car park space, the Tramyard, Spa Road, Inchicore, in the parish of St Jude and district of

Kilmainham; **Co Dublin**

Regd owner: Peter Cunningham; folio: DN97865L; lands: (1) the leasehold interest in the property being part of apartment no 57 Second Floor, Davis Court, Inchicore, and situate to the south of Thomas Davis Street West in the parish of St Jude's and in the district of Kilmainham; (2) the leasehold interest in the property being part of apartment no 57 Second Floor, together with car parking space, no 57 Davis Court, Inchicore and situate to the south of Thomas Davis Street West in the parish of St Jude's and in the district of Kilmainham; **Co Dublin**

Regd owner: Eamonn Murphy and Teresa Murphy; folio: DN133733F; lands: a plot of ground known as 9 Villa Park, Navan Road, in the parish of Castleknock and in the district of Cabra and in the county borough of Dublin; **Co Dublin**

Regd owner: Anne Theresa Tynan; folio: DN31292L; lands: property situate in the townland of Haroldsgrange and barony of Rathdown; **Co Dublin**

Regd owner: Walter McCormack and Elizabeth McCormack; folio: DN96081F; lands: property known as 69 Donaghmede Road, situate in the parish of Baldoyle and district of Kilbarrack; **Co Dublin**

Regd owner: Malachy Fahy; folio: 10456F; lands: townland of (1) and (3) Corrofin, (2) Cloonkeen and barony of (1), (2), (3) Clare; area: (1)

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9.6140 hectares, (2) 0.2700 hectares, (3) 4.5720 hectares; **Co Galway**
 Regd owner: Michael Joseph Mahon; folio: 7585; lands: townland of Shoodaun and barony of Tiaquin; area: 7.2514 hectares; **Co Galway**
 Regd owner: Pauline Meehan; folio: 3490F; lands: townland of Townparks and barony of Clare; **Co Galway**
 Regd owner: John A Keane; folio: 63670F; lands: townland of Lavalley (Dunkellin By) and barony of Dunkellin; area: 1.3660 hectares; **Co Galway**
 Regd owner: Martin Glennon; folio: 28286 and 30744; lands: townland of Fahy (Longford By) and Grange (Longford By) and barony of Longford; **Co Galway**
 Regd owner: Bridget Horgan; folio: 10842F and 30714F; lands: townland of Ardferit and barony of Clanmaurice and county of Kerry; **Co Kerry**
 Regd owner: Simon Beatty; folio: 22239; lands: townland of Muingvautia and barony of Trughanacmy; **Co Kerry**
 Regd owner: John Fleming; folio: 11209; lands: townland of Parknamulloge and barony of Trughanacmy; **Co Kerry**
 Regd owner: O'Cathain Iasc Teoranta; folio: 34930F; lands: townland of Ballymorereagh and barony of Corkaguiny; **Co Kerry**
 Regd owner: Michael Clooney; folio: 13988; lands: townland of Killeenlea and barony of Salt North; **Co Kildare**
 Regd owner: Robert O'Keeffe and Ors; folio: 5981; lands: townland of Townparks and barony of Narragh and Reban West; **Co Kildare**
 Regd owner: Sean Early (otherwise John

Early); folio: 1906F; lands: situate at Allenwood Middle, Naas, Co Kildare; **Co Kildare**
 Regd owner: Eirfab Products Limited; folio: 4158F; lands: Rathpatrick and barony of Ida; **Co Kilkenny**
 Regd owner: Thomas Curtin; folio: 20954; lands: townland of Faha Demesne and barony of Pubblebrien; **Co Limerick**
 Regd owner: Joseph Larkin and Theresa Larkin; folio: 26328; lands: townland of Knockane and barony of Glenquin and county of Limerick; **Co Limerick**
 Regd owner: Denis O'Donoghue; folio: 3940; lands: townland of Raheenagh and barony of Glenquin; **Co Limerick**
 Regd owner: Patrick Farrell, Derrygeel, Lanesboro, Co Longford; folio: 3998F; lands: lands of Derrygowna containing 3.8826 hectares, Derrygowna containing 0.1267 hectares, Derrygeel containing 8.1771 hectares, Derrygeel containing 4.8259 hectares, Derryglash containing 15.4007 hectares and Derrygowna containing 0.9834 hectares; **Co Longford**
 Regd owner: Brian McCabe, Belpatrick, Smarmore, Drogheda, Co Louth; folio: 1534; land: Corstown; **Co Louth**
 Regd owner: Stephen Skelly and Helen Skelly, Kildalkey, Navan, Co Meath; folio: 4068; lands: Moyrath; area: 0.1644 hectares; **Co Meath**
 Regd owner: Anthony Cromwell, Commons, Duleek, Co Meath; folio: 3417; lands: Commons; area: 5.7971 hectares; **Co Meath**
 Regd owner: David William Courtney Ferris, The Villa, Rathmoylan, Enfield, Co Meath; folio: 24628; lands: Rathmoylan, Kill Beg and Kill More; area: 14.6825 hectares, 1.5175 hectares and 7.6055 hectares; **Co Meath**
 Regd owner: Peter Kearney, 30 Dillons Land, Navan, Co Meath; folio: 1919L; lands: Dillonsland; **Co Meath**
 Regd owner: Mary McKenna, Emy, Emyvale, Monaghan, Co Monaghan; folio: 10722; lands: Stramore; area: 5.4430 hectares; **Co Monaghan**
 Regd owner: John Swaine and Bridget Swaine; folio: 10152; lands: Backwood and barony of Philipstown Upper; **Co Offaly**
 Regd owner: Michael Carroll; folio: 18422; lands: townland of Beagh (Brabazon) and barony of Moycarn; area: 3.4709 hectares; **Co Roscommon**
 Regd owner: Constantine McGuire; folio: 32517; lands: townland of (1) Ballyfeeny, (2) Clooneen (Hartland), (3) Ballyfeeny and barony of (1) Ballintober North, (2) Roscommon, (3) Ballintober; area: (1) 12.8538 hectares, (2) 6.2018 hectares, (3) 0.2706 hectares; **Co Roscommon**

Regd owner: Patrick Conry; folio: 22469; lands: townland of Corbally and Ardkkeenagh (Plunkett) and barony of Frenchpark and Roscommon; **Co Roscommon**
 Regd owner: Michael McGovern; folio: 11056 and 11194; lands: townland of Farnbeg and barony of Roscommon; **Co Roscommon**
 Regd owner: Nicholas Roddy and Una Roddy; folio: 8424F; lands: townland of Gortersluin and barony of Leyny; area: 0.318 hectares; **Co Sligo**
 Regd owner: Michael Cahill; folio: 6281F; lands: townland of Ballydonnell and Lismalin and barony of Slievardagh; **Co Tipperary**
 Regd owner: Bridie Hayes; folio: 24322; lands: townland of Loughourna and barony of Lower Ormond; **Co Tipperary**
 Regd owner: Bernard Power; folio: 18191F; lands: plot of ground being part of the townland of Cheekpoint in the barony of Gaultiere and county of Waterford; **Co Waterford**
 Regd owner: Raymond Daly, Parsonstown, Monilea, Mullingar, Co Westmeath; folio: 6865; lands: Parsonstown; area: 25.315 hectares; **Co Westmeath**
 Regd owner: Eugene Martin, Clonfad, Dalystown, Co Westmeath; folio: 8522; lands: Clonfad; area: 10.7014 hectares; **Co Westmeath**
 Regd owner: Daniel Carroll (deceased); folio: 336; lands: Arnestown and barony of Bantry; **Co Wexford**
 Regd owner: Frederick Gethings; folio: 7158; lands: Ballybreen and barony of Scarawalsh; **Co Wexford**

Feeley, Martin (deceased), late of 77B Upper Dominick Street, Dublin 7. Would any person having knowledge of a will made by the above-named deceased, who died on 3 May 2005, or if they would have any knowledge about any surviving blood relations of the deceased, please contact Paul W Tracey, Solicitors, 24 Marlborough Street, Dublin 1; tel: 01 874 5656, fax: 01 874 5550

Flynn, Eugene (deceased), late of Templeglantine East, Templeglantine, Co Limerick, driving instructor, who died on 29 March 2005. Would any person having knowledge of the whereabouts of the original will of the above-named deceased please contact Dennison Solicitors of Main Street, Abbeyfeale, Co Limerick

Higgins, John (deceased), late of Chapel Street, Eyrecourt, in the county of Galway. Would any person having knowledge of a will dated 11 July 1980, executed by the above-named deceased, who died on 12 December 1985 at Chapel Street, Eyrecourt, Co Galway, please contact Michael Collins & Co, Solicitors, Main Street, Borrisokane, Co Tipperary; tel: 067 27470, fax: 067 27504, email: mwclaw@eircom.net

McCarthy, James (otherwise Jim) (deceased), late of 1 Knockree Gardens, Balklinlough Road, Cork, who died on 3 September 2006. Would any person having knowledge of a will executed by the above-named person please contact Daniel Murphy & Co, Solicitor, 3 Moorefield Terrace, South Douglas Road, Cork

McMahon, Mary (deceased), late of 52 Fergus Manor, Ennis, Co Clare. Would any person having knowledge of a will executed by the above-named deceased please contact Thornton Solicitors, 88 O'Connell Street, Limerick; tel: 061 315 543, fax: 061 315 503

O'Connell, Patrick (otherwise Paddy) (deceased), late of 38 Charleville Road, Dublin 7, also Staff Quarters, Arbour Hill Prison, Dublin or Farranshone, Limerick; date of death: 23 September 2006. Would any person having knowledge of any will executed by the above-named deceased, who died on 23 September 2006 at the Mater Hospital, Dublin, please contact Geraldine Thornton, Thornton Solicitors, 88 O'Connell Street, Limerick City; tel: 061 315 543, fax: 061 315 503, email: gthornton@thorntonsolicitors.ie

O'Neill, Phyllis (a ward of court), currently at Carysfort Nursing Home, Arkendale Road, Glenageary, Co Dublin, previously residing at Moyle, Sandyford Road, Dublin 16. Would any person having knowledge of the whereabouts of a will executed by the above-named ward

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 Email: nvd@cvslaw.co.uk

WILLS

Croston, Richard (deceased), late of Carrigfadda, Skibbereen, Co Cork. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died September 2006, please contact Daniel Sheehan, Collins, Brooks & Associates, Solicitors, 6/7 Rossa Street, Clonakilty, Co Cork

Doyle, Noel Nicholas (deceased), late of 74 Tolka Estate, Finglas, Dublin 11. Would any person having knowledge of a will being made by the above-named deceased, who died on 15 August 2006, please contact O'Leary Maher Solicitors, 191 Howth Road, Killester, Dublin 3; tel: 01 833 1900, fax: 01 833 4991

Duignan, Thomas (deceased), late of Hanstown, Ballinea, Mullingar, Co Westmeath. Would any person having any knowledge of the whereabouts of any will made by the above-named deceased, who died on 11 August 2006, please contact Larkin & Tynan, Solicitors, Mullingar; tel: 044 934 8318, email: info@larkintynan.ie

of court please contact Avril Gallagher of Gallagher & Co Solicitors, 58 Ranelagh Village, Dublin 6; tel: 497 1520

Russell, Aileen (deceased), late of Apartment 7, 65 Strand Road, Sandymount Road, Sandymount, Dublin 4. Would any person with knowledge of any will made by the above-named deceased, who died on 27 August 2006, please contact Matheson Ormsby Prentice (Graham Richards), 30 Herbert Street, Dublin 2; tel: 01 619 9000

Ryan, Kathleen (deceased), late of Bilboa, Cappamore, in the county of Limerick. Would any person having knowledge of a will executed by the above-named deceased, who died on 1 February 1983, please contact: John Cooke, Solicitors, Main Street, Hospital, Co Limerick; tel: 061 383 388, fax: 061 383 330, email: jcookesolr@eircom.net

Smith, Helen (deceased), late of 35 Glasnevin Avenue, Dublin 11. Would any person having knowledge of a will made by the above-named deceased, who died on 6 September 2006, please contact Margetson & Greene Solicitors, 35 Lower Baggot Street, Dublin 2; tel: 01 676 1916, fax: 01 676 6549

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TITLE DEEDS

Estate of the late John Charles Robinson (deceased), property at 1 Churchtown Close, Milltown, Dublin 14. Would any person having knowledge of the original title documents relating to the above property please contact Hayes Solicitors, Lavery House, Earlsfort Terrace, Dublin 2 (Ref: TM); tel: 01 662 4747, fax: 01 661 2163, email: law@hayes-solicitors.ie

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 a strip of land with stand erected thereon at Richmond Park, Inchicore, Dublin 8: an application by Newtonheath Company Limited, having its registered office at 125 Emmet Road, Inchicore, Dublin 8 (trading as St Patrick's Athletic FC)

Take notice that any person having any interest in the freehold estate of the following property: all that and those the premises demised by indenture of lease, 28 February 1958, made between Sarah A O'Reilly of 117 Emmet Road, Dublin 8, John O'Reilly of 117 Emmet Road, Dublin 8, Michael O'Reilly of 117 Emmet Road, Dublin 8, and Mary Teresa Magaharn of 6 Old Kilmainham, Dublin 8, lessors of the one part, and Martin Dunne of 142 Cooley Road, Drimnagh, Dublin 12, Joseph Cronin of 102 Mourne Road, Drimnagh, Dublin 12, Bartholomew B Cummins of 33 Walkinstown Drive, Walkinstown, Dublin 12, and Denis Ward of 6 New Vale, Shankill, Co Dublin, lessees, and therein described as all that and those that piece or plot of ground situate on the east side of certain land now in the occupation of the lessees and known as Richmond Park, Kilmainham, in the parish of St James, formerly in the barony of Coolock and county of Dublin, but now in the city of Dublin, which said piece or plot of ground containing on the western side 292 feet, on the eastern side 267 feet, on the northern side 30 feet, and on the southern side 30 feet, be the said admeasurements more or less, more particularly shown on the map drawn on these presents and therein edged red, being a strip of land with stand erected thereon at Richmond Park, Inchicore, Dublin 8.

Take notice that Newtonheath Company Limited (trading as St Patrick's Athletic FC) intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest of the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the 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, Newtonheath Company Limited intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 3 November 2006

Signed: Richard Black Solicitors (solicitors for the applicant), Beechfield House, Clonee, Dublin 15

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 Michael and Dolores Crowe

Take notice that any person having any interest in the freehold estate of or any superior interest in the following property: all that and those the premises known as 77 Larchfield Road, Goatstown, in the county of Dublin, held under an indenture of sub-lease dated 1 October 1958 ('the sub-lease') and made between Robbins White and Company Limited of the first part, Thomas O'Neill and Edward McMahon of the second part, and James Bradford of the third part, and as to the portion shown coloured in red on the map annexed thereto for the residue unexpired of a term of 99 years from 29 September 1950, and as to the portion shown coloured in blue on the map annexed thereto ('the blue portion') for the residue unexpired of a term of 99 years from 15 June 1955, subject to the yearly rent of £15 thereby reserved and the covenants on the part of the lessee and the conditions in the sub-lease contained, and further as to the blue portion forever with other property under an indenture of fee farm grant dated 23 July 1889 and made between Thomas Joseph Walker of the one part and the Commissioners of Public Works in Ireland of the other part, subject to the yearly rent of £46.18s.8d thereby reserved (but indemnified against payment of any part thereof in the manner provided in an indenture of conveyance dated 22 May 2006 and made between the Commissioners of Public Works in Ireland of the one part and the applicants of the other part) and the covenants on the part of the grantee (other than the covenant for payment of rent) and the conditions in said fee farm grant contained, insofar as same relate to or affect the blue portion and further subject to and with the benefit of the sub-lease insofar as same relates to or affects the blue portion.

Take notice that the applicants intend

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

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

Date: 3 November 2006

Signed: Gerard O'Shea (solicitors for the applicants), Meridian House, 13 Warrington Place, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Brian Murphy and Garret Peers

Take notice that any person having interest in the freehold estate of the following property: 11 Saint David's Terrace, Blackhorse Avenue, Dublin 7, more particularly described in an indenture of lease dated 28 November 1910 between John Joseph Beatty of the first part and Richard Crookes of the second part for the term of 238 years from 1 September 1910, subject to the yearly rent of £5 and to the covenants on the lessees par and conditions therein contained.

Take notice that Brian Murphy and Garret Peers intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforementioned property to the below named within 21 days of the date of this notice.

In default of any such notice being received, Brian Murphy and Garret Peers intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the property aforesaid are unknown or unascertained.

Date: 3 November 2006

Signed: Partners at Law (solicitors for the applicants), 8 Adelaide Street, Dun Laoghaire, Co Dublin

In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Conor Whelan, James Boucher and Paul Dunne

Take notice that any person having an interest in the freehold estate or any superior interest in the property known as Prague Haus, 3 College Road, Castleknock, Dublin 15, being the property demised by indenture of lease dated 17 October 1967 made between Gallagher Group Limited of the one part and John Cruise of the other part for a term of 900 years from 25 March 1965, subject to a yearly rent of £1 (€1.27).

Take notice that the applicants, Conor Whelan, James Boucher and Paul Dunne, intend to submit an application to the registrar of titles for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid 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 applicants intend to proceed with the application before the registrar of titles for the county/city of Dublin at the end of the 21 days from the date of this notice and will apply to the registrar of titles for the county/city of Dublin for vesting on arbitration as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 3 November 2006

Signed: P Delaney & Co (solicitors for the applicants), Parkside House, Main Street, Castleknock, Dublin 15

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Landlord and Tenant (Ground Rents) Acts 1967-1989: notice of intention to acquire fee simple (section 4)

To whom it may concern:

Description of land

Shop, dwelling house and premises, together with appurtenances thereto, situate at Main Street, Templemore, in the barony of Eliogarty and county of Tipperary, described in the rate books of Templemore Town/Urban District Council as no 72 house and shop and no 73 licensed house, offices and yard.

Particulars of applicant's lease or tenancy

The property is held under a yearly tenancy at a rent of £20 per annum, which arose by operation of law or by inference on the expiry of a lease made on 18 April 1908 between William Edmondson Dudley and Patrick Nesbitt for a term of 14 years from 1 November 1907 and reserving a yearly rent of £20, the unexpired portion of which lease was assigned by the said Patrick Nesbitt to Patrick Hennessy on 31 March 1912 and the applicant is the successor to the interest of the said Patrick Hennessy.

Take notice that Declan Shelly, of 72/73 Main Street, Templemore, Co Tipperary, being a person whom we believe entitled under the above acts, proposes to purchase the fee simple in the land described in paragraph 1.

Date: 3 November 2006

Signed: Butler Cunningham & Molony (solicitors for the applicant), Main Street, Templemore, Co Tipperary

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Dermot Daly

Any person having a freehold estate or any intermediate interest in all that and those 3 Arbourfield, Windy Arbour, Dundrum, Co Dublin, being part of the premises described in an indenture of sub-lease dated 27 March 1950 between the Irish Civil Service (Permanent) Building Society of the first part, the Commercial Banking Company Limited of the second part, John Dowling of the third part, and Thomas Noone of the fourth part, for a term of 400 years from 25 March 1949 at a rent of £72 per annum.

Take notice that Dermot Daly, being the person currently entitled to the sub-lessees' interests in the said premises, intends to apply to the county registrar for the county of Dublin for the acquisition of the sub-lessor's and all superior interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Dermot Daly intends to proceed with the application before the

county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 3 November 2006

Signed: TG McVeagh & Co (solicitors for the applicant), 32 Kildare Street, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: an application by Gerard McErlean, Gabriel Maguire and Michael Morris

Any person having a freehold estate or any intermediate interest in all that and those that plot or piece of ground the subject of an indenture of lease dated 24 September 1943 between Mary Tyrell of the one part and Frank Malachy Boyland of the other part for a term of 90 years from 29 September 1941, at a yearly rent of £3 and therein described as all and singular that plot or piece of ground situate in the parish of St Peter and city of Dublin, bounded on the south-east side by the garden of no 23 Upper Pembroke Street, on the south-west side by the rear of no 22 Upper Pembroke Street, and on the north-west side by Quinn's Lane, and on the north-east side partly by premises forming part of the rear of no 24 Pembroke Street and partly by premises in the occupation of SH Purser, together with the messuage and buildings erected thereon.

All that and those that plot or piece of ground the subject of a further indenture of lease of even date between Mary Tyrell of the one part and Frank Malachy Boyland of the other part, for a term of 90 years from 29 September 1941 at a yearly rent of £3, and therein described as all and singular that plot or piece of ground situate in the parish of St Peter and city of Dublin, bounded on the south-east side by the garden of no 22 Upper Pembroke Street, on the south-west side by the rear of no 21 Pembroke Street, on the south-west side by the rear of no 22 Upper Pembroke Street, on the north-west side by Quinn's Lane aforesaid and on the north-east side by premises forming part of the rear of no 23 Upper Pembroke Street, together with the messuage and building erected thereon.

Take notice that Gerard McErlean, Gabriel Maguire and Michael Morris, being the persons currently entitled to the lessees' interests under the said leases, intend to apply to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence of title to same

to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Gerard McErlean, Gabriel Maguire and Michael Morris intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 3 November 2006

Signed: Maguire McErlean, 78/80 Upper Drumcondra Road, Dublin 9

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 Crofton Bray Head Hotel 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 hereditaments and premises comprised by an indenture of lease dated 9 August 1860 and made between George Putland of the one part and James Lacey of the other part and now known as part of the lands of New Court containing one rood and seventeen perches, which said lands form part of the lands of the Bray Head Hotel, Bray, Co Wicklow.

Take notice that Crofton Bray Head Hotel Ltd intend to submit an application to the county registrar of the county of Wicklow 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 the applicant intends to proceed with the application before the county registrar for the county of Wicklow for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion to the property are unknown or unascertained.

Date: 3 November 2006

Signed: Donal T McAuliffe (solicitors for the applicant), 57 Merrion Square, Dublin 2 (ref DTMcA/GMcG)

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 Marcus Fogarty

Take notice Andrew Thompson and Martha Thompson or any person having an interest in the following property

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mw@fearonlaw.com

PROPERTY
John Phillips
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as detailed at 1 hereof:

1) Description of land to which this notice refers: all that property known as

- a) No 9 (otherwise 9e and 9f) Cumberland Street, Dun Laoghaire, barony of Rathdown, county of Dublin;
- b) No 10 Cumberland Street, Dun Laoghaire, barony of Rathdown, county of Dublin;
- c) No 10B Cumberland Street, Dun Laoghaire, barony of Rathdown, county of Dublin;
- d) No 11 Cumberland Street, Dun Laoghaire, barony of Rathdown, county of Dublin.

2) Particulars of applicant's lease or tenancy:

- a) Lease dated 23 June 1941 of the property at (a) above, made between Andrew Thompson and Martha Thompson of the one part and Francis Martin and Rosaleen Martin of the other part of the residue of the term of 150 years (less the last day thereof) from 1 November 1938, subject to the yearly rent £5 thereby reserved and to the covenants on the part of the lessee and conditions therein contained;
- b) Lease dated 23 January 1946 of the property at (b) above, made between Andrew Thompson and Martha Thompson of the one part and Nora Fogarty of the other part

of the residue of the term of 143 years from 1 November 1945, subject to the yearly rent £10 thereby reserved and to the covenants on the part of the lessee and conditions therein contained;

- c) Lease dated 26 June 1950 of the property at (c) above, made between Andrew Malcolm Thompson and Martha Thompson of the one part and Cyril Newmark of the other part of the residue of the term of 138 years from 3 March 1950, subject to the yearly rent of one shilling thereby reserved and to the covenants on the part of the lessee and conditions therein contained;
- d) Lease dated 29 December 1948 of the property at (d) above, made between Andrew Malcolm Thompson and Martha Thompson of the one part and Nora Fogarty of the other part of the residue of the term of 140 years from 1 November 1947, subject to the yearly rent of one shilling thereby reserved and to the covenants on the part of the lessee and conditions therein contained.

Take notice that Marcus Fogarty of Errislangen, Castlepark Road, Dalkey, Co Dublin, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the

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NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE LAW SOCIETY GAZETTE

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **NO recruitment advertisements will be published that include references to years of Post-Qualification Experience (PQE).**

The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998 and 2004*.

freehold interest and of any intermediate interests in the aforesaid property, and any party or parties asserting that they hold a superior interest in the aforesaid properties 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, the applicant 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 in the aforesaid properties are unknown or unascertained.

Date: 3 November 2006

Signed: Whitney Moore (solicitors for the applicant), Wilton Park House, Wilton Place, Dublin 2

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

Take notice any person having an interest in the freehold estate or a superior interest in the dwelling-house and premises known as 9 Harcourt Street in the city of Dublin, held under indenture of lease dated 4 June 1799 between Francis Synge and Elizabeth Synge, otherwise Hatch, his wife, and Dorothy Hatch for a term of 285 years from 25 March 1799, subject to the yearly rent of £130 sterling thereby reserved and to the covenants and conditions therein contained.

Take notice that the applicant, Hilda Gleeson, being the person entitled under sections 9 and 10 of the *Landlord*

and *Tenant (Ground Rents) (No 2) Act 1978*, intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest (and any intermediate interest in the aforesaid property), and any persons asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforesaid premises to the under named within 21 days from the date of this notice.

In default of any such notice being received, Hilda Gleeson intends to proceed with the application to the county registrar after 21 days hereof and will apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate on the basis that the person or persons legally or beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 3 November 2006

Signed: Arthur O'Hagan (solicitors for the applicant), Charlemont Exchange, Charlemont Street, Dublin 2

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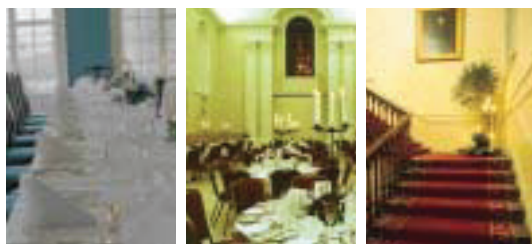
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Law Society of Ireland, Blackhall Place

New opportunity at the Law Society

Litigation Solicitor

The Law Society is inviting applications for the position of Litigation Solicitor in its Regulatory Litigation Section.

You will be responsible for advocating on behalf of the Society in disciplinary proceedings before the Solicitors Disciplinary Tribunal and legal proceedings in the High Court arising directly from disciplinary cases and for acting as the Society's solicitor in legal proceedings in the High Court and the Supreme Court in connection with regulatory matters. In addition, you will advise the Society generally in relation to regulatory matters and litigation, administer our regulatory litigation database and participate in projects to further improve the regulation of the solicitors' profession. You will work as a member of a team of solicitors and support staff.

You must be a solicitor experienced in criminal or civil litigation or both. We are looking for someone with a confident manner, patience and common sense. Good advocacy skills and sound judgement are essential.

The position will be initially on a two year fixed term contract basis.

Please write, enclosing your curriculum vitae, to:

Maureen Seabrook
Human Resources Manager
Law Society of Ireland
Blackhall Place
Dublin 7



www.lawsociety.ie

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Benson & Associates is a niche consultancy, specialising in the recruitment of high calibre lawyers for private practice, commerce and industry, from newly qualified to partner level.

A selection of opportunities for November 2006.

In-house Commercial Lawyer –

Associate to Senior Associate level

IHB0004

Our client, a successful Irish plc, has a vacancy for a talented professional to join its Legal Department. The successful applicant will be involved in a diverse range of legal activities, including commercial, banking and property law, contract drafting and review. A sound knowledge of EU and international trading law would be a distinct advantage.

In-house Corporate Lawyer – Belfast

Associate level

IHB0002

Our client, a major retail bank based in Northern Ireland, seeks a corporate lawyer. The successful applicant will advise on regulatory and legal issues in the areas of fund management, securities dealing and investment advice, collective investment schemes, insurance-based investments and other wealth management products and services. Excellent drafting and negotiating skills also an advantage.

Commercial Conveyancing Solicitor –

Associate level

PP0156

A leading Dublin-based law firm is seeking a strong solicitor to join its commercial conveyancing department. The successful candidate will be a bright, enthusiastic individual with experience in this practice area.

Conveyancing Solicitor – Carlow

Associate level

PP0153

This Carlow-based law firm seeks an experienced conveyancing solicitor to join the team. You will be solely responsible for all residential conveyancing dealt with by the firm. There will also be a small generalist aspect to the role, mainly in commercial conveyancing, litigation, district court, family and licensing.

Banking Solicitor –

Junior Level

PP0014

This front ranking practice seeks junior to mid level banking solicitors for its rapidly expanding department. You will be dealing with an interesting and diverse workload and have a solid background in commercial lending matters.

Corporate Commercial Solicitors –

Associate to Senior Associate level

PP0154

This highly successful Dublin-based law firm is seeking solicitors to join the Corporate Commercial Department. You will be exposed to a wide variety of commercial transactions advising both Irish and foreign public and private companies on a range of areas.

Professional Support Lawyer –

Associate level

PP0158

This top-flight Dublin law firm seeks to recruit an additional lawyer to join its Professional Support Department. It would be advantageous if you were ICSEA-qualified although this is not a prerequisite.

Medical Litigation Solicitor –

Associate to Senior Associate Level

PP0155

This well-established law firm is seeking a litigation solicitor specialising in medical negligence. You will be dealing with interesting and diverse workload which will include high-profile cases. Your experience should include exposure to substantial medical negligence cases.

Professional Support Legal Executive –

Junior Level

PP0159

Our client is a Big 5 firm. An opportunity has arisen for a legal executive to join the Professional Support Department. You will provide support to the solicitors in the department in all aspects of their work. The ideal candidate will be part way through ICSEA exams.

Residential Conveyancing Legal Executive –

Senior Level

PP0152

This respected law firm is seeking an experienced legal executive to join their Dublin-based office. You will deal with residential conveyancing and some commercial conveyancing.

For more vacancies, please visit our website or contact

Michael Benson bol solr. in strict confidence, at
Benson & Associates, Carmichael House,
60 Lower Baggot Street, Dublin 2, Ireland.

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The successful candidate will have an outstanding academic record, substantial experience as a practising commercial lawyer in a PSL-supported environment, excellent written and oral communication skills, and will bring initiative, energy and commitment to the role. Experience as a PSL would be an advantage.

Applicants should send their CVs, in confidence, by e-mail to garrahdorsey@rdj.ie or by post, marked 'Strictly Personal; Re: JGC/PSL', to Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork, Ireland. The closing date for applications is 7 December 2006.



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FINANCE LAWYERS TO £90,000

Our client is one of London's leading firms.

Unlike some it is not obsessed with recruiting lawyers from its competitors. On the contrary, the firm can point to a track record of recruiting talented lawyers from a number of leading out of town firms.

This is because the partners in the finance practice know from experience that lawyers from such firms invariably have a broad based training and practice which is perfectly suited to the way this firm is structured.

You may have thought that life in a top City practice would not be for you because the work would be too restricted – the same documents month after month, year after year. Nothing could be further from the truth at this firm. Finance lawyers here can specialise if they want, but most tend to want to develop their practice into three or four of the following:-

Acquisition and Leveraged Finance
Loan Finance
Private Equity
Lending and Asset Finance

Project Finance
Capital Markets
Derivatives
Corporate Recovery

It may be that you do not have experience of many of the above practice areas: that does not matter. What is important is that you are bright, motivated and have a keenly developed the ability to think and work independently where necessary. If you have the desire to work at the very top of the market on a broad range of complex transactions, that are stimulating and demanding, then you should consider this.

For further information in complete confidence please contact Andrew Wintle or William Cock at First Counsel via email at andrew.wintle@first-counsel.co.uk or william.cock@first-counsel.co.uk or via telephone on 020 7332 6337.

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DUBLIN

EMPLOYMENT €45,000-€60,000

Superb role for a lawyer seeking to specialise in employment law. Focusing on non-contentious matters, this role is both challenging and rewarding. Excellent long-term career potential. **Ref: 13323**

IN-HOUSE €60,000-€70,000

Rare in-house commercial role with a multi-national company based in the IFSC. Our client is interested in commercial lawyers, ideally with experience of the financial or funds sectors. **Ref: 13393**

LIFE SCIENCE €45,000-€55,000

Unique position within the life science/healthcare practice group of this leading Irish firm. Candidates will have life science or HSS experience or general commercial/regulatory backgrounds. **Ref: 12153**

IN-HOUSE FUNDS €110,000-€130,000

Leading global funds company is seeking to appoint a mid-level legal advisor to provide legal support to clients across Europe. Experience of funds is essential. Excellent package on offer. **Ref: 461100**

CORPORATE €50,000-€65,000

All aspects of corporate law are on offer with this commercial heavyweight. With an expanding team, our client is especially interested in candidates with experience of JVs and M&A. **Ref: 12103**

AVIATION FINANCE €50,000-€65,000

Superb specialist role in aviation finance with the market-leader. Candidates looking to specialise in this field with banking or general commercial experience should apply. **Ref: 12213**

RENEWABLES €45,000-€55,000

With the growing global market in renewable energy, this is an exciting and innovative position with a dynamic Dublin firm. Experience of energy, construction or projects is desired. **Ref: 13533**

CONSTRUCTION €50,000-€60,000

The market-leader in the construction/projects sector. Top-tier firm with an attractive portfolio of clients in Ireland and the UK. Opportunity to work on large-scale commercial projects. **Ref: 12193**

INSURANCE €50,000-€65,000

Are you interested in developing your career in insurance law? Ireland's largest, dedicated insurance team has a position that offers a high level of client contact and a supportive environment. **Ref: 12373**

PENSIONS €45,000-€55,000

Excellent position within the niche pensions team of this leading Dublin practice. Candidates will have prior experience in pensions or be banking/finance lawyers seeking a change in direction. **Ref: 12300**

PROJECTS / PFI €45,000-€55,000

Highly ranking projects team of this large Dublin firm is expanding. It seeks projects or PFI lawyers looking to take their career to the next level. Excellent work/life balance on offer. **Ref: 12313**

PRIVATE EQUITY €45,000-€55,000

Specialist private equity role with one of Dublin's finest. Private equity or general corporate experience required and the ability to engage with large finance institutions. **Ref: 12283**

LONDON

PROPERTY FINANCE €60,000-€72,000

Leading City firm seeks a mid-level property lawyer with experience on the property funds/finance side. Top quality deal flow and competitive top-tier salary package and prospects. **Ref: 391070**

PENSIONS €55,000-€67,000

This central London law firm boasts an impressive self-sufficient pensions practice. A commercially aware candidate is now sought to take on an advisory and transactional role. **Ref: 464880**

CONSTRUCTION €55,000-€63,000

Market-leading construction team seeks an additional lawyer with experience in contentious matters. The firm boasts an impressive international client base. Good work/life balance. **Ref: 464610**

TECHNOLOGY €63,000-€70,000

This major London player has a broad IT role on offer. With the role offering a real international flavour to it, there is scope for overseas travel to work on various technology matters. **Ref: 177810**

TAX €55,000-€70,000

This mid-sized City firm can offer high quality work and good work/life balance. It is looking for an assistant to focus on corporate tax and real estate tax work. **Ref: 469890**

REAL ESTATE €60,000-€80,000

This Magic Circle firm is keen to hire a number of real estate lawyers. Having successfully interviewed a number of lawyers from Scotland and Ireland it is eager to invite more applications. **Ref: 390250**

EMPLOYMENT €60,000-€75,000

The employment group of this Magic Circle firm is seeking an associate to join its strong practice group. The team is non-contentious based and advises blue-chip corporate clients. **Ref: 446130**

INSOLVENCY €60,000-€85,000

The insolvency practice of this Magic Circle firm sits within the banking group and undertakes leading non-contentious insolvency work for major international players. **Ref: 343690**

EU / COMPETITION €60,000-€75,000

The EU/competition group of this leading firm undertakes a varied mix of standalone work from M&A to cartel matters. You will have gained experience at a leading firm. **Ref: 343330**

COMMERCIAL To €60,000

Exciting role focusing on advertising and branding sectors. Advise brand managers, newspapers and advertising agencies on copy for TV campaigns and celebrity endorsements. **Ref: 429340**

BANKING €55,000-€65,000

Mid-sized City firm seeks a lawyer interested in undertaking general banking role including ship, aircraft and rail finance deals, trade and structured finance work. **Ref: 291050**

INVESTMENT FUNDS €60,000+

International firm enjoys one of the best reputations for private equity work within the City, with clients from UK and US market. Will consider lawyers from transactional background. **Ref: 467090**

TAYLOR ROOT IN DUBLIN

David Thomson and Erica MacKinnon will be available to meet with you in Dublin on **16th and 17th November**. If you are considering a move to London, whether with a UK or US law firm, please contact them to arrange a confidential meeting to discuss your requirements.



Contact Erica MacKinnon or David Thomson
on +34 (0)131 224 0400.
E: ericamackinnon@taylorroot.com
E: davidthomson@taylorroot.com

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ANAGRAM:

STRUCTURE HOOOF

PRACTICE**GENERAL PRACTICE****Dublin**

- This busy general practice in South Dublin has an immediate vacancy for a strong general practice lawyer with excellent conveyancing experience. The ideal candidate will have experience handling files independently from instruction to completion. The successful candidate will be required to deal with clients at all levels on a daily basis. This is a truly exceptional opportunity to join a busy and dynamic firm with excellent prospects for progression. €Excellent, with generous bonus

FUNDS LAWYER**Dublin City Centre**

- A fantastic opportunity exists to join the Investment Funds Team of this leading firm. Applications from lawyers in both private practice and industry are invited. You will have experience in Irish funds practice, advising institutional clients and have knowledge of compliance and regulatory issues. Newly qualified solicitors with an interest in developing a career in Investment funds are also encouraged to apply. €Excellent

SENIOR COMMERCIAL PROPERTY LAWYER**Dublin**

- Our client a leading boutique firm in Dublin City centre is seeking to recruit a strong commercial property lawyer. The successful candidate will have a number of years in depth experience in all areas of commercial property law including developments, leasing and investment. You will have first class drafting and negotiation skills as well as excellent presentation and communication skills. Excellent prospects for the successful candidate. €80,000 +

IN HOUSE**ASSOCIATE LEGAL COUNSEL****Galway**

- Our Client, a leading international company, is seeking to appoint an Associate Legal Counsel to Support the Senior Legal Counsel of its EMEA operations. You will deal with all legal matters for all departments, including litigation, purchasing for all departments, Employment Law matters, Corporate matters, contract queries, facilities/leases, logistics and debt collection. Excellent drafting and research skills are a prerequisite as are good communication and presentation skills. You will also be responsible for developing legal know how and the management of corporate and litigation matters. An excellent and rare opportunity for a strong commercial lawyer to move in house. €50,000 – €55,000+

COMPANY SECRETARY**Dublin**

- We have a very exciting opportunity for an experienced Company Secretary in this financial services company based in Dublin 2. Our client is looking for a company secretary who is ICSA qualified with a number of years experience. Whilst experience in the funds and financial services industry is not mandatory, it would be a huge advantage. A highly competitive salary is on offer to the successful candidate. €45,000+

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Mid Tier Commercial firm has an exciting new vacancy for an experienced solicitor to join them at Associate level working with a wide range of clients from financial institutions to multinational corporations. Challenging workload for the right candidate with an excellent remuneration and benefits package.

■ **In House Solicitor - Financial Institution Southside Dublin - €Negotiable**

A leading Irish financial institution has an opening for an experienced solicitor in their legal department. This role will encompass dealing mainly with conveyancing matters as well as general litigation duties. Excellent benefits package as well as market leading salary for the successful applicant.



If you are interested in finding the right position in the right firm with an agency who genuinely respects your need for confidentiality contact Stephen Kelly B.A., LL.B. at Stelfox Legal on (01) 679 3182 or email your CV to Stephen@stelfox.ie

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Where will the future take you?

Commercial Property Solicitor €100,000-€120,000

This Dublin city firm is looking to make an addition to an already very experienced commercial property department. The work will include hotels, retail developments and office developments and tax based property acquisition and development. This role offers excellent career progression and superb quality of work. Ref: 18421

Senior Legal Counsel €90,000-€120,000

Our client, just north of Dublin city centre, is seeking to hire a senior legal counsel. The successful candidate will have experience working in a large firm or as an in-house counsel in a large organisation. The role will be to ensure the provision of support and advice to the Board and Senior Management on all legal aspects generated by the Company's business. Ref: 27324

Banking Solicitor €80,000-€100,000

Banking Lawyer required to join one of the leading Banking Teams in Dublin. Experience in general asset and tax based finance, financial services (advice on hedging, arbitrage, lending and documentary credit transactions) and banking strategy (advising domestic and international banks on internal corporate affairs) is desirable. Ref: 16536

Capital Taxes Manager €70,000-€85,000

One of Dublin's leading firms of Tax Consultants are seeking to recruit a Solicitor or Barrister with a strong background in CAT, CGT and Stamp Duty. You will be providing high level consultancy to a wider range of Irish based clients covering all areas of private wealth management and estate planning. Ref: 26498

General Practice Solicitor €70,000

Our client is a varied practice based in Cork City. They currently wish to appoint an experienced General Practice solicitor to join their team. This role will incorporate a variety of conveyancing, litigation, probate and family law. Excellent opportunity for someone who seeks to build a rewarding career in a medium sized firm. Ref: 27010

In-House - Counsel €60,000-€80,000

Our client is a leading financial services institution in Dublin. They are currently seeking to hire an in-house lawyer to join its legal team. Reporting into the Chief Legal Officer, you will have experience working in the commercial department of a law firm or in-house with preferably some cross border and/or asset finance or banking experience. Ref: 27557

Practice - Commercial Solicitor €60,000-€80,000

Our client is a highly regarded law firm who is based in Limerick City. They are currently wishing to appoint an experienced commercial solicitor to join their well-respected practice. The position will offer a highly competitive salary. This position would be an excellent opportunity for an experienced candidate. Ref: 27615

Medical Negligence Lawyer €60,000-€75,000

This position is an exciting opportunity for a Medical Negligence Solicitor to join a leading Dublin City firm. This well-respected firm is a major player in the medical negligence market. The role will offer excellent prospects and a competitive salary for the successful candidate. Ref: 26560



Conveyancing Solicitor

€55,000-€60,000

Our client is a well-respected firm which is based in the south Dublin area. They currently have a requirement for a solicitor with solid residential conveyancing experience to join their busy practice. This excellent firm offers a competitive salary for the successful candidate and is located in pleasant offices in a south Dublin suburb. Ref: 26117

Practice - Commercial Solicitor

€50,000-€60,000

Our client is a progressive and dynamic firm which is based in Cork city. They are currently looking to make an addition to their already very experienced commercial department. This position will offer excellent career progression as well as superb quality of work to the successful candidate. Ref: 24574

Conveyancing & Probate Solicitor

€50,000-€60,000

Experienced Conveyancing Solicitor required for a busy North Cork practice. This firm prides itself on its innovative and flexible approach and excellent service delivery and its wide ranging clients attest to its success. This is an exciting opportunity to join a reputable practice just outside Cork City. This position offers an excellent remuneration package. Ref: 26637

Litigation Solicitor

€50,000-€60,000

Strong firm with an outstanding reputation seeks a Litigation Solicitor for their dynamic Waterford practice. This firm covers conveyancing, family law, commercial law and litigation. Must have a good academic background, be bright and hard working but also have good people skills in order to maintain a good working relationship with clients. Ref: 26788

General Practice Solicitor

€45,000-€70,000

Outstanding opportunity to join a progressive practice in Cork City. The firm seeks a motivated individual with solid experience in Conveyancing. The successful candidate will be exposed to a varied workload, including litigation work. Excellent remuneration package available for the right candidate. Ref: 27327

Solicitors

€45,000-€55,000

One of Ireland's Premier Law firms seeks newly qualified Solicitors or other solicitors to work as part of their team. Must have the drive and ambition and ideally have experience with commercial law. Superb opportunity for you to build a profile with one of the most highly regarded law firms in Dublin. Excellent salary and package plus endless prospects. Ref: 26144



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E-COMMERCE & IT COMMERCIAL LAWYER – DUBLIN CITY CENTRE

€60K+

Our client, a leading commercial law firm, are now recruiting a lawyer who needs to be focused, energetic, enthusiastic and interested in all areas of IT and e-Commerce. The successful candidate will work with some leading brands, a wide range of financial institutions and both public and private sector entities.

SENIOR PROPERTY SOLICITOR – DUBLIN CITY CENTRE

€90K +

A leading commercial law firm in Dublin are now seeking a solicitor with experience in commercial conveyancing. The successful candidate will have experience in large deal commercial transactions advising investors, developers and financial institutions and investigating title as well as good working knowledge of landlord and tenant issues.

AVIATION FINANCE LAWYER – DUBLIN 2

€60-90K+

Top 5 law firm requires a solicitor for its aviation finance department. Its clients include both foreign and domestic aircraft owners, lessors and a range of financial institutions. You will regularly advise on all aspects of the financing, securitisation, acquisition and leasing of aircraft. Ideally you will have aviation finance experience but our client will also consider candidates with general banking experience.

PROBATE SOLICITOR – DUBLIN 2

€70K+

Our client based in Dublin City Centre is a small to medium size practice that are now looking for a solicitor with probate work experience as well as some conveyancing knowledge. Ability to work on own initiative. Long-term prospects for suitable candidate. Excellent organizational, time management and PC skills needed.

TAX CONSULTANT – DUBLIN CITY CENTRE

€60 – 90K

This is an opportunity to join the tax team in one of Dublin's leading firms. Its team comprises a team of tax lawyers, accountants and consultants serving a broad range of international and domestic clients in all major business sectors including finance, technology, communications, construction, leisure and entertainment. You will be a Qualified Accountant, Tax Consultant or Solicitor with AITI qualifications.

COMMERCIAL SOLICITOR – CORK CITY

€70K +

Our client, based in Cork has experienced exceptional growth in its commercial department in the last year. Due to this growth it is now seeking a good company/corporate solicitor to join its team.

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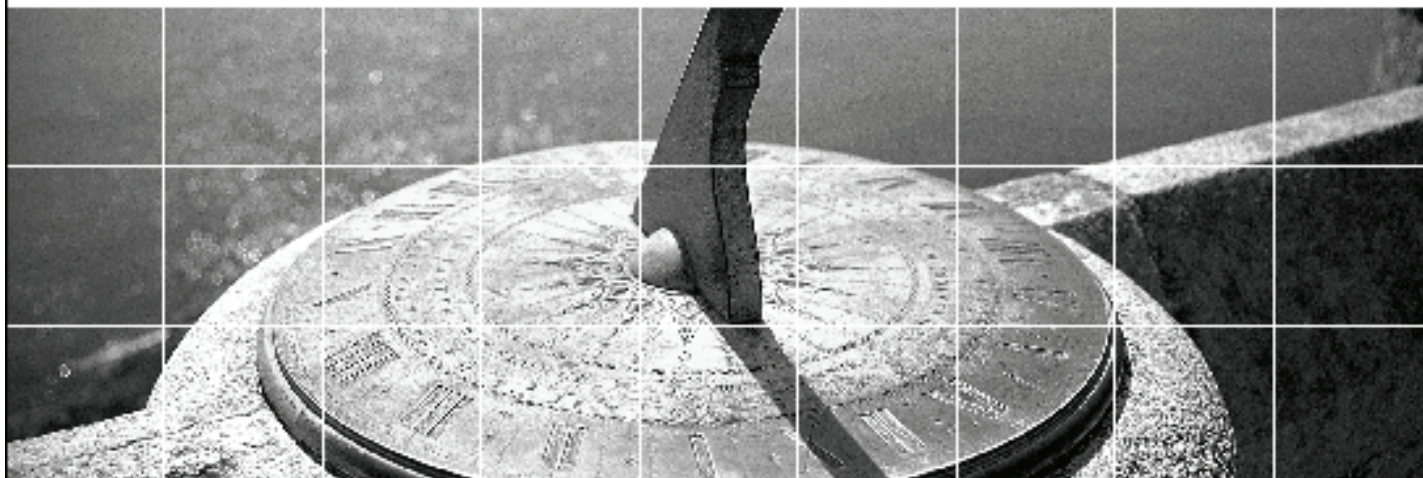
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In-House

Arbitration Lawyer

€50k + Bonus and Benefits

A market leader in arbitration services seeks to recruit a commercial lawyer to join their in-house legal team, working to support their senior legal counsel. You must be a qualified lawyer or barrister with experience in negotiating and drafting commercial contracts as well as hearing and settling disputes. Prior experience within the arbitration sector is not essential however an enthusiastic and flexible approach is necessary. Ref: JD488679

Derivatives Lawyer

€50k + Bonus and Benefits

The global treasury division of a leading financial services institution seeks to appoint a Derivatives Lawyer for their headquarters in Dublin. You will advise on all aspects of derivatives including credit derivatives, equity derivatives, structured transactions and collateralisation. Drafting and negotiating legal agreements for new products is also required. You must have experience in derivatives law, good academic qualifications and excellent drafting skills. Ref: JD490849

In-House Banking Lawyer

€55k + Bonus and Benefits

A leading indigenous financial services institution is currently looking for a lawyer to join their legal team within their capital markets division. This diverse role includes drafting documents and responses to legal issues relating to account security, opening requirements and bank mandates. You must have excellent attention to detail and a strong interest in developing your career in a leading bank. Ref: JD379440

Interested candidates should forward their Curriculum Vitae to: Gloran Deherly at gloran.deherly@robertwalters.com or call +353 (0) 533 4111.

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Private Practice

Commercial Property Lawyer

€25k + Bonus

A well known, niche Dublin firm seeks to appoint a Commercial Property Lawyer for their leading practice. The ideal candidate will have experience in 'big ticket' deals including building developers and large financial services organisations on legal issues. The successful candidate will wish to develop their career in a well regarded Dublin firm with the opportunity to progress to a senior level. Ref: JD417961

IT/IP Lawyer

€70k + Bonus

A top five Dublin law firm seeks to appoint a lawyer for their prominent technology practice. The practice specialises in data protection, creative telecommunications and e-commerce. Having gained a reputation for excellence within intellectual property they now seek for some of Ireland's leading technology companies. They now require a lawyer with expertise in the above areas, from either a private practice or in-house background. Ref: JD488201a

Employment Lawyer

€60k + Bonus

This is an excellent opportunity for an Employment Lawyer to join a prestigious medium-sized practice based in Dublin city centre. The successful candidate will work on contentious and non-contentious aspects of employment law and must possess excellent technical skills and a strong understanding of employment law issues. This role offers excellent career progression with an exceptional remuneration package on offer to the right candidate. Ref: JD368960

Interested candidates should forward their Curriculum Vitae to: Miko Campbell at miko.campbell@robertwalters.com or call +353 (0) 533 4111.

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Banking Dublin

Senior banking professional required to join this prestigious mid-tier practice in their commercial property department. Candidates should be able to demonstrate extensive knowledge and experience in a wide range of banking issues. This is an outstanding opportunity to work within a leading team in a fantastic modern working environment. Excellent financial package offered. (ref 15614/2)

Capital Markets Dublin

Leading law firm requires experienced Capital Markets Lawyer to join their established team. Working directly with partners you will have good client facing skills and the ability to market the practice. Excellent salary and career prospects. (ref 17987/1)

Commercial Property Dublin

Solicitor required for this established and expanding team within a leading law firm. You will have a broad knowledge and experience of commercial property including large developments. Ideally you will have extensive experience in a similar environment. (ref 16727/2)

Construction Dublin

Experienced Construction Solicitor urgently required for the expanding banking practice of this top tier firm. A working knowledge of a wide range of non-contentious construction issues is essential along with strong drafting skills. Excellent salary and benefits package offered to the right candidate. (ref 15259/22)

Corporate Dublin

Prestigious niche practice requires two Associate Corporate Solicitors to join their expanding practice. Working on a wide variety of high quality work for an outstanding client list, you will have strong experience gained in a similar environment in the UK, Ireland or other leading jurisdiction. (ref 16229/1)

Employment Dublin

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 tenure and conditions of employment, post-termination restrictive covenants and implementing redundancy programme advantageous. (ref 15266/5)

EU Regulatory Dublin

Ireland's leading life sciences practice requires an experienced EU solicitor to join their team. This role will involve advising on regulatory issues to an enviable client base covering the food, pharmaceutical and agricultural sectors. This is an excellent opportunity to join a Legal 500 firm with a superb reputation. The salary and benefits package are commensurate with experience. (ref 15275/1)

Financial Services Dublin

Prestigious law firm requires lawyers to join one of Ireland's leading Financial Services teams. Advising a broad range of clients including financial institutions, regulators and domestic and international corporations on a wide range of international financial services and banking law. (ref 15266/5)

Funds Dublin

Opportunity to join one of Ireland's leading law firms in their renowned fund team with an enviable client portfolio. Ideally you will have experience in a similar environment, but enthusiastic candidates from other practices will be considered. (ref 15259/22)

IP Dublin

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 an extensive working knowledge of a broad range of IP issues preferably gained in a similar environment. Excellent continued training programme and career prospects offered to the successful candidate. (ref 15259/22)

IT Dublin

Opportunity to join a leading practice within this leading law firm. Previous experience in a wide range of contentious and non-contentious issues is desirable. Candidates should be ambitious and driven and looking to move to an Associate or Senior Associate position. Fantastic salary and benefits package above market rate offered as well as a defined career path. (ref 15259/22)

In House

Commercial (In House) Dublin @Negotiable

A vacancy has arisen for an in-house solicitor for a multinational software and consultancy company based in Dublin 18, the ideal candidate will have corporate experience in an in-house role or top legal practice. The role will involve advising on all company legal, contractual and compliance issues. (ref 15527/1)

Commercial Conveyancing (In House)

Dublin @Negotiable

Senior role organisation requires a commercial property solicitor on a locum basis. Candidates should have extensive commercial property experience. Initially required for an 8 month contract, there is the possibility of a permanent contract. (ref 15293/1)

Corporate (In House) Dublin @Negotiable

Outstanding opportunity for an experienced Corporate Solicitor to join this prestigious financial services company. Incorporating a broad range of corporate skills including banking, financial services and drafting, you will have significant corporate experience gained in a similar environment in the UK, Ireland or other leading jurisdiction. (ref 16229/2)

Employment (In House)

Dublin or London @150,000 (upto)

Our client a global financial services company is looking for a senior in-house employment lawyer of senior needs to or partner level. Based in either London or Dublin you will have extensive experience gained in a leading practice or multinational organisation. Candidates should have broad experience in non-contentious issues preferably with a European or EMEA overview. (ref 12172/2)

Financial Services (In House)

Dublin @Negotiable

Multinational bank are looking for experienced solicitors to join their financial services team. This is a great opportunity to get some in-house experience with one of the most well known names in the business. The role will suit candidates with experience who can demonstrate experience in a similar role. (ref 15266/5)

IT Dublin @Excellent

I.T. Lawyer required to join the legal department of one of Ireland's leading providers of internet products. The successful candidate will have significant experience in a similar environment or reputable practice. Excellent remuneration available. (ref 1443/1)

Dublin Office

t +353 (0)1 619 0400 f +353 (0)1 611 4448 e dublin@g2legal.ie 18 Fitzwilliam Square Dublin 2 Ireland

Out of Office Hours Paul Fahy 087 9109745 Alan Whelan 087 9374022

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t 01 619 0400

General Practice

t 01 619 0400

Funds (In House) Dublin (Excellent)

Opportunity to join an established legal team within an international investment company. Responsible for advising on regulatory matters relating to hedge funds in Dublin, Bermuda and US. There will be some international travel with a choice of permanent location of either Dublin or Bermuda. This is an outstanding opportunity for an ambitious lawyer to move in-house or to progress their career in an in-house environment. Excellent remuneration package offered. (ref 16112/1)

Commercial (In House) Kerry (Excellent)

Irish owned international financial services company requires two commercial solicitors to join their in-house team based in County Kerry. These roles will incorporate various commercial issues including intellectual property, company law and anti-litigation will also be required to deal with a variety of commercial agreements. (ref 17076/1)

Compliance (In House)

London/ Frankfurt to €150k

Blue chip financial services company require a senior compliance lawyer to oversee the development, implementation and management of a risk-based compliance programme for business unit compliance with various regulatory or compliance requirements and functional programs for assigned business areas. (ref 12172/1)

M&A (In House) London/ Frankfurt €150k+

Our client a leading financial services company requires an experienced senior M&A specialist to join their expanding legal team of almost 200 lawyers. Candidates will have worked for a leading corporate practice specialising in M&A and other corporate areas. Fluency in German is essential as is a willingness to travel. Excellent salary and benefits package offered along with career progression. (ref 12172/1)

M&A (In House)

London/ Frankfurt €100k+

Our client a leading financial services company requires a junior M&A specialist to join their expanding legal team of almost 200 lawyers. Candidates will have worked for a leading corporate practice specialising in M&A and other corporate areas. Fluency in German is essential as is a willingness to travel. Excellent salary and benefits package offered along with career progression. (ref 12172/1)

Commercial Conveyancing Dublin City Centre

Mid-tier firm in central Dublin requires experienced solicitors to join their team. With an impressive client base, our client is looking for solicitors with an excellent background in commercial conveyancing preferably from a similar position in Dublin. (ref 16207/1)

Commercial Conveyancing Dublin City Centre

Medium sized practice in Dublin 2 requires experienced solicitors to join their commercial conveyancing practice. Experience of commercial lending would also be beneficial. This is an excellent opportunity for candidates to join a well respected firm. (ref 15221/2)

Commercial Conveyancing South Dublin

South County Dublin general practice requires an experienced solicitor for their expanding team. This role would suit candidates with extensive residential and commercial conveyancing experience. Litigation experience is desirable but not essential. (ref 16225/1)

Conveyancing South Dublin

General practice firm located on the outskirts of South Dublin requires an experienced solicitor to join their team. This varied role will also require knowledge residential conveyancing, probate and litigation. This is an excellent opportunity to join a well respected team. (ref 15722/1)

General Practice West Dublin

Small general practice located on the outskirts of south west Dublin requires a solicitor to join this busy office. Candidates will ideally have experience of residential conveyancing and probate and be looking for a role where they will have freedom to work independently. (ref 15722/1)

Litigation Dublin 8

General practice firm located in Dublin 8 requires a part-time litigation solicitor to join their team. The successful candidate will ideally have a strong background in medical negligence. This is an excellent opportunity to join a downbeat and friendly team. Flexible terms available. (ref 16225/1)

Residential Conveyancing Dublin City Centre

Residential conveyancing specialist required for busy law firm in Dublin 4. Candidates will need to demonstrate strong experience in residential conveyancing with the ability to work independently. Commercial conveyancing and probate experience would be beneficial. (ref 15767/1)

Residential Conveyancing West Dublin

West Dublin law firm requires a solicitor to join their expanding team. Candidates should be able to demonstrate strong residential conveyancing experience in a similar role. Excellent prospects and package available to the successful candidate. (ref 15261/1)

General Practice Co. Westmeath

Medium sized law firm in County Westmeath requires an experienced solicitor to join their team. The varied role will involve a mix of conveyancing, commercial and probate. Candidates should have experience in a similar role be comfortable working in a close knit team. Salary and benefits are commensurate with the local market. (ref 17654/1)

Residential Conveyancing Co. Waterford

This well known Waterford firm are looking for an assistant solicitor to work in their residential conveyancing department. Ideally candidates will have experience in a similar role and be looking to join a friendly downbeat team. Salary is negotiable and dependent on experience. (ref 16725/1)

Legal Executives Dublin

At the present time C2 Legal has a number of vacancies for experienced Legal Executives. Of particular interest will be candidates with experience in Commercial and Residential Conveyancing as well as Litigation. Please contact Ann Whelan for further information.

Keane McDonald is an executive search and selection firm focusing exclusively on legal & compliance appointments. We specialise in the recruitment of executive legal, compliance & regulatory professionals into private practice law firms, accountancy firms and in-house legal departments both in Ireland and overseas. Candidates are assured the utmost confidentiality and discretion when working with us.

In-House Opportunities:

Senior Legal Counsel – Dublin €100,000 – €120,000

Our Client, a niche financial services organisation with a global presence, is now seeking to recruit a Head of Legal for their Dublin office. This is a key appointment and the successful candidate will be responsible for all European offices. You will have proven experience in a financial services institution where you have worked with front office teams and built strong relationships with the regulators. Strong negotiation skills are essential.

Compliance Manager – Dublin €70,000 – €80,000

A prestigious financial services provider is seeking to recruit a compliance manager to manage all regulatory and compliance matters. You will have strong compliance experience in the funds industry and have previously managed a team of compliance personnel. You must be self-assured and ambitious. Unique opportunity for a highly compliant specialist to join a highly successful organisation.

Corporate Legal Advisor - Dublin €55,000 – €65,000

Our Client, a prestigious financial institution wishes to recruit an in-house lawyer to join the well established legal and compliance team. This position is a very general and varied commercial one and needs a lawyer who has had previous experience in a commercial/corporate role either from a law firm or an in-house legal department within a large organisation. Exceptional career path and package on offer for the right candidate.

Private Practice Opportunities:

Commercial Property Lawyer – Dublin €70,000 – €90,000

Our Client, a boutique law firm, with prestigious offices in Dublin 2, is seeking to recruit a strong commercial property lawyer. The successful candidate will have had in-depth exposure to all areas of property law to include development, leasing and investment. Sound drafting and negotiating skills are a prerequisite. Genuine partnership prospects for the right person.

Corporate Lawyers – Dublin & Cork €50,000 – €90,000

Due to the current economic growth and subsequent business expansion, many of Ireland's highly regarded corporate divisions are actively seeking to recruit good corporate lawyers. Corporate Lawyers at all levels will be considered. Must have had hands on exposure to corporate transactions such as private equity, venture capital and M&A. You will have ambition to work in a driven environment and have sound client management skills.

Financial Services Lawyers – Dublin €55,000 – €90,000

Our Client, a top tier law firm is seeking strong financial services lawyers at all levels. Experience in one or more of the following areas required: general banking, asset finance, structured finance, capital markets and funds. You will be self-assured, well spoken and present yourself immaculately. Outstanding opportunities for highly lawyers keen to join one of Dublin's strongest banking teams.

For more vacancies visit our website at www.KeaneMcDonald.com
Interested applicants should contact Yvonne Keane in strict confidence on 01 6415614 or 087 6824581.
Alternatively email your CV to yvonne@keanemcdonald.com



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executive legal recruitment

Keane McDonald
Ground Floor
68 Pearse Street, Dublin 2
Tel: +353 1 8415614
Fax: +353 1 8836229
Email:
yvonne@keanemcdonald.com
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Legal Advisor (In-house) 0610-58

A Solicitor with Irish Commercial law experience is required to join the Irish HQ of this International company. Knowledge of Irish Company Law and Corporate Governance Issues is required. The role demands travel to the company's sub offices based in Israel, Italy and the UK on a monthly basis. Excellent package on offer.

Commercial Property Solicitor 0610-71

This mid-size, client focused, Dublin firm continues to expand and is now seeking another assistant commercial property solicitor. The successful applicant will be working on a full range of property, Landlord & Tenant, leaseholds, development acquisition and disposals and advisory work. Some high net worth residential work will also feature. Excellent career progression on offer.

Legal Executive/Legal Secretary

With ongoing success in placements, we are able to provide an informative and discreet consultation for legal support staff. We currently have excellent opportunities for strong candidates in many fields of law.

Junior Solicitor

Vacancies available in Corporate/Banking/Financial departments in Top 10 law firms.

Commercial Solicitor (In-house) 0610-22

This newly established foreign property company requires a commercial solicitor to advise on property acquisitions, share purchases, joint ventures, agency agreements and other property related issues. There is the added responsibility of managing a foreign team of lawyers based in a number of jurisdictions, overseeing the requisition and co-ordination of all required advices. A strong commercial awareness and sense of responsibility are required.

PSL/Knowhow Lawyer 0610-150

Leading law firm requires an Associate Solicitor to add to the level of expertise on offer in this crucial department. Experience of preparing legal update memoranda; conducting research and preparing memoranda in response to queries from individual fee earners, preparing articles and "Quick Guides" essential.

Employment Lawyer (non-contentious) 0610-85

Top 20 law firm requires a senior solicitor to deal in non-contentious employment law and general commercial matters. Excellent prospects on offer.

In addition to these vacancies we currently have a wide variety of opportunities for all levels of Solicitors in many areas of law. Visit our website to view further opportunities.

Your details will not be forwarded to any third party without your prior consent

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Legal Counsel

Dublin base with substantial reward package

Our client is a leading financial institution.

Due to continuing growth, the organisation is now looking for a Legal Counsel at an associate level to join its European headquarters in Dublin. The successful candidate will have a background in corporate law having worked in a leading practice.

You will work with the legal team to direct and monitor a broad array of legal matters including corporate/commercial agreements and associated contracts. Reporting to a member of the Board of Directors, the role requires the individual to interact with all levels of management both within and outside of the organisation.

This is an outstanding opportunity to join a truly global organisation active in the financial markets of over 20 countries on five continents. To discuss the role in more detail, please contact Portia White in confidence on +353 1 477 3063 or by email at portia@laurencsimons.com

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Commercial/Asset Finance Lawyer

Dublin €Excellent

Our client, a global provider of aerospace capital solutions require a lawyer. You will have experience of working in the commercial department of a law firm or an in-house organisation with preferably some cross border/asset finance or banking experience. A unique opportunity to join a rapidly developing business for someone with vision, energy and ambition. Ref: 16422. Please contact Portia White.

Pensions Lawyer

Dublin €70k plus

Our client requires an Investment/Pensions lawyer to join its legal team based in the city centre. You will provide legal advice to their large client base in the areas of pensions, employment and trust law as well as drafting and legal documentation. Relevant experience in pensions and employment law gained either in-house or in private practice is highly desirable but not essential. Ref: 11184. Please contact Portia White.

Funds Lawyer

Dublin €70k plus

Unique opportunity to join an established legal team of a leading global investment and asset management organisation. This is an outstanding opportunity for an ambitious lawyer to move in-house or progress their career in an in-house environment. Experience of funds or asset management is essential. Ref: 13448. Please contact Portia White.

Corporate Lawyer

Dublin €Excellent

Our client, a boutique firm with an excellent reputation among its clients are looking to recruit a commercial lawyer at associate level for a team based role. You will have experience in one or more of the following: mergers and acquisitions, venture capital, joint ventures, privatisations and flotations. Ref: 12667. Please contact Sharon Swan.

Commercial Property Lawyer

Cork €65k plus

Leading firm in Cork require an associate solicitor to join an expanding and progressive team. You will have an in-depth knowledge of all areas of property law, including development, investments, leasing and strong drafting and negotiating skills. The successful candidate will have a commercial approach and the ability to work to tight deadlines. Ref: 13454. Please contact Portia White.

Junior Financial Services Lawyer

Dublin base with international travel

Our client, a leading provider of financial services is looking to recruit a junior lawyer for their European headquarters. You will have gained first rate training and now wish to develop your career in-house. Excellent basic and bonus is offered as well as international travel to other global financial centers including New York and Hong Kong. Ref: 6432. Please contact Sharon Swan.

Junior Corporate/Banking

Dublin €Excellent terms on offer

Our client has a strong domestic & international focus and seeks to recruit commercial and banking lawyers. You will have strong academics and have apprenticed in a mid-sized or leading firm. Most importantly you will have a desire to develop your career within a leading firm. Ref: 14840. Please contact Sharon Swan.

Conveyancing Lawyer

Dublin €Excellent

Small expanding practice based outside the city centre seeks a property lawyer at associate level, with experience in commercial or residential property. This is an excellent opportunity to develop your career within a highly autonomous role. Flexible work arrangements are on offer. Ref: 14428. Please contact Sharon Swan.

Sharon Swan Tel: +353 (0) 1 477 3063 email: sharonswan@laurencsimons.com

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