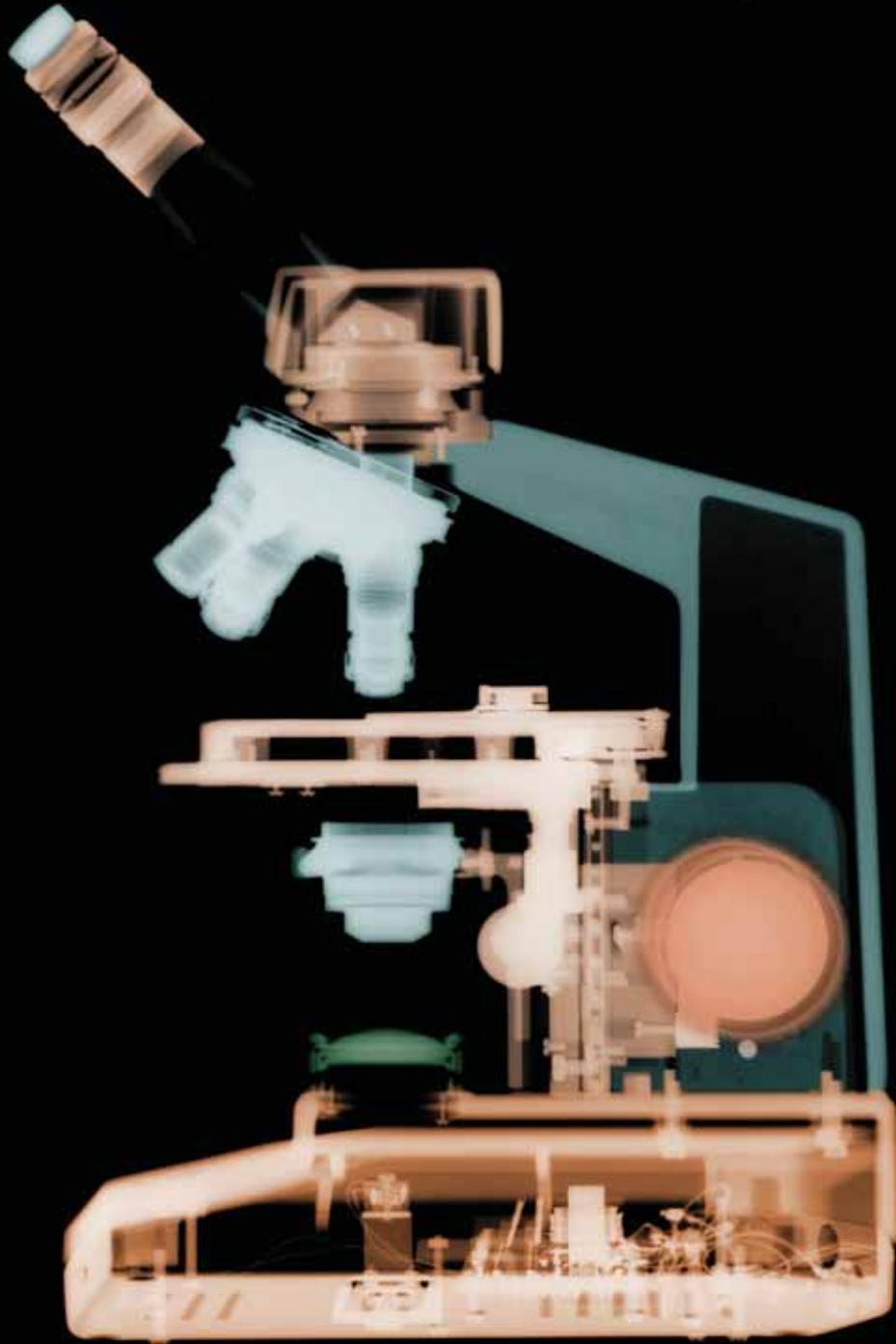
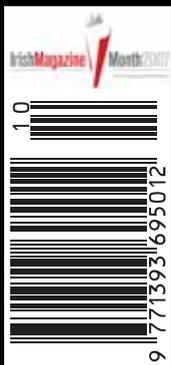


# LAW SOCIETY Gazette

€3.75 October 2007



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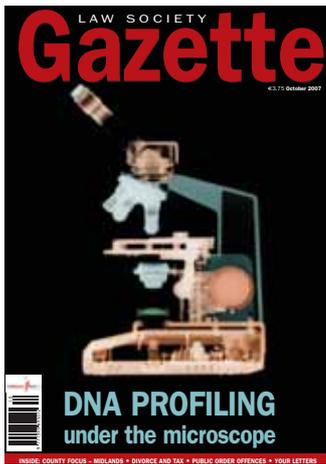


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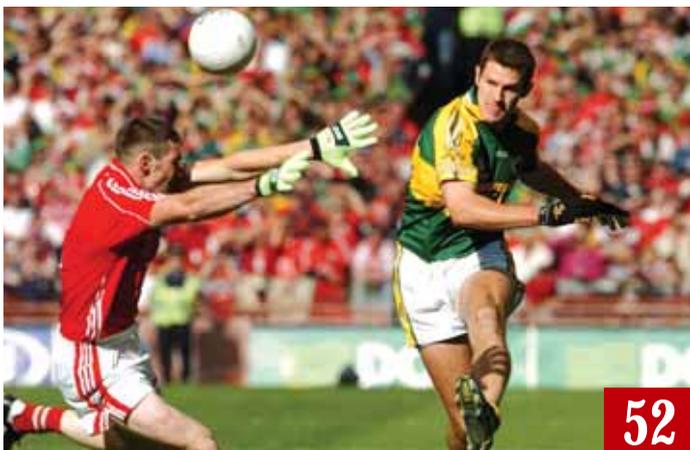
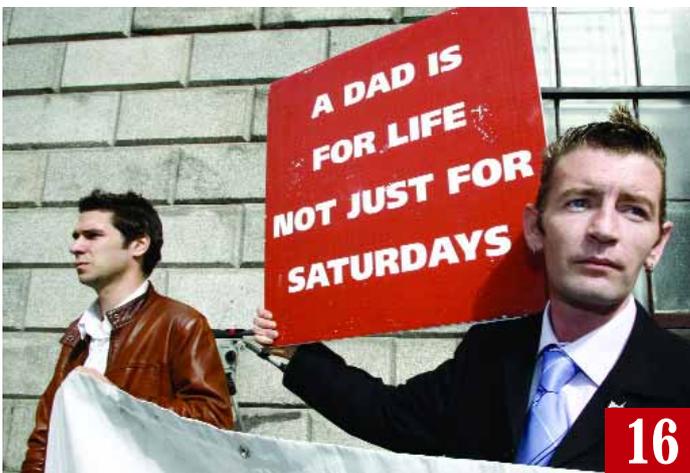
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In order to address the increasing problem of home-made firearms, the legislature has attempted radical reform of firearms regulation through the *Criminal Justice Acts 2006 and 2007*. Genevieve Coonan takes aim

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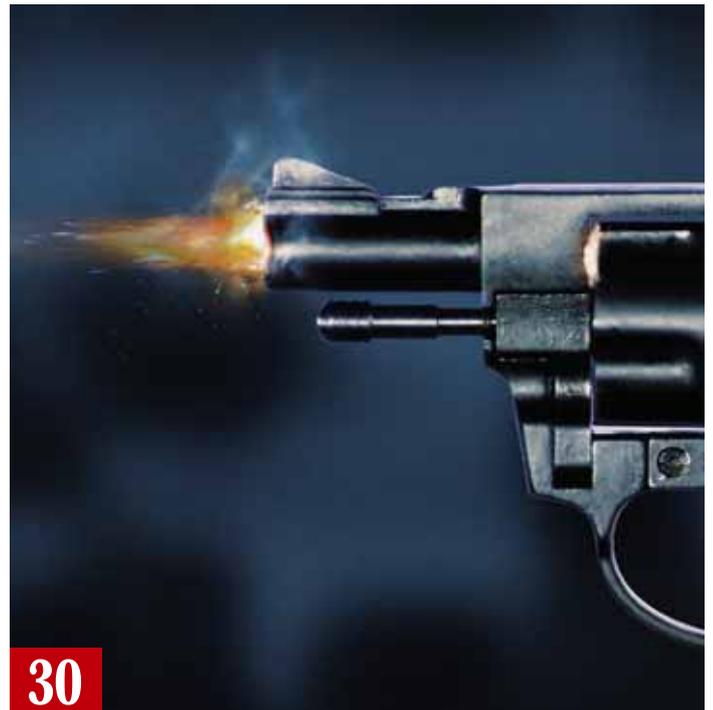
It is unlawful for a company to give financial assistance for the purpose of purchasing shares in that company. Kate Browne breaks open the piggy bank to assess the significance of the *Companies Acts* on such matters

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In our continuing series, Tom Rowe meets the president and some stalwart members of the Midland Bar Association and discovered an association that's proud of its past – but with eyes fixed firmly on the future

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# New PII rules provide greater protection

**A**t its meeting in July, the Council of the Law Society passed new regulations relating to professional indemnity insurance. This is the culmination of the work of the PII Task Force, which has been ongoing since 2005. The task force was chaired by the former secretary general of the Department of Justice, Mr Joe Brosnan. In the course of its work, it had the benefit of expert legal and insurance market advice.

The aim of the task force was to examine in detail the professional indemnity insurance regulations. There were four principles guiding its work:

- 1) Protecting the public,
- 2) Protecting the individual solicitor,
- 3) Placing the Law Society in a strong and tenable position in relation to professional indemnity insurance, and
- 4) Ensuring that there was healthy competition in the market place.

The work undertaken by the task force was complex and detailed. It represents a very solid advance, which I feel will benefit the profession and the public well into the future.

Professional indemnity insurance is not an optional extra. Each practising solicitor is required to be covered by insurance. A system exists whereby if a solicitor cannot, for one reason or another, obtain insurance in the open market, then the requirement for cover is met by the assigned risks pool. The position is broadly similar to that operated by the Motor Insurance Bureau of Ireland (MIBI). Members of the public expect that, whenever a motor accident occurs, they are subject to liability covered by insurance. If an issue arises between the insurer and the policy-holder, the insurer or the MIBI has a right of redress against the policy holder.

This is the position that now operates in relation to professional indemnity insurance. It is also the position that has operated in England and Wales for some years. The new regulations will operate to provide the public with a greater level of protection than heretofore. Solicitors can be more confident in their dealings with the public as a result of the revised arrangements. Up to now, the assigned risks pool only gave cover for the minimum insured sum in the

aggregate, rather than each and every claim. This was not a sustainable position. Furthermore, the public has a right to expect that, if a solicitor ceases practice, there is adequate cover for reasonable eventualities. The new regulations will require that solicitors make arrangements for the provision of cover into the future when practices cease for one reason or another.

In future, the renewal date for insurance will be 1 December each year. This small change will mean that practices do not have to cater for payment of insurance premiums and the practising certificate in the same calendar month.

It is open to firms to agree the level of their self-insured excess with the insurer. The cost of defending a claim will now be met in full without limit. The public is protected in case of fraud or misrepresentation in that they are covered, subject to the right of the insurer to be reimbursed by the practice.

I am very pleased that the new regulations were passed unanimously by the Council of the Law Society. It is testament to the hard work and dedication of the task force. In Irish terms, it represents a considerable advance on the position up to now and brings us into line with the practice in neighbouring jurisdictions. We have a moral duty as a profession to see that the public is properly protected when the need arises to call on an insurance policy. When a practice is the subject of a claim, it is a time of great stress and trauma – both to the solicitor and to the client. It is my hope that these new regulations will be seen to be mutually beneficial to the profession and to the public. **G**

**Philip M Joyce**  
President



## PII TASK FORCE

Joe Brosnan  
(chairman)  
John Elliot  
Rosemary Fallon  
Niall Farrell  
Mary Keane  
James MacGuill  
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## ■ CARLOW

Now that Judge Mary Martin has moved to pastures new, our Carlow brethren have been mulling over who might replace her. Judges Clyne, Haughton and Anderson have been 'doing time' in Kathryn Thomas country, but the smart money seems to be on the veteran judge Billy Hartnett, who has been covering the south-east region for a long number of years.

Carlow Bar Association President John Foley (not, of course, the source of such speculation) tells us that he proudly hosted a dinner for two 50-year practitioners recently – namely his father, John M Foley, and Michael P Donnelly. A remarkable milestone for any practitioner. John hopes shortly also to host a dinner for leading District Court practitioner Breda Fleming, who is retiring from general practice and may too, like Judge Martin, be seeking out new legal ventures.

## ■ DUBLIN

Many practitioners were greatly saddened to hear of the untimely death of Colette Egan (sister of Frank, Egan O'Reilly), who passed away in August. Colette was a much sought-after locum solicitor. Colette did stints in many firms throughout the county and, more recently, in Lavery Kirby Gilmartin, Pierce Mehigan and, until recently, John Lynch. The DSBA passed a resolution of condolence at a recent meeting.

Plans are well under way for David Bergin's conference in Ashford Castle on the weekend of 19-21 October, with a 'Sports and the law' type theme. David, being the accomplished sportsman that he is, has lined up some interesting speakers.



The Galway Bar Association enjoyed a day at the races, courtesy of the hard work of its committee members Louis Bourke, Ailbhe Burke (president), Cairbre O'Donnell, Yvonne Francis (secretary) and Rob Meehan

Colleagues from other bar associations would be more than welcome to join with David and his colleagues, but numbers are filling up very fast and those interested should contact Kevin O'Higgins.

The DSBA, through its various committees, has been hugely busy, with as many as 14 seminars rolled out over the autumn period.

Meanwhile, congratulations were extended to our evergreen council member, John Glynn, who recently became a grandfather. On the other end of the scale, council member John Hogan will shortly marry Carrie, following in the steps of council member Paddy Kelly and Catherine.

## ■ LONGFORD

Longford colleagues were delighted that one of their own, trainee solicitor Helene Quinn, secured first place in the Law Society examinations by winning the Findlater Prize. Such has been the delight that her boss, Paddy Groarke, has been deflecting the congratulations

and backslapping to himself! Helene's brother David has also gone through the system and works with his uncle John Quinn – another member of the Longford Quinn dynasty.

Elsewhere, the secretary of the bar association, Karen Glavey, who has her own practice in the town, recently married William to the delight of her colleagues.

## ■ CORK

Eamonn Harrington, as president of Southern Law Association, has just returned from Madrid, where he held a highly successful conference in which the special guest and speaker was Judge Sean O'Donovan. Despite my best efforts to extract a more colourful account of the trip, neither Eamonn nor Sean Durcan were revealing anything.

## ■ DONEGAL

Bernadette Smith of the Donegal Bar Association tells me that a number of Law Society CPDs have been arranged for Donegal in November and December. This is the first time in which the

Law Society has arranged seminars in Donegal, and similar efforts are being arranged in Galway. The topics to be covered include 'Wills – complex issues' and 'District Court – recent developments'. Meanwhile, Bernadette tells me that the younger members in the county organised a night out recently in Letterkenny, which was very well attended.

## ■ CAVAN

The congratulations of all their colleagues have been extended to practitioners Adrian Kelly of O'Reilly Dolan, Cootehill, and Mary Duffy, Legal Aid Board Navan, who were married recently in Florence. The wedding was attended by a number of colleagues, including Adrian's boss and new bar association president Martin Cosgrave. We wish all our best, too, to the new bar association secretary John Keaney in his very worthy house-building venture with the Niall Mellon Foundation in South Africa.

## ■ MAYO

It's great to see that the bar association website is live and will be a sound source of information for Mayo colleagues. As far as we know, only Dublin, Cork and Mayo have dedicated websites, but if there are others, we'd be delighted to hear about them.

Meanwhile, bar association president Pat O'Connor will hold the Mayo dinner this year in the new, splendid venue of Mount Falcon. Elsewhere, the fight to save the civil office in Ballina continues. **G**

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

## ECLA eyes up Fair City

The Corporate and Public Sector Committee is organising a board meeting of the European Company Lawyers Association (ECLA) on Friday 16 November 2007 at Blackhall Place. The board meeting is being supported by the Law Society, the Corporate and Public Lawyers Association, McCann FitzGerald Solicitors, and Dillon Eustace Solicitors.

The committee liaises with the ECLA and represents the Law Society at such board meetings. ECLA is an umbrella organisation of associations and entities representing in-house corporate lawyers in 17 countries across Europe. It is a pan-European resource for in-house solicitors, primarily concerned with aspects of in-house legal practice and education.

# New-look lecture theatre for Law School

The Law School lecture theatre in Blackhall Place has been extensively refurbished during the summer. The theatre's seating scheme has been significantly upgraded so that it is now capable of accommodating 280 attendees per session – up from 198 previously.

In addition, the theatre's audio-visual and video-conferencing facilities have been revamped. It is now



The lecture theatre before, and below, after



equipped with an advanced, modern system that enhances the lecture theatre's broadcasting performance. Thanks to the addition of individual seating and slick, fold-away tables – as well as the introduction of two new aisles – students can access seats more easily.

Our 'before' and 'after' photos show the significant impact of the improvements.

## Shannon is new chairman of Adoption Board

Solicitor and deputy director of education at the Law Society of Ireland Geoffrey Shannon is the new chairman of the Adoption Board. Currently a member of the Adoption Board, his appointment was announced by the Minister for Children, Brendan Smith TD, on 18 September 2007.

"The new chairman will be taking up his position at a time of great change and development for the Adoption Board," Minister Smith said, "not least the forthcoming legislation which will have fundamental implications for the whole sector. I would like to pay tribute to Mr Shannon's expertise and his contribution to facilitating the consultation process on



Geoffrey Shannon

future developments in adoption legislation," he stated.

Geoffrey is a highly-regarded expert in child and family law and has published

widely on the subject. In 2003, he was retained by the Department of Health and Children as an independent legal expert to facilitate a wide-ranging consultation process on future developments in adoption legislation. He has been appointed by the Economic and Social Research Institute as the child law expert to the longitudinal study of children. He has also been selected by the European Expert Organising Committee as the Irish expert member of the Commission on European Family Law. His expert opinion was most recently referred to in the *G* case in Ireland.

Geoffrey received the Canon Maurice Handy Award for the period January 2006 to December 2007. The award acknowledges those who make outstanding contributions on a national level to the understanding, knowledge and support of marriage/relationships in Ireland. In addition, he completed the first major Irish book on the law relating to children in 2005, entitled *Child Law*.

Minister Smith also paid tribute to the outgoing chairman, Judge Jim O'Sullivan, who, he said, had made an outstanding contribution to the Adoption Board during his time in office.

# Council election – 22 into 16 won't go

"One of the most highly competitive elections ever for the Council," is how director general Ken Murphy describes this year's election, in which there are 22 candidates for the 16 available Law Society Council seats.

There are 15 outgoing Council members each seeking re-election for a further two-year term. The only outgoing Council member who chose not to seek re-election was Marie Quirke.

One of the non-Council member candidates is a former Council member. That leaves an unusually high number of candidates, no less than six, who are running for the Council for the first time.

Ballot papers will be received by voters in the middle of October. They must be completed and returned by the poll deadline of 1 November.

The election count, overseen by the scrutineers, will take place on 2 November. The first meeting of the new Council will be on 9 November.



Ken Murphy: 'Make sure to vote'

Council members are elected for two-year terms with half of the Council elected every year.

The provinces of Munster and Connaught are holding elections this year for their provincial delegate seats. Rosemarie Loftus of Ballina has been returned unopposed for the Connaught seat, but the Munster seat will be contested between two Limerick-based solicitors, Ted McCarthy and Frances Twomey.

"Make sure to vote," the

## Candidates for Council election 2007/2008

Matthew Breslin (Donal J O'Neill & Co, Tralee), Niall Browne (Dame Street, Dublin), James Cahill (Cahill & Cahill, Castlebar), Paul Connellan (Fair and Murtagh, Athlone), John E Costello (Eugene F Collins, Dublin), Niall Farrell (Patrick J Farrell & Co, Newbridge), Stuart Gilhooly (HJ Ward & Co, Dublin), Edward C Hughes (Dun Laoghaire-Rathdown County Council, Dun Laoghaire), Philip M Joyce (Joyce & Barry, Killenaule), Liam Keane (Liam Keane & Partners, Dunshaughlin), Liam Kennedy (A&L Goodbody, Dublin), Martin G Lawlor (Coghlan Kelly, New Ross), Jarlath McInerney (McInerney

Solicitors, Galway), Joseph B Mannix (Mannix & Co, Tralee), Thomas Murrin (Peter O'Connor & Son, Waterford), Michele O'Boyle (O'Boyle Solicitors, Sligo), John O'Connor (Ballsbridge, Dublin), Kevin O'Higgins (Blackrock, Dublin), James O'Sullivan (Ronan Daly Jermyn, Cork), Moya Quinlan (Dixon Quinlan, Dublin), Louise Rouse (Arthur Cox, Dublin), John D Shaw (JS Shaw & Co, Mullingar).

### Provincial delegates

**Connaught:** Rosemarie Loftus (Bourke Carrig & Loftus, Ballina). **Munster:** Ted McCarthy (Limerick); Frances Twomey (Twomey Scott & Co, Limerick).

director general urges all members. "This is your democratic opportunity to

choose the people to lead the profession through these challenging times."

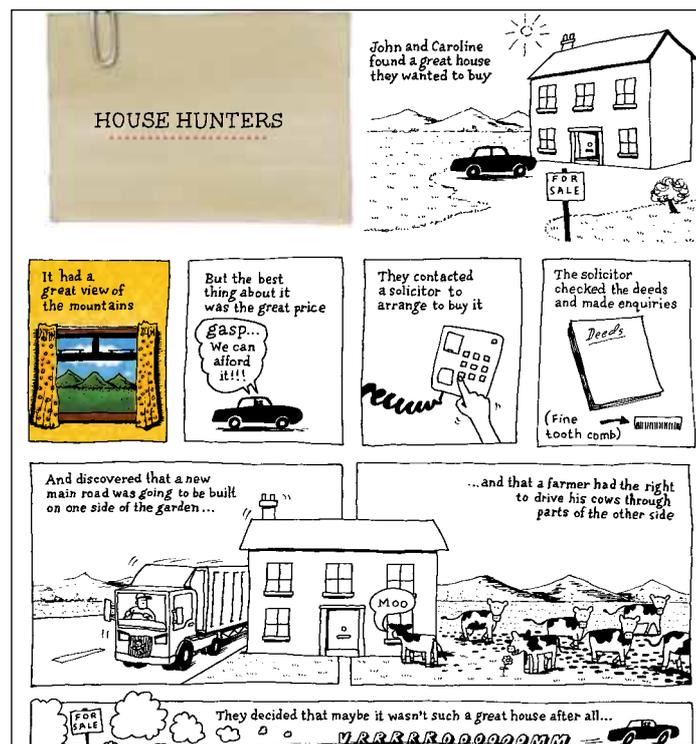
## Advertising survey gets more than 1,500 responses

More than 1,500 solicitors have responded to the survey of the views of members on the Society's recent media advertising campaign to promote the solicitors' profession and the services it provides to the general public.

As the *Gazette* goes to press, the survey responses are being compiled by Behaviour & Attitudes Market Research. Graham Wilkinson of Behaviour & Attitudes will

make a presentation analysing the results of the survey at the Law Society Council meeting on 5 October. In addition, he will present at the meeting a summary of the results of separate Behaviour & Attitudes' focus-group-based market research on the public's view of the advertisements.

The Society thanks all those who participated in the survey. The results will be published and analysed in the November issue of the *Gazette*.



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# All aboard the client focus train!

The Client Care Task Force is about to launch its winter programme. Countrywide seminars and workshops are wending their way to a location near you, *writes chairman of the Client Care Task Force, Tom Murran.*

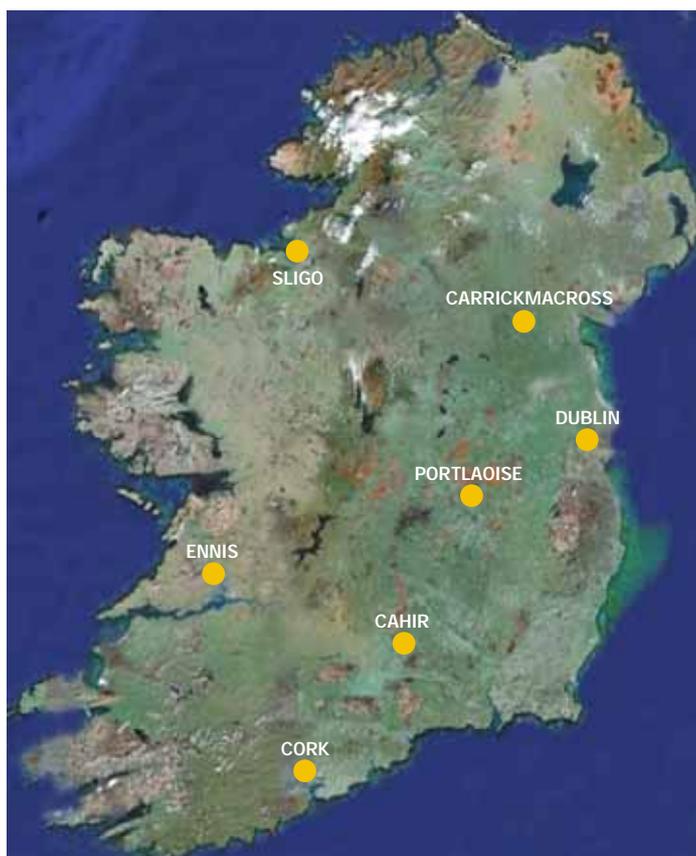
“Client expectations are increasing rapidly and it is up to us as a profession to meet them.” So said past president of the Law Society, Michael Irvine, when he launched the Client Care Task Force in 2005. “As a profession, there is a lot we can do to improve the overall level of service we offer. We need to focus strongly on managing and retaining our existing clients,” he stated.

Since then, the task force has held 13 seminars and six workshops throughout the country, with almost 1,000 solicitors signing up to attend. The Client Care Task Force is now launching the winter programme to facilitate solicitors who have not yet had the opportunity to attend. The line-up includes three seminars and six workshops that will be held around the country in November and December 2007.

The seminars will follow a similar format to previously but, acting on feedback from evaluation forms, the task force has added new speakers to the panel of client care experts.

Topics to be covered include:

- What clients think of you – from the client point of view,
- What clients complain about,
- The different perspectives of solicitors and clients in their relationship,
- How to create, build and retain the trust of clients,
- Why client care is the key to profitability,
- Achieving a client-focused culture,
- Practical tips to assist solicitors in dealing with clients in an increasingly pressurised world.



Through the Client Focus seminars, participants will gain exclusive access to current ideas to improve their legal practices, advantageous to both clients and the firm. The workshops have been designed for smaller numbers of up to 14 people and will again be run

by Brian Allingham, a former Scottish solicitor. Workshops are only available to those who have previously attended a Client Focus seminar.

If you have any queries, please contact the CPD Focus team on 01 672 4802 or email: [cpdfocus@lawsociety.ie](mailto:cpdfocus@lawsociety.ie).

## CLIENT FOCUS SEMINARS – DATES

- CORK, Maryborough Hotel, Douglas – Monday 5 November, 1pm - 5pm
- DUBLIN, Royal College of Physicians, No 6, Kildare Street, Dublin 2 – Monday 19 November, 1pm - 5pm
- SLIGO, Radisson Hotel, Ballincar, Rosses Point – Friday 23 November, 1pm - 5pm

## WORKSHOPS

- DUBLIN, Conrad Hotel, Earlsfort Terrace, Dublin 2 – Tuesday 20 November, 11am - 4pm
- LAOIS, Heritage Hotel, Town Centre, Portlaoise – Wednesday 21 November, 11am - 4pm
- MONAGHAN, Nuremore Hotel, Carrickmacross – Friday 23 November, 11am - 4pm
- CLARE, Woodstock Hotel, Woodstock, Ennis – Monday 10 December, 11am - 4pm
- TIPPERARY, Kilcoran Lodge Hotel, Cahir – Tuesday 11 December, 11am - 4pm
- DUBLIN, The Fitzwilliam Hotel, St Stephen's Green, Dublin 2 – Thursday 13 December, 11am - 4pm

## Future Garda Commissioner named

The government has named Deputy Commissioner Fachtina Murphy to succeed Noel Conroy as Garda Commissioner when he retires in November.

Commissioner Designate Murphy is from Timoleague, Co Cork, and has served in An Garda Síochána since 1967. Deputy Commissioner Murphy was promoted to the rank of chief superintendent in 1996 and took charge of the Dublin Metropolitan Eastern Division. He was appointed as the first chief bureau officer of the



Garda Commissioner Designate Fachtina Murphy

Criminal Assets Bureau, established in August the same year, following the murder of journalist Veronica Guerin in June 1996. He led the bureau for three years until his promotion to the rank of assistant commissioner in December 1999, with responsibility for human resource management and training and development at the garda training college in Templemore. Following over three years in human resource management, he was appointed deputy commissioner in July 2003.



Model shown is the new Cayenne S at €106,650 including metallic paint and delivery charges.

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## SUPPORT SERVICES FOR MEMBERS

# COMPANY FORMATION SERVICE

Louise Campbell summarises the services offered by the Society's Company Formation Service

The Law Society of Ireland's Company Formation Service is provided by the hardworking team (*right*) of Carmel Molloy, Rita Hogan, Lorraine Cullen and Susan Murray. They have over 25 years of experience, with a thorough knowledge of company formations and the associated needs of their customers.

Incorporating approximately 1,000 companies every year for over 300 solicitor firms, the service is competitively priced, fast and efficient. It offers five-day electronic filing and the use of nominee shareholders.

The service was first assessed by the NSAI in 2002, when it achieved ISO 9001:2000 – a standard it continues to maintain.

The service forms a range of companies based on standard memorandum and articles of association, pre-approved by the Companies Registration Office, including:

- Private companies limited by shares,
- Single member companies,
- Guarantee companies,
- Charitable status companies,
- Unlimited companies.

The Company Formation Service will also check availability of a



proposed company name on request, free of charge.

Following incorporation, the

service provides:

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## LAW SOCIETY OF IRELAND RETIREMENT TRUST SCHEME

The Law Society of Ireland Retirement Trust Scheme is the Revenue-approved, trust-based RAC scheme (that is, 'personal pension' group scheme). Membership of the scheme is open to members of the Law Society, whether self-employed (sole-practitioners or partners) or in non-pensionable employment. The retirement trust scheme was established in 1975 to facilitate members of the Law Society to save for their retirement. It has grown and developed over the years alongside developments in the pensions industry generally, for example, through enhancement of the investment options available to members, changes from time to time in the managers appointed to manage the assets, and broadening the investment options available to members at retirement.

For further details, or to request a copy of the scheme's explanatory booklet, please contact the Trustee/Administrator, Bank of Ireland Trust Services, 40 Mespil Road, Dublin 4 (Brian King: 01 637 8770 or email: [brian.king@pb.boi.ie](mailto:brian.king@pb.boi.ie)).

- The company seal, and
- The combined share register/share certificate book.

The service also deals with:

- Change of name,
- Change of objects,
- Sales of company seals, Jordan's company kits and combined share-register and share-certificate books.

Based in Blackhall Place, members wishing to avail of the service are welcome to place their orders by email, fax, post or to attend personally.

For further information on any of the services provided, price lists or application forms, contact a member of the company formation team at Blackhall Place, tel: 01 672 4914 or 01 672 4916, email: [companyformation@lawsociety.ie](mailto:companyformation@lawsociety.ie), or log onto the 'Company Formation' section of the Law Society website: [www.lawsociety.ie](http://www.lawsociety.ie). 

*For information on any Law Society member service, please contact Louise Campbell, support services executive, Blackhall Place, tel: 01 881 5712 or email: [l.campbell@lawsociety.ie](mailto:l.campbell@lawsociety.ie)*

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## letters



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

## Reflections on 'good character' in a solicitor

*From: John M Bourke, Bourke & Co, Solicitors, Walkinstown, Dublin 12*

I read with interest the synopsis of Dominic Dowling's presentation to our neighbouring law societies in the July 2007 issue (page 39ff). I was struck in particular by the reference to the need for good character in a solicitor.

Dominic expressed the view that those engaged in the profession must not only be technically competent but must also have the "attributes of character that would enable people, by and large, to trust them".

Dominic's comments struck a chord with me, as I have always been curious to understand how one creates trust with a client and how important it is or is not in our legal world.

I have been in practice for a long time and have spent most of my career learning to be technically competent. I have been fortunate in not having to expend energy on creating relationships of trust with my clients, as it is something that has always come naturally to me. I have, however, noticed that it does not come as naturally to many of our colleagues.

I have often wondered how trust is formed, and noted over the years that great communicators were people who inspired trust in their listeners. I have spent a lot of my spare time studying behavioural psychology and discovered in the course of my

studies that creating trust is a process, and what's more, it is a process that any person can learn.

I am aware that the Law Society runs seminars on communication. It is my experience that these courses emphasise the importance of creating trust and illustrate good communication. However, they do not teach the process. By way of example, I attended a seminar on mediation in the spring. The course presenters wanted to teach us the process of rapport. They believed that the building of rapport is a fundamental component of trust. They believed that building rapport is a process that can be learned by anybody, and they took a good stab at teaching the process ... though it did not work as well as it could have. The point, however, is that the presenters recognised that creating trust is a key component of mediation and that teaching the process was equally as important as teaching

technical proficiency. I would suggest that the same rules apply to solicitors.

I observe my colleagues and note that there is now a very strong emphasis in our training and in our practice on technical competency. It seems to me that all the emphasis is on competency to the extent that a competent solicitor is someone who can be trusted.

Thus we attend seminars on 'client care' and we are told that returning phone calls within a time limit, seeing clients on time, making sure our correspondence is word perfect, and so forth, are the key to good communication. I would suggest to you that 'client care' as it is currently taught is the key to competency. I would submit that it does not create rapport with clients nor does it build trust. Do you notice how many solicitors complain about how difficult their clients are and how demanding they are? I believe that there is a direct

relationship between a difficult/demanding client and a technically competent solicitor, that is, someone who believes that technical competency is the key to a trusting relationship.

I suggest that the people who believe that technical competency establishes rapport have difficult and demanding clients. The people who believe that creating and establishing rapport independent of technical proficiency are the people who have enjoyable relationships with their clients.

The purpose of my letter is to propose to you, my colleagues, and to the Law Society, that we set up courses that teach the creation and maintenance of rapport as the 'builder of trust' to those of us who have difficult and demanding clients, with the intention that our current and future solicitors will be both technically competent and good at establishing rapport, thereby enabling our clients to trust us.

## Dangers of cut-price conveyancing

*From: Ronan O'Brien, TP Robinson, Solicitors, Merrion Square West, Dublin 2*

I have read with interest the letter of Richard McDonnell in the Aug/Sept issue of the *Gazette* entitled 'The title time bomb and the competition fuse'. Mr McDonnell is right. The situation he describes was entirely foreseeable and widely

predicted when the *Boland Regulations* of 1987 removed the bank's solicitor from conveyancing transactions. The Law Society supported these regulations. It was short-sighted, and solicitors can rightly feel that they were let down by their Society. I hope the Society will be strong in our defence when the time

bomb does go off, because it is the profession that will be blamed. The Society might consider an advertising campaign to warn consumers against the dangers of cut-price conveyancing. Even at this late stage, it may go some way to mitigating the damage to the profession when the inevitable fall-out comes about. ©

# Reform urged in aftermath

Despite appearances, the *G* judgment does not create new rights for unmarried fathers, writes Geoffrey Shannon, who argues that there is now a need for robust legislation in this area

The *G* case was essentially an application under the child abduction convention. It concerned the mother of unmarried twins and whether she was entitled to take them out of the country and determine their residence without the consent of the father or the court.

The parties to the case were not married and lived in Ireland prior to the removal. The father argued that he was the primary carer of the children. In January, the mother removed the children from Ireland to England without the knowledge or consent of the father. Mr G had the right to apply for custody or guardianship but Mr G had not done this prior to the removal. Mr G sought the return of his children in the High Court in London.

His partner argued that she was entitled to bring the children to England, as she was the sole guardian of the children.

Mr G argued that he had 'inchoate' rights that should be considered as rights of custody. In other words, he had the right to apply for guardianship. Given his involvement with his children, he thought that an Irish court would be likely to grant him guardianship rights.

The English High Court granted a declaration under article 15 of the 1980 *Hague Convention* requesting Mr G to obtain a decision from the Irish courts as to whether the removal of his twins without his consent was wrongful. While this case was initiated under



Guardianship is of overriding seminal importance to a child's upbringing – and, for the non-marital father, is the 'gateway' to custody

child-abduction legislation, it required the Irish High Court to consider the rights of the Irish non-marital father.

## Guardianship

The *Guardianship of Infants Act 1964* provides that the mother and father of a child born to them in wedlock are joint guardians of the child. The mother of a non-marital child is the sole guardian of her child.

Under Irish law, the unmarried father has neither an automatic right to the day-to-day care of his children (known as 'custody'), nor has he an automatic right to have a say in the upbringing of his children (known as 'guardianship').

The father of a child not married to the mother can, however, apply to court to be appointed a guardian. Moreover, section 4 of the *Children Act 1997* introduced a new and simplified procedure for appointing a natural father as guardian of a non-marital child that does not involve a court appearance, but merely requires the execution of a

statutory declaration. There are practical difficulties, however, with the operation of this section. For example, where does one 'file' the declaration, or what happens if this declaration is lost?

The *Hague Convention* was relied on by Mr G in this case. It applies to any child who was 'habitually resident' in a contracting state immediately before the child was abducted. The High Court in the *G* case held that the twins were habitually resident in Ireland prior to the removal.

To trigger the mechanisms of the 1980 convention, there must have been a wrongful removal of the child from the place where it was habitually resident. The removal or retention of a child is stated to be wrongful within the meaning of the convention where it is in breach of a right of custody as defined in article 3 of the convention. This article gives 'rights of custody' a very wide interpretation and specifies three possible legal origins of a right of custody. "The rights of

custody may arise in particular:

- By operation of law or
- By reason of a judicial or administrative decision or
- By reason of an agreement having legal effect under the law of that state."

Article 3 requires that rights of custody were actually exercised at the time of the removal. The scope of the term 'rights of custody' was considered in *HI v MG*, a case referred to by McKechnie J in the *G* case. The applicant in *HI v MG*, an Egyptian citizen, married the respondent, a British citizen, according to the rites of the Muslim faith. The Islamic marriage ceremony was not one that was recognised by New York law. Following the removal by the respondent of her son (H) to this jurisdiction, the applicant, a non-marital father, sought the return of H under the *Child Abduction and Enforcement of Custody Orders Act 1991*. It was submitted on behalf of the applicant that, as he was entitled to apply to the New York courts for rights to custody of or access to H once the issue of paternity was formally confirmed, he had inchoate rights in respect of the child, which would almost inevitably have crystallised into established rights. He therefore submitted that he should be entitled to invoke the 1980 *Hague Convention*.

## 'Undefined hinterland'

The Irish Supreme Court in *HI v MG*, however, reversing the finding of the High Court,

PIC: PHOTOCALL IRELAND



# of the G case

rejected the assertion that regard should be had by the *requested* state to an undefined body of inchoate rights not recognised by the *requesting* state. Keane J, as he then was, delivering judgment for the majority, stated that the term 'rights of custody' did not embrace "an undefined hinterland of inchoate rights of custody not attributed in any sense by the law of the requesting state to any party asserting them or to the court itself". The High Court in *G* felt bound by the Supreme Court decision in *HI v MG* and considered next the *European Convention on Human Rights* (ECHR).

The ECHR (unlike Irish law) makes no distinction between the family life of a marital and non-marital family – an issue highlighted in *Keegan v Ireland*. In that case, involving primarily the question of a non-marital father's right to be consulted in relation to the adoption of his child, the European Court of Human Rights held that the father's rights under articles 6 and 8, ECHR, had been

violated. The court held that the father's rights under article 6 (which provides for the right to a fair hearing) and article 8 (which provides for respect for one's private and family life) had been violated.

Article 8, ECHR, was applicable, the European Court of Human Rights emphasised, despite the fact that the natural parents of the child were never married to each other. For two years prior to the making of the adoption order, the mother and father had been living in a stable relationship and that, essentially, formed a family for ECHR purposes. Alluding to article 6, ECHR, the European Court of Human Rights held that the father's right to 'a fair and public hearing by an independent and impartial tribunal' had also been violated. Effectively, the father had 'no rights under Irish law' to challenge the decision to place his child for adoption, either before the Adoption Board or before the courts.

Mr Justice McKechnie in the *G* case applied article 8, ECHR, stating that Mr G enjoyed

article 8 rights "and that the removal of the children from this jurisdiction without his consent, knowledge or approval interfered with those rights". The judge, therefore, held that the removal of the twins from this jurisdiction was wrongful.

## Reform

The *G* judgment does not create new rights for unmarried fathers. Under Irish law, unmarried fathers still do not have an automatic right to the day-to-day care of their children, nor do they have an automatic right to have a say in the upbringing of their children. No matter how lengthy the relationship, our law tends to regard the unmarried father as a legal stranger vis-à-vis his child.

Guardianship concerns matters of overriding seminal importance to a child's upbringing – and, for the non-marital father, is the 'gateway' to custody. In light of this, we should establish a guardianship register by way of an amendment to the *Civil Registration Act*. If Mr G had guardianship rights, this matter

would never have come before the courts.

We also need broader reform that should equate rights with responsibilities. There is now a need for robust legislation in this area, which should give rights to fathers commensurate with the responsibilities that they assume.

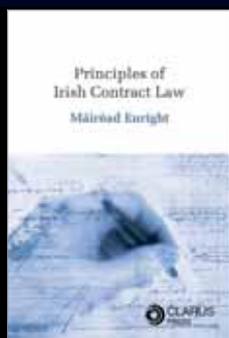
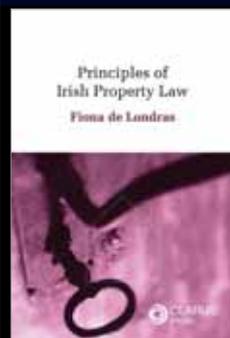
We need to start looking at this issue from the perspective of children. The promised referendum on children's rights, if passed, will actively promote the welfare interests of children in the resolution of the issues for consideration by the court in the *G* case.

We are too quick to define guardianship, custody and access in terms of fathers' or mothers' rights. If we put the needs of the children first, we might succeed in obtaining better outcomes for all involved. Let us hope that the *G* case will provide the impetus for this new approach to family law. **G**

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

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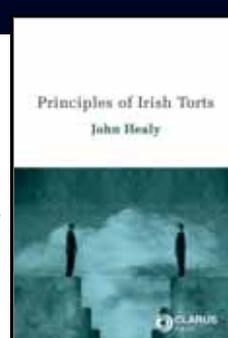
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Law Society Gazette, April 2007



# New financial directive

**MiFID arrives on these shores on 1 November. It is crucial that solicitors advising investment firms should instruct such clients to take all necessary steps to ensure appropriate compliance**

**T**he *Markets in Financial Instruments Directive* (MiFID), 2004/39/EC, was adopted in April 2004, replacing the existing *Investment Services Directive* (ISD), 93/22/EEC. MiFID aims to substantially expand and improve the provisions of the ISD and will be transposed into Irish law on 1 November 2007 by virtue of the *European Communities (Markets in Financial Instruments) Regulations 2007* (SI no 60 of 2007).

The aims of MiFID are to protect investors and ensure market transparency and integrity by establishing harmonised requirements on authorised firms' activities, management of conflicts of interest, imposition of best execution obligations and new rules on providing investors with an order execution policy.

Solicitors need to be mindful of MiFID in terms of their clients.

## Scope of MiFID

MiFID will apply to specific financial instruments and services, including transferable securities, money-market instruments, units in collective investment undertakings, financial contracts for differences, and various forms of derivative contracts.

The definition of a 'financial instrument' under MiFID has been extended from the definition in the ISD to include contracts for differences (CFDs) and other derivatives such as credit, commodity, weather and freight rate derivatives. This



Like *Sea Stallion* – the Viking longship that slowly, but relentlessly, made its way into Dublin harbour recently – MiFID has been a long time coming

extension to the scope of the directive may require additional firms to be regulated.

Under MiFID, firms who are authorised to carry out investment services and

activities may also provide ancillary services. However, firms that only provide ancillary services will not fall within the scope of MiFID. The most notable new investment service provided for under MiFID is that of a multilateral trading facility.

MiFID covers both investment services and activities, and ancillary services. Investment services and activities include the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients, dealing on own account, portfolio management, investment advice, underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, placing of financial instruments without a firm commitment basis, and operation of multilateral trading facilities.

## Ancillary services

Ancillary services include safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as:

- Cash/collateral management,
- Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction,
- Advice to undertakings on capital structure, industrial strategy and related matters,

## LONG-OVERDUE OVERHAUL

MiFID represents an overhaul of the *Investment Services Directive* (93/22/EEC). It aims primarily to harmonise the rules relating to the provision of investment services, and to increase the level of protection offered to investors throughout the European Union. MiFID brings, among other things:

- Extensions of the current investment service regulations (including an expanded list of core investment services),
- An extension of the list of the regulated financial instruments and of regulated investment services, and
- Application of its rules to banks and building societies and the regulation of market operators.

As a result, it is important for investment firms to consider all services that they currently provide to clients with a view to establishing the extent to which MiFID will apply to their activities after 1 November 2007.

# – worth waiting for?

- Advice and services relating to mergers and the purchase of undertakings,
- Foreign exchange services, where these are connected to the provision of investment services,
- Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments, services related to underwriting and investment services and activities, as well as ancillary services related to the underlying of derivatives where these are connected to the provision of

investment or ancillary services.

## Exemptions

Article 2 of MiFID has set out a number of exemptions, including insurance and assurance undertakings and also an exemption for firms partaking in own-account transactions in financial instruments to the clients of their main business, provided this is an ancillary activity to their main business.

MiFID has established high-level organisational and conduct of business standards that will apply to all investment firms. These new

standards include managing conflicts of interest, best execution, customer classification and suitability requirements for customers.

Other key areas dealt with under the regulations include cross-border services, conflicts of interest, compliance obligations, outsourcing, obligations of investment firms when appointing tied agents, systematic internalisers, organisational requirements, best execution, information to clients, reporting to clients and pre-trade and post-trade transparency.

The main aim of MiFID is

to create greater market transparency and to ensure 'best execution' for investors, whether trading takes place on or off an exchange. Investment firms, exchanges, trading platforms and market data vendors will all have to adapt their business processes and their IT systems in order to comply with the directive. MiFID is by far the most detailed and extensive European directive on financial instruments to date. 

*David Dillon is a senior partner at Dillon Eustace Solicitors and specialises in financial services, corporate and commercial law.*



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# Finally getting a piece

**After eight years of protracted litigation, the ECtHR has finally confirmed the compatibility of the doctrine of adverse possession with the ECHR – and secured its position in Irish law**

On 30 August 2007, the Grand Chamber of the European Court of Human Rights delivered its judgment in the case of *JA Pye (Oxford) Ltd and JA Pye (Oxford) Land Ltd v The United Kingdom*. After eight years of protracted litigation, the Grand Chamber finally confirmed the compatibility of the doctrine of adverse possession with article 1, protocol 1, of the *European Convention on Human Rights* and secured its position in Irish law in relation to registered land.

This case arose out of a dispute over the ownership of 23 hectares of agricultural land in Berkshire. The disputing parties were two companies, JA Pye (Oxford) Ltd and JA Pye (Oxford) Land Ltd – the owners of the land – and their neighbours, Mr and Mrs Graham, who had been in possession of the property for over 12 years. The Grahams had occupied the land under a grazing agreement until 31 December 1983, after which their permission to continue farming on the land had been withdrawn. The Grahams



The European Court's HQ

continued in occupation and, in 1997, sought to register a caution in the Land Registry against the owner's title on the grounds that they had obtained title to the property by virtue of the doctrine of adverse possession. The applicant companies sought the cancellation of the cautions and possession of the land before the High Court.

Article 1, protocol 1 of the ECHR states that every person is entitled to the peaceful

enjoyment of his possessions. It does, however, provide that the state has a right to enforce such laws, as it deems necessary, to control the use of property in accordance with the general interest. The Grand Chamber felt that, in this case, the British state, by virtue of the doctrine of adverse possession, was controlling the use of property. It fell to be considered, therefore, whether the doctrine pursued a legitimate aim in the general interest.

## A legitimate aim in the general interest?

There were two specific issues for consideration before the Grand Chamber. Firstly, whether limitation periods in general pursued a legitimate aim and, secondly, whether extinguishing the owner's title after the limitation period had expired pursued such an aim.

In relation to the first issue, the European Court of Human Rights had previously held that limitation periods were compatible with the ECHR as they serve several important purposes. Therefore, the Grand

Chamber held that the existence of a 12-year limitation period for actions for recovery of land was a legitimate aim in the general interest.

Secondly, the Grand Chamber considered the extinguishment of title after the 12-year limitation period. It held that states are entitled to a wide margin of appreciation in implementing social and economic policy. The court would respect the legislature's judgement as to what was in the public interest as long as such a policy was not manifestly without reasonable foundation. The Grand Chamber determined that "it must be open to the legislature to attach more weight to lengthy, unchallenged possession than to the formal fact of registration", even in the case of registered land. Such a policy was not manifestly without reasonable foundation.

Therefore, there was a general interest in implementing both a limitation period and the extinguishment of title after that period had expired.

## ONE TO WATCH: NEW LEGISLATION

- **Industrial Design (Amendment) Regulations 2007, SI no 620 of 2007**
- **Trade Marks (Amendment) Rules 2007, SI no 621 of 2007**
- **European Communities (Provision of Services Concerning Trade Marks and Industrial Designs) Regulations 2007, SI no 622 of 2007**

On 5 September 2007, the *EC (Provision of Services Concerning Trade Marks and Industrial Designs) Regulations* came into effect. These regulations amend the *Trade Marks Act 1996* and the *Industrial Design Act 2001* by bringing their provisions in line with Ireland's commitments under article 49 EC in relation to the

freedom to provide services. On the same day, the *Industrial Design (Amendment) Regulations 2007* and the *Trade Marks (Amendment) Rules 2007* were also introduced to reflect the changes brought about by the these regulations and to make provision for their operation in Irish law.

### Amendments to the *Trade Marks Act 1996*

Section 85(4A) of the 1996 act now provides that a person may carry on the business of acting as a trademark agent for others provided they are:

- Established in a member state of the European Community, and

## human rights watch

of the *Pye*

The Grand Chamber also had to determine whether a fair balance had been struck between the demands of the general interest and the interest of the individuals concerned. There were four significant issues for consideration by the Grand Chamber: the length of the limitation period, the absence of compensation, the absence of procedural protection and, finally, the windfall that would be visited upon the new owner.

Firstly, the limitation period and the rule that extinguished the title did little more than regularise the positions of the parties to the dispute, namely to confirm that the person who has acquired title by 12 years' adverse possession is the owner. Indeed, this reflected the aim of the land registration legislation. The Grand Chamber were of the opinion that very little action on the part of the applicant companies would have stopped the time from running and would have meant that the possession by the Grahams would no longer have been adverse.

Secondly, in relation to the issue of compensation, the Grand Chamber was of the opinion that "a requirement for

compensation would sit uneasily alongside the very concept of limitation periods, whose aim is to further legal certainty by preventing a party from pursuing an action after a certain date". It noted further that the *Land Registration Act 2002* in Britain did not provide for compensation to be payable by the new owner of registered land on expiry of the limitation period.

Thirdly, the Grand Chamber considered that the applicant companies were not totally without procedural protection. It was at all times open to them to remedy the position by bringing a court action for re-possession of land. Such an action would have stopped time running. Even after the expiry of the limitation period, it was open to them to argue that the occupiers had not been in adverse possession as defined by domestic law.

Finally, the Grand Chamber felt that the possibility of the adverse possessor being able to receive a windfall profit did not affect the overall assessment of the proportionality of the legislation. If limitation periods are to fulfil their purpose, they must apply regardless of the

size of the claim. The value of the land could not, therefore, be of any consequence to the outcome of the case.

#### The effect in Ireland

This decision secures the position of the doctrine of adverse possession in Irish law in relation to registered land. The judgment is also significant in that it potentially secures the position of the doctrine in relation to unregistered land, mainly because the policy reasons for the doctrine are stronger in relation to such land. As the Irish government submitted in the case, the doctrine of adverse possession plays a very important role in Irish law by ensuring the quieting of titles so that uncertainty over the ownership of land can be reduced.

This is of particular importance in Ireland, where ownership of land has often been difficult to ascertain, as much land is unregistered and, historically, there have been issues surrounding the administration of estates on intestacy. The ownership of land entails both rights and duties, and the Grand Chamber would appear to agree with the

#### LOOK IT UP

##### Cases:

- *AGOSI v The United Kingdom* (1986), application no 9118/80
- *Beyeler v Italy* (2000), application no 33202/96
- *Jahn and others v Germany* (2005), application no 46720/99
- *James and Others v The United Kingdom* (1986), application no 8763/79
- *JA Pye (Oxford) Ltd and JA Pye (Oxford) Land Ltd v The United Kingdom* (2007), application no 44302/02
- *Sporrong and Lonnroth v Sweden* (1982), application no 7151/75; 7152/75
- *Stubbings and Others v The United Kingdom* (1996), application no 22083/93; 22085/93

government that it is not unreasonable to impose a duty on landowners to take action to maintain possession. **G**

*Elaine Dewhurst is the Law Society's parliamentary and law reform executive.*

b) Qualified under the law of that state to act as a trademark agent.

Therefore, persons who meet the criteria as set out in the new s85 may, subject to the restrictions in that provision, be authorised to operate and may elect to cease to operate as a trademark agent in Ireland.

#### Restrictions

Such persons, however, are subject to a number of restrictions: 1) Before commencing to practise, the person must provide to the Controller of Trade Marks, Patents and Designs evidence of (s85 (4B)):

- The person being established in another member state of the

European Community;

- The person being qualified under the law of that state to act as a trademark agent in that state; and
- The person's nationality (this can be done by providing a copy of a passport, national identity card or other proof of nationality);

- In the case of a person who is not an individual, a company or firm formed in accordance with the law of a member state of the European Community and having its registered office, central administration or principal place of business within the European Community (this can be done by a copy of a



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certificate of incorporation, an entry in a relevant register or other proof of the possession of the required legal personality, a copy of a certificate of an entry in a relevant register specifying the location of the person's registered office, central administration or principal place of business or other proof of its location).

2) The person acting as a trademark agent shall use an appropriate professional title subject to the following requirements (s85(4C)):

- The title must be expressed in the official language or one of the official languages of the member state referred to in s85(4A).
- In a case where the language in which the title is expressed is also an official language of the state, the use of the title is not as is likely to be understood as indicating that the person is a trademark agent under the *Trade Marks Act 1996*. It is sufficient if the use of the title concerned is accompanied by an indication of the member state in which the person concerned is established as a trademark agent (s85(4D)).
- If there is no applicable professional title, then the person shall indicate that the person possesses the applicable qualification and those qualifications shall be expressed in the official language or one of the official languages of the member state (s85(4E)).

3) The person must provide the following evidence in relation to their qualifications (rule 51A, *Trade Mark Rules 1996*):

- Evidence that they are established in the member state concerned for the purposes of the activities concerned;
- Evidence of the applicable qualification, such as a copy of a diploma or certificate, or other evidence of formal qualifications, awarded by a

competent authority, which indicates that the person is qualified to act as a trademark agent.

4) If there is a material change of circumstances affecting the person's continuing to be qualified to act as a trademark agent, the person shall notify the controller in writing (rule 51B).

#### Registration

A person may now be registered as a trademark agent in Ireland provided they (s86):

- Reside in the European Community,
- Have a place of business in the European Community,
- Possess the prescribed educational and professional qualifications, and
- Comply with the prescribed conditions of the 1996 act.

The *Trade Marks (Amendment) Rules 2007* provide that in order to register as a trademark agent, the person must make an application under s86 to the controller in writing, with the prescribed fee and containing the following information (rule 51):

- a) Where the applicant is an individual:
  - The full name,
  - Date of birth,
  - Nationality,
  - Private address,
  - Name or style under which he or she proposes to carry on business as a registered trademark agent.
- b) Where the applicant is a partnership:
  - First name and surname, date of birth and nationality of each partner,
  - The name or style under which the partnership proposes to carry on business as a registered trademark agent,
  - A statement that all partners are registered on the register of trademark agents.
- c) The address at which the applicant proposes to carry on

business as a registered trademark agent.

d) Full particulars of the educational and professional qualifications of the person.

In relation to educational qualifications, the following are required (rule 51(6)):

- At least a pass in ordinary level Leaving Certificate, or
- A qualification that in the opinion of the board is equivalent (the board may waive this requirement if it is satisfied that, in light of the educational and professional qualification that the applicant possesses, the applicant is fit to perform the professional duties of a registered trademark agent), and
- A satisfactory knowledge of the law and practice of trademarks.

The controller may also refuse to recognise certain agents including:

- Any solicitor whose name has been struck off the Roll of Solicitors under the *Solicitors Acts 1954 to 1994* and has not since been restored,
- Any person who no longer satisfies the requirements of s85(4A),
- A person referred to in s85(4A) who does not comply with qualifications requirements set out in rule 51A or the requirement under rule 51B in relation to a change of circumstances.

#### Trade Mark Agents Board

The *Trade Marks (Amendment) Rules 2007* provide for additional duties for the board in relation to examinations, such as fixing the time and location for such examinations, appointing examiners and other such arrangements (rule 51(4)). The board is also now under a duty to process applications and examinations as expeditiously as possible, having regard to the number of applications (rule 51(5)).

#### Privileged communications

The rules relating to privileged communications on the protection

of a trademark or in respect of any matter involving passing off are also now extended to persons established in the European Community and qualified to act as a trademark agent under the law of that state (s91).

#### Amendments to the *Industrial Design Act 2001*

The following persons are now capable of being authorised to do any act in connection with the registration of a design, or any procedure relating to a registered design or design rights:

- A registered patent agent;
- A registered trademark agent;
- A person referred to in s106(3) of the *Patents Act 1992* (this is a person who is not registered but has been permitted by the minister, upon an application made by that person, to act on behalf of others for the purpose of obtaining patents);
- A person referred to in s85(4A) of the *Trade Marks Act 1996*.

Indeed, they are also entitled to cease acting once they have given notice to the controller and the person who authorised them, subject to any provision to the contrary in any agreement. (s88(2)).

#### Restrictions

In order to act they must:

- Comply with all the relevant conditions set out in the *Trade Marks Act 1996* and the *Patent Act 1992*, and
- Be qualified under the law of the state to act in relation to such matters.

#### Privileged communications

The rules relating to privileged communications relating to the protection of a design are also extended to persons qualified and established outside the European Community (s87 (3)). **G**

*Elaine Dewhurst is the Law Society's parliamentary and law reform executive.*

# DNA

## UNDER THE MICROSCOPE

The recent controversy surrounding the Madeleine McCann case over DNA sampling has focused the spotlight on the reliability of such evidence.

John Dolan peers into his microscope

**D**NA profiling, as a branch of forensic science, is one of the ways in which scientific methods are employed in the investigation of crime. In recent years, it has eclipsed more traditional investigative sciences such as fingerprinting and handwriting analysis in the public mind, and has come to be generally regarded as the most compelling proof of guilt available to the prosecution.

The standard method of analysis used by forensic scientists when carrying out DNA profiling is called short tandem repeats (STR) and involves isolating and measuring those sections of an individual's DNA – known as a DNA profile – that differentiate that person genetically from the rest of the population. However, because it would be impossible to measure the DNA profile of the entire population, it is not possible to say with absolute certainty that each individual profile is unique.

The most that can be achieved is to estimate,

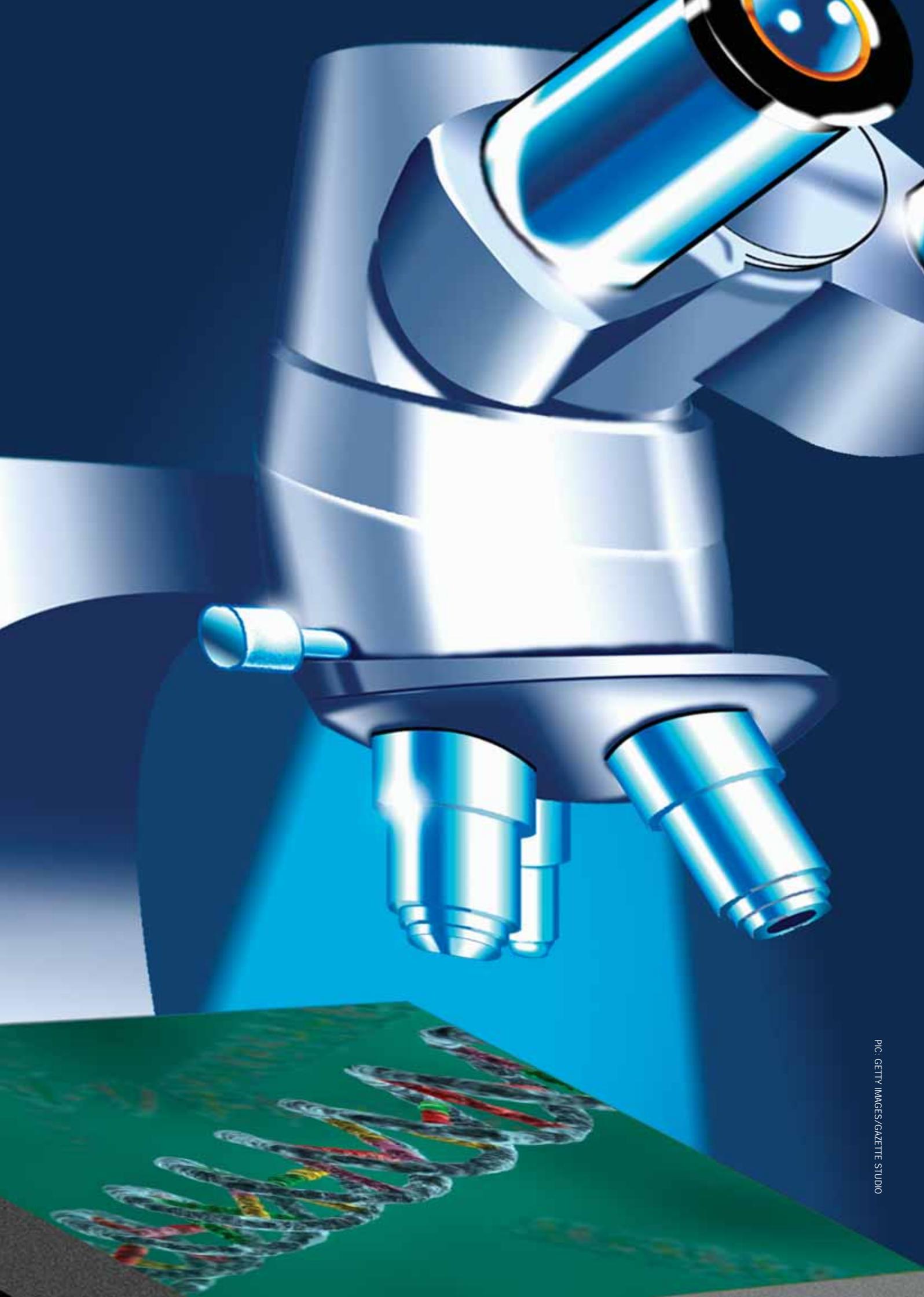
using databases built up from samples of the population, how often each individual section of the DNA profile occurs within that population – and from these estimates to assess the probability of finding the same complete profile in more than one individual. Hence, the statistical estimates that form the *leitmotif* of the DNA expert's testimony in court: one in 5 million, one in 20 million and so on. The easiest way to illustrate how this works in practice is to look at a typical example of the use of DNA evidence in a criminal trial.

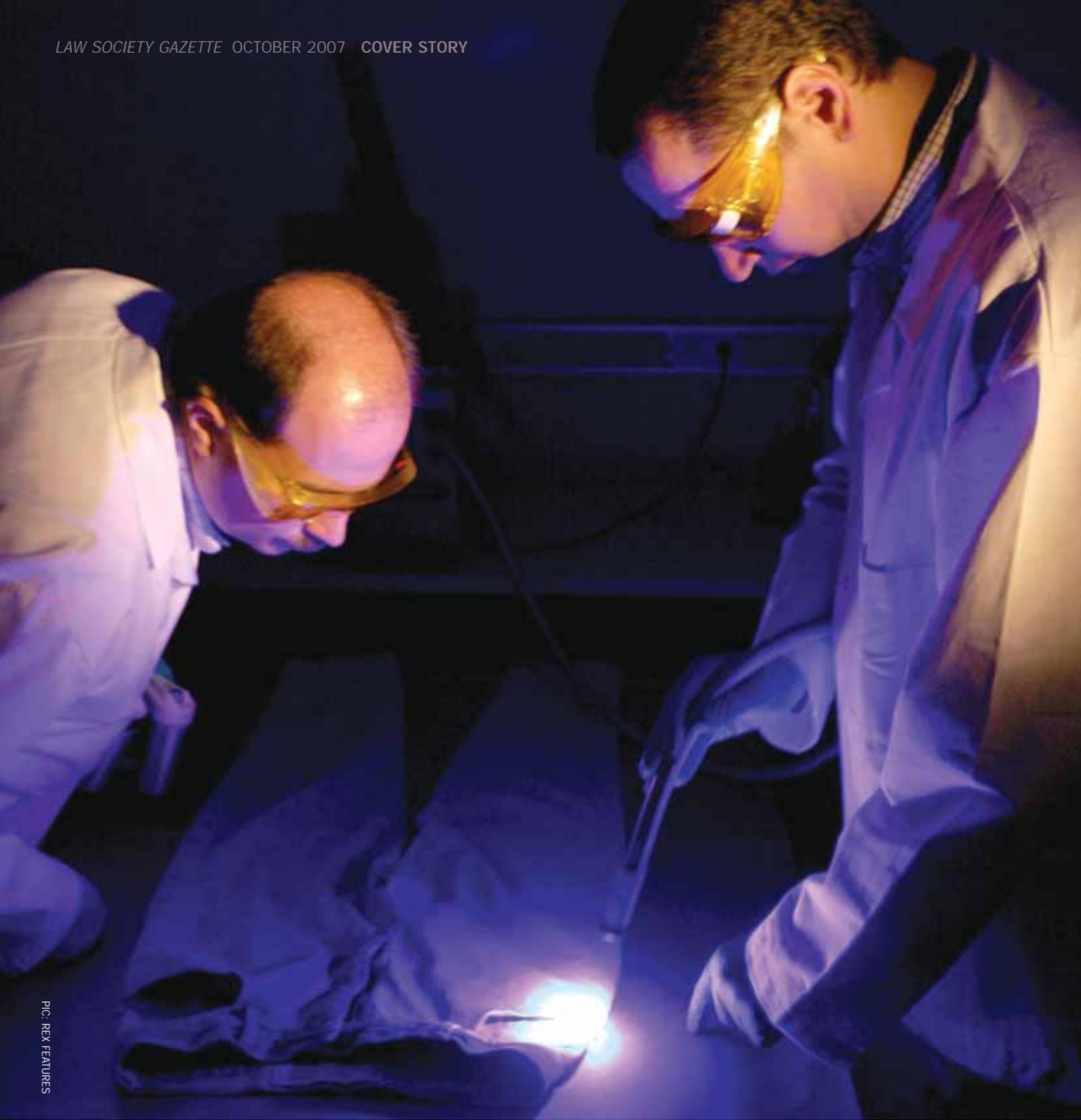
### Suspicious circumstances

A body is found in suspicious circumstances and the pathologist determines that the cause of death is a stab wound to the chest. A suspect is identified, arrested and detained for questioning. Clothing taken from the suspect during his detention is sent to the Forensic Science Laboratory in the Phoenix Park, where it is examined. A bloodstain found in the course of this examination is subjected to DNA

### MAIN POINTS

- DNA profiling
- STR and LCN testing
- The application of DNA testing





PICTURE: REX FEATURES

The science police: investigators generally register microtraces like hair, fibres, saliva or blood droplets, which can contain DNA

testing and a match is found with a blood sample taken from the victim's body during the post-mortem.

However, the fact that the DNA profile from the victim's blood sample matches that of the blood stain found on the suspect's clothing does not establish that the victim is the source of the blood stain. It merely establishes that the victim, together with anyone else who has the same DNA profile, can be considered a potential source of that stain.

The second stage of the process is for the scientist to assess the significance of the match using

the databases referred to above. If, for example, he comes up with a figure of one in 5 million, the evidence he will give to the court is that the matching DNA profiles are 5 million times more likely to be obtained if the blood stain originates from the victim than if it is from an unknown, unrelated person.

Once this process has been gone through, consideration has to be given to the circumstances of the case to establish what, if any, probative value the resulting evidence has. For instance, if the suspect says that he came upon the body and attempted to

administer first aid, then the significance of the blood staining on his clothes will be diminished in the light of this innocent explanation. Conversely, it may be of great importance if he denies ever having had any contact with the victim.

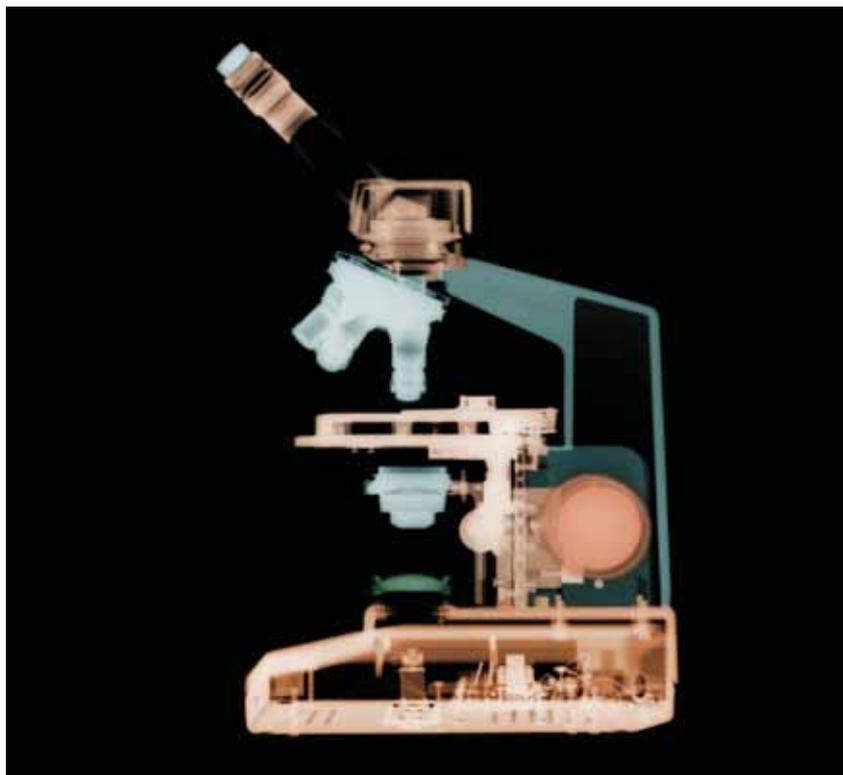
### Determining guilt

Where DNA evidence does play a role in determining guilt, it is inevitably a very powerful and compelling one, by virtue of the huge degree of certainty imported by statistics such as one in 5 million. The courts have long been aware of the danger that juries may treat it as infallible, and have been concerned to ensure that such evidence is given in a way that emphasises to the jury that it is not definitive of guilt.

It is generally viewed as being less problematic in cases where it serves to corroborate other evidence, such as a confession or an eyewitness account of the alleged crime, but many lawyers are disquieted by the idea that DNA evidence alone can be sufficient to ground a conviction. There has been no definitive ruling to date from the Irish appeal courts on this point, but the case law suggests that they have confidence in both the scientific and the statistical components of DNA profiling, so long as it is adequately explained to the jury by the trial judge in closing.

Given that the reliability of the science is accepted, the focus in any trial where it is being used must turn to the manner in which it has been applied. It is crucially important that the biological material being tested has been preserved from contamination at every stage of the process. One way in which material found at a crime scene can be contaminated is through secondary transfers, that is, the adventitious transfer to the crime scene of DNA material that originated elsewhere.

Contamination of a crime scene may take place before the police arrive, for example, through efforts to administer first aid to the victim of a fatal attack,



PIC: GETTY IMAGES

as mentioned above. But contamination can occur at any stage of an investigation if the crime scene and any evidence taken from it are not rigorously monitored and controlled, in the first instance by the police and then by the forensic scientists into whose custody samples are passed for testing. Strict protocols are observed in forensic laboratories to ensure that traces from samples being examined in one case are not transferred onto materials from another case.

### Controversial profiling

The threat to the integrity of DNA testing that can be posed by contamination has been highlighted by concerns expressed over a recently-developed

## THE FORENSIC SCIENCE LAB – ITS ROLE AND ITS WORK

Typically, a forensic scientist takes full responsibility for the scientific work required in a criminal case. The job thus involves analytical laboratory work using quite a wide range of instrumental techniques. The scientist writes a report on the results for the gardai and the Director of Public Prosecutions. The scientist frequently presents the work orally to a court and defends that work under legal cross-examination.

### Crime investigation

The Forensic Science Laboratory is involved in the investigation of hit-and-run traffic accidents, criminal damage, arson, possession of drugs, poisoning, armed robbery, sexual offences, kidnapping, fraud,

murder, firearm offences, explosives and any offences where physical evidence occurs. In 2006, the laboratory examined approximately 10,000 cases – the bulk of which consisted of suspected drug cases.

### Scientific tests used

The laboratory uses light microscopy, comparison microscopy, scanning electron microscopy (SEM), electrophoresis, DNA profiling, infra-red spectroscopy (including FTIR-microscopy), thin layer chromatography (TLC), high-pressure liquid chromatography (HPLC), capillary column gas chromatography (GC), GC/ITD, GC-mass spectrometry, microspectrophotometry, UV spectroscopy and x-ray fluorescence.

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technique called low copy number (LCN). LCN employs the same technology as more traditional methods, but pushes it further, and is used to test samples that would be considered too small to be tested by STR, such as a touch on a keyboard or a nose-print on a glass. It was initially intended to be used as an investigative aid, designed to point the police in the direction of a particular suspect rather than to be presented as evidence in court.

It is controversial because it works with such very small amounts of DNA that it has to magnify them many more times than needs to be done in STR profiling. In doing so, it may also magnify stray DNA from another source and so produce unreliable results. Alternatively, it may produce an incomplete profile that is difficult to interpret accurately. It has never been introduced into any trial in this state and is regarded with suspicion in other jurisdictions, but it has been presented in a trial in Northern Ireland, the outcome of which is still awaited at the time of writing.

Hair and blood are the main sources of DNA used by the forensic scientist and are among the samples that can be taken from a person in custody under the *Criminal Justice (Forensic Evidence) Act 1990*. However, as far as the use of hair samples is concerned, there is an important difference from a

forensic point of view between a plucked hair and a combed hair, as a plucked hair has a live root that can provide a full DNA profile when tested, whereas a hair that has fallen out naturally can provide only a partial profile, because the root is dead.

The hair stalk contains mitochondrial DNA, which is inherited from the mother only, so that siblings and their mother share identical mitochondrial DNA. This type of DNA is more resistant to destruction than nuclear DNA, and so is useful in identification cases where a body has been badly burned. It is of limited value in other types of investigations, as it cannot discriminate between one sibling and another or between siblings and their mother.

Probably the most important debate taking place at the moment in this field concerns the establishment of a DNA database. It would not be possible to do justice to this issue in an article of this length, but it is dealt with very comprehensively in the Law Reform Commission's consultation paper *The Establishment of a DNA Database*, which is well worth reading for anyone interested in the subject. **G**

*John Dolan is a senior prosecution solicitor in the office of the Director of Public Prosecutions. The views expressed in this article are his own and may not reflect the views of that office.*

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# Missing the TARGET



In order to address the increasing problem of homemade firearms, the legislature has attempted radical reform of firearms regulation through the *Criminal Justice Acts 2006 and 2007*. Genevieve Coonan takes aim

In the past two years, through the enactment of the *Criminal Justice Acts 2006 and 2007*, the legislature has attempted radical reform of firearms regulation. In particular, it has sought to address the growing problem of what can loosely be referred to as homemade firearms, via the creation of five new offences relating to such weapons, through s56 of the 2006 act (inserting a new s12A to the *Firearms and Offensive Weapons Act 1990*).

Indeed, these provisions are now the main port of call in addressing the problem of homemade firearms, since s47(2) of the 2007 act has effectively done away with the offence of possession of an article “made or adapted for use” in the commission of specified offences under s15 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*. What are the elements of these new offences and what issues are most likely to arise as they become part of the daily practice of our criminal law?

## Barrel of a gun

In 2006, shotguns were the second highest category of firearms seized by the gardaí, after pistols and airguns, with rifles coming in third. Many jurisdictions have a minimum legal length for shotgun and rifle barrels, since reduced-length firearms are easier to conceal and manoeuvre. Section 12A(1) addresses this problem by criminalising the “shortening” of the barrel of a

shotgun or rifle to a length of less than 61 or 50 centimetres, respectively. On indictment, the maximum penalty for this offence is ten years’ imprisonment and/or an unlimited fine. The seriousness of the offence is also reflected in the fact that s12A(9) states that, of this maximum term of imprisonment, the court must specify a mandatory minimum term of imprisonment of five years.

Whereas one can never be absolutely certain in the absence of clear judicial authority, the wording of s12A(1) raises the spectre of a strict liability offence. Practitioners will, of course, be familiar with the ramifications of this and, given the severity of the punishment, it is not entirely unlikely that a challenge based on the landmark *CC v Ireland* decision may be on the horizon. It should be noted, however, that it is the act of “shortening” the firearm that constitutes the *actus reus* of the offence. A successful prosecution will, therefore, depend upon whether the prosecution can show that the accused was, in fact, the person responsible for shortening the barrel of the firearm. Consequently, mounting a defence may, at least in some cases, be easier than where an accused is charged with mere possession of the shortened weapon. However, it should be noted that an offence is not committed where a registered firearms dealer shortens the barrel of either a shotgun or rifle for the “sole purpose” of replacing a defective part of its barrel.

## MAIN POINTS

- Radical reform of firearms regulations
- Five new offences relating to ‘homemade firearms’
- *Criminal Justice (Theft and Fraud Offences) Act 2001*



Although s12A(1) probably creates a strict liability offence, an accused person's intention in shortening the firearm may nevertheless be relevant to sentence and, in turn, to avoiding the minimum mandatory sentence – a point of significant interest for any defendant. For example, in *R v Gent*, the English Court of Appeal held that the sentence may be mitigated where a person of good character has shortened a weapon without any intention of using it to commit a crime. Of course, s12A(9A) of the 1990 act now states that the court must specify a term of imprisonment of no less than five years. However, one may be able to take advantage of the fact that that requirement is qualified by the phrase “in view of the harm caused to society by the unlawful possession and use of firearms”. Where a person of good character has no intention of using the firearm in question to commit an offence, the argument may be made that no harm is caused to society and, as a result, the court should exercise its discretion pursuant to s12A(10) not to impose the mandatory minimum five-year sentence.

#### There goes my gun

The minister for justice has stated that s12A creates a new offence of converting a deactivated firearm or imitation firearm into a live firearm. Doubts arise as to whether the wording of s12A(3) actually lives up to this description. It states that it is an offence for

any person to convert “into a firearm anything which resembles a firearm but is not capable of discharging a projectile”. So, the item to be converted must not fall, in the first instance, within the definition of a firearm. After all, if the item *is* already a firearm it cannot be converted *into* a firearm. As most deactivated firearms will probably fall within the parent definition of a firearm in s1(f) of the *Firearms Act 1925*, the offence of conversion will not be committed where an accused person reactivates a deactivated firearm. Section 1(f) states that a firearm means: “any article which would be a firearm under any of the foregoing paragraphs but for the fact that, owing to the lack of a necessary component part or parts, or to any other defect or condition, it is incapable of discharging a shot, bullet or other missile or projectile or of causing a shock or other disablement, as the case may be”.

Where a firearm has been deactivated by the welding shut of its chamber or by the removal of one of its necessary component parts, it will therefore remain a firearm and so cannot be converted into a firearm through reactivation! Nor will the offence of conversion occur where “a device capable of discharging blank ammunition and to be used as a starting gun or blank firing gun” is altered, since s26 of the 2006 act also extends the definition of a firearm to include such items.

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Thus, s12A(3) seems to apply only to items, such as imitation firearms, which were never intended to be used as a firearm, since they are, by their very nature, incapable of discharging a projectile. Practitioners should therefore be aware of the distinction between imitation firearms and deactivated firearms (or, where necessary, consult an expert in this regard) as reactivating the latter does not constitute an offence under s12A(3).

Finally, it should be noted that an offence committed under s12A(3) carries a maximum penalty of ten years' imprisonment and/or an unlimited fine, with the mandatory minimum term of five years' imprisonment applying. The offence again, seems to be a strict liability offence, which focuses on the act of conversion.

### Machine gun

A fully automatic firearm is one that automatically re-cocks, reloads and fires as long as the trigger is depressed. For criminal purposes, there are obvious advantages to such weapons. High-calibre firearms are also more dangerous than the average firearm, since they have a greater capacity to inflict injury.

Section 12A(4) creates two new offences – those of modifying a firearm so as to “render its reloading mechanism fully automatic” or so as to “increase its calibre”. In both cases, the offence may be committed irrespective of whether the firearm, as so modified, is a restricted firearm. The sentences referred to above again apply, and both offences seem to be of a strict liability nature. However, s12A(5) expressly states that s12A(4) does not apply to a firearm “designed and manufactured so as to enable barrels of different calibres to be attached to it.” It seems, therefore, that it is not an offence to attach a barrel of a different calibre to a firearm designed and manufactured for such. Instead, the offence of modifying a firearm so as to increase its calibre seems to apply only to hand-made attempts to increase calibre.

The significance of the phrase “irrespective of whether the firearm, as so modified, is a restricted firearm” is less than clear. A “restricted firearm” is a firearm declared to be such by ministerial order and is likely to encompass weapons of a very serious nature. Possession of such a firearm without a certificate carries a potentially greater penalty than that imposed for possession of an ordinary firearm, or for possession of a modified firearm under s12A(6) (see below). The phrase might have made more sense had it been inserted into s12A(6), since this would allow a person to be convicted of both possession of a firearm under s2(2A)(a) as well as possession of a modified firearm. However, its meaning in s12A(4) is unclear and must await further explanation from the courts.

### Smokin' gun

The new offences already discussed criminalise the “production” of homemade firearms. Section 12A(6) builds upon this and creates the offence of possessing such firearms “without lawful authority or reasonable excuse”. The concept of “lawful authority” is probably straightforward. For example, the holding of a firearms certificate in relation to any such firearm would seem to be enough to avoid liability under s12A(6). The meaning of “reasonable excuse” is less than clear. It seems probable that the likelihood of a court accepting that an accused had a “reasonable excuse” for rendering a firearm fully automatic or increasing its calibre is slim. In *R v Gent*, the fact that the barrel of the accused's shotgun had been damaged did not justify the offence of shortening it, but rather simply supported his argument as to sentence that he had no intention of using the gun to commit crimes.

Over the past five years, the amount of firearms seized by the gardaí has steadily increased, with 1,009 being seized in 2006 alone. Given that the definition of a firearm has been widened by the 2006 act, this figure is set to rise even further. With the creation of five new firearms offences, the legislature has signalled a renewed intention to tackle serious gun crime. However, it is clear from the wording of s12A that at least one of these crimes does not address the specific situation that the minister for justice sought to target. In turn, it remains to be seen whether these offences will be efficient in reducing the incidence of serious firearms offences. And will the difficulties outlined above – particularly in relation to charges of conversion contrary to s12A(3) – require the legislature to revisit these provisions in the near future? **G**

*Genevieve Coonan is a Dublin-based barrister practising in the area of criminal law and is co-author of Summing up in Ireland: The Judge's Charge to the Jury, due to be published by Thomson Round Hall next year.*

## LOOK IT UP

### Cases:

- *CC v Ireland* (2006) IESC 33
- *R v Gent* (2002) EWCA Crim 943 (England)

### Legislation:

- *Criminal Justice Act 2006*, part V
- *Criminal Justice Act 2007*, part VI

# 50 ways TO LEAVE YOUR LOVER

**There has been a dramatic increase in the number of marriages ending in divorce in Ireland – and there are many tax issues that can arise in a marriage break-up. Amanda Comyn cuts the cake**

It may come as a surprise to many that, up until the ninth century under Brehon law, divorce was legal where there was mutual consent. From the 12<sup>th</sup> century onwards, the influence of the Catholic Church led to marriage being considered as an ‘indivisible bond’.

The *Irish Constitution*, at article 41.3.2, stated: “No law shall be enacted providing for the grant of dissolution of marriage.”

A referendum in November 1995 saw over a million people vote for a lift of the ban on divorce. The *Family Law (Divorce) Act 1996* allows the court to grant a decree of divorce where the court feels confident that all the applicants are aware of the alternatives to divorce and that there is no possibility of reconciliation.

Since its enactment, we now find ourselves with 16% of all marriages ending in divorce. It would appear that people’s attitudes to marriage break-up have changed dramatically, if the figures showing the frequency of divorce decrees granted in the state are anything to go by.

It must also be remembered that the granting of a divorce decree is no simple process in this country, with stringent conditions to be complied with before the courts will grant one. Much to contrary belief, it is not a requirement that the couple are legally separated. It is, however, a stipulation that, before a court can grant a divorce in Ireland, the parties must have been living apart for a period amounting to four out of the previous five years before the application is made.

A valid marriage ceremony (that is, one recognised by Irish law) bestows considerable tax benefits on a couple.

In relation to income tax, to obtain benefits, a couple must be married and “living together”. Under the income tax rules, a married couple are living together unless either:

- They are separated under an order of a court of competent jurisdiction or by deed of separation, or
- They are, in fact, separated in such circumstances that the separation is likely to be permanent.

Accordingly, it is assumed that a married couple are living together unless there is a definite separation, either by court order, agreement or as a matter of fact.

A couple must also be married and living together in order to obtain any capital gains tax (CGT) benefits. Inter-spouse transfers are exempt from CGT where the spouses are living together, and any capital losses available to one spouse can be used by the other spouse.

Inter-spouse transfers are also exempt from stamp duty. The stamp duty exemption does not apply, however, if the instrument transferring the property includes a transfer to a person other than the spouse, in a sub-sale situation or in transfers governed by the CREST legislation.

Finally, inter-spouse transfers are exempt from capital acquisitions tax.

## **Just slip out the back**

When a married couple decide to separate or live apart, one of the first tax consequences to arise is the change in their income tax status. Both formal and informal separations are recognised for income tax purposes. There must, however, be an intention

## **MAIN POINTS**

- Tax implications of separation and divorce
- Income tax, CGT, CAT and stamp duty
- Maintenance payments and tax liabilities



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by the parties to end the marriage. The date on which the separation is likely to be permanent is of the utmost importance, as it is from that date that the income tax changes come into effect.

If one spouse is wholly or mainly maintaining the other spouse, they will be entitled to the married tax credit. As a rule of thumb, the Revenue grants the married tax credit, provided maintenance payments to the spouse exceed income earned in that spouse's own right.

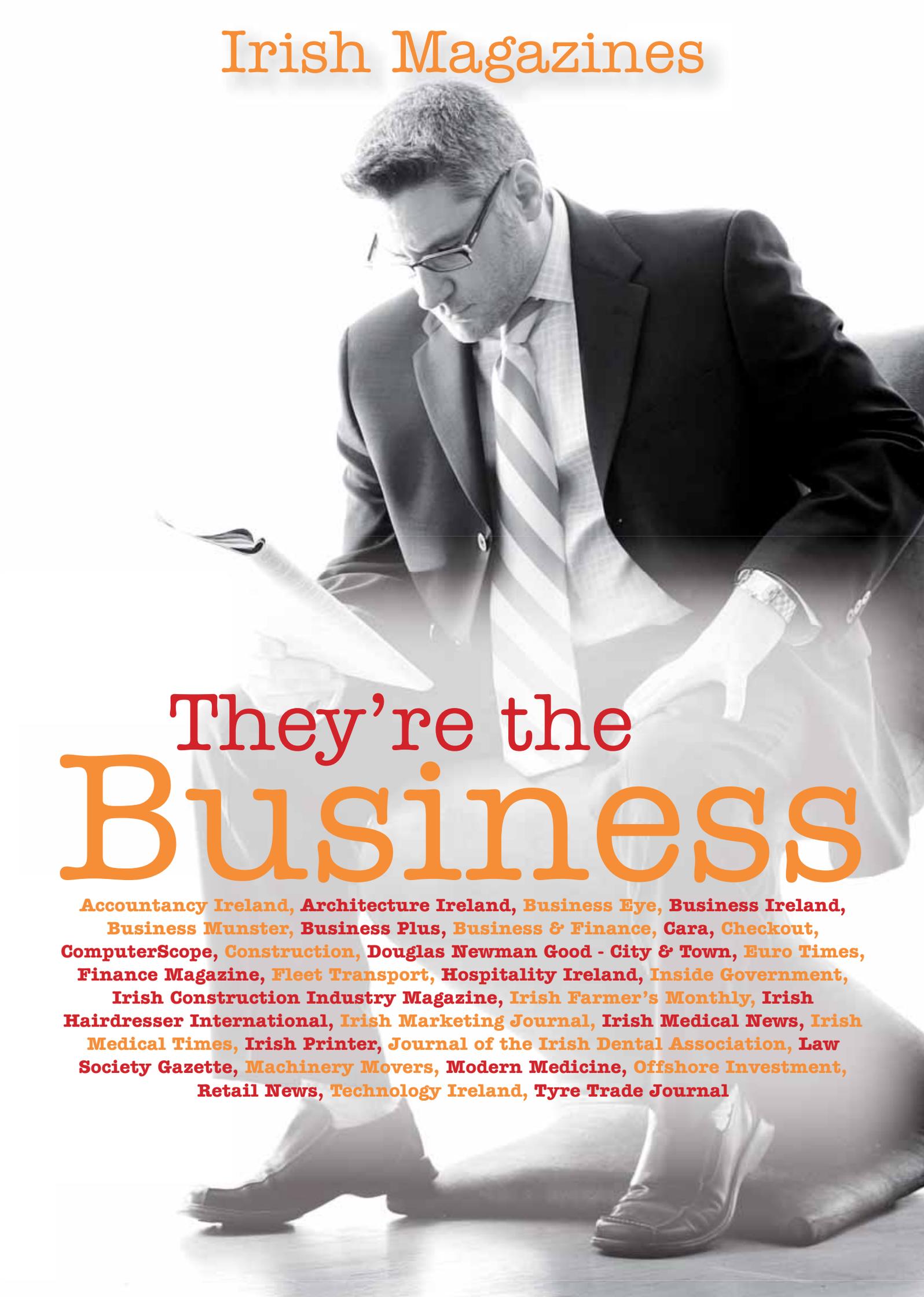
Separated spouses are treated as singly assessed from the date of separation, unless they have validly elected for joint assessment.

If this election is not made in the year of separation, the assessable spouse is entitled to the married allowance and married bands and, following the date of separation, they are taxed on their own income only. The non-assessable spouse is assessed only on their own income from the date of the separation to the end of the tax year, and is entitled to single allowances and rate bands.

Either spouse may be entitled to the single-parent allowance, provided the child:

- Is under the age of 16 at the start of the tax year, or
- If over the age of 16, is receiving full-time education at any university, college, school or other

# Irish Magazines

A black and white photograph of a man in a dark suit, light shirt, and striped tie, wearing glasses. He is sitting and looking down at a newspaper he is holding in his hands. The background is a plain, light color.

## They're the Business

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educational establishment, and

- Resides with him or her for the whole or part of the year.

### Hop on the bus

From the date that the separation is likely to be permanent, any transfer of assets between spouses is not exempt from CGT. The permanence of the date of separation will be a matter of fact.

However, assets transferred from one spouse to another under a deed of separation or by court order following the granting of a decree of judicial separation can still avail of the exemption.

There is an exemption from CGT for disposals of assets between spouses. The deemed treatment of the disposal in order to achieve this is as follows: the disposing spouse is deemed to make a disposal of the asset for an amount that gives a nil capital gain (that is, at the original cost of the asset). As such, there is neither a loss nor a gain on the disposal. The acquiring spouse is treated as though they have acquired the asset at its original cost and at the original acquisition date. The result for the acquiring spouse is that any latent capital-gain transfers with the asset will crystallise when the acquiring spouse eventually disposes of the asset.

Capital losses are transferable between spouses. In the event of separation, and from the date of any permanent separation, any losses that have not been utilised by either spouse at that date can only be used by the spouse who incurred the loss in the first place. These losses can only be used against capital gains arising to that same spouse on or after the date of the likely permanent separation.

Separation, whether informal or formal, does not change the stamp-duty exemption available for spouses whose marriage, at the date of the transfer, is recognised as valid in Ireland.

With regard to capital acquisitions tax (CAT), separation does not change the gift/inheritance exemption available to spouses whose marriage at the date of the gift/inheritance is recognised as valid in Ireland. Therefore, on separation, whether it is a formal or informal separation, all assets transferred between spouses are exempt, as there is no change in their legal status as a married couple.

### Just drop off the key

In certain circumstances, divorced couples may opt for joint assessment for income tax purposes. For joint assessment to apply, both partners must be resident in Ireland for tax purposes in that year of assessment and remain unmarried. The divorce must have been granted under section 5 of the *Family Law (Divorce) Act 1996* or, if a foreign divorce, it must be recognised as valid in Ireland.

If there is not a valid election for joint assessment, the divorced couple will be singly assessed in respect of all income, with the relevant single credits and rate bands applying to each party.

If the transfer of assets forms part of the divorce decree order, then the transfer of assets from one ex-spouse to the other following such an order will not give rise to any CGT liability in the hand of the transferring ex-spouse. The asset(s) will be deemed to have passed from one ex-spouse to the other at original cost and acquired at the same time as the transferring ex-spouse acquired the asset. Any uncrystallised gains thereby transfer with the property.

Any transfers subsequent to the divorce that are not provided for under the terms of the divorce agreement will be liable to capital gains tax.

All transfers of property from one spouse to the other, where those spouses have divorced and the transfer is made following a court order, are exempt from stamp duty. The exemption will not apply where the property – although transferred under a family law order – is conveyed to a person other than one of the partners to the marriage.

Once divorced, any transfer of assets between former spouses that are not part of the divorce agreement will be liable to stamp duty.

Property transfers between former spouses on foot of a court order governing a divorce will be exempt from capital acquisitions tax. Once divorced, any transfer of assets between former spouses that are not part of the divorce agreement will be liable to CAT.

### Make a new plan

Where a previously married couple have opted for single assessment, maintenance payments for the benefit of the other party to the marriage are deductible in calculating the payer's total income. Similarly, they are taxed on the recipient. However, if an election for joint assessment has been made, then the payments are ignored.

Maintenance payments for the upkeep of children are always ignored, regardless of the method of taxation. Therefore, the payee will not be entitled to a deduction in respect of payments made in respect of children, and the payment will not be taxed on the recipient. Maintenance payments are paid without deduction of tax if the payments are made on foot of a legal agreement – that is, a maintenance agreement or court order.

### No need to be coy

The taxation of married persons is a complicated area. Therefore, the taxation of couples who are in the process of dissolving their marriages is understandably more complicated. These complications arise from the fact that there are no uniform rules under each tax head, and the rules can have implications before anyone has had time to consider them. As such, it cannot be reiterated enough that timely advice is pertinent to mitigating the tax implications for each party in a separation or a marriage dissolution. ©

*“Timely advice is pertinent to mitigating the tax implications for each party in a separation or a marriage dissolution”*

*Amanda Comyn is a qualified barrister and is tax manager at Grant Thornton.*

Many of the offences created by the *Criminal Justice (Public Order) Act 1994* are vaguely drafted and are capable of subjective interpretation to a greater extent than is generally considered desirable. Dara Robinson assesses the *rí rá agus ruaile buaile*

# I PREDICT

**W**ith the exception of *Road Traffic Act* cases, there are probably more alleged offences prosecuted in the District Courts nationwide under public order legislation than any other type of crime. The operative statute, the *Criminal Justice (Public Order) Act 1994*, is so much a part of the criminal justice scene now that it is rarely scrutinised critically.

Most of the offences created by the act were intended for summary disposal, and indeed statistically, the overwhelming majority of cases prosecuted are brought by way of the summary-only provisions, of which the best known are sections 4, 6 and 8. There are, however, a number of offences, some very serious indeed, created by the act that are triable on indictment.

Of the latter, most interest has tended to focus on the true ‘public disorder’ offences, intended to be used in the prosecution of the most serious types of group public disorder. In descending order of severity, they are riot (s14), violent disorder (s15) and affray (s16). Lifted almost verbatim from the English *Public Order Act 1986*, these sections abolished the old common law offences of riot, rout, unlawful assembly and affray, and replaced them with the above new statutory offences. The behaviour prohibited is the use, or threat, of unlawful violence, such that a “person of reasonable firmness” (who need not be, or likely be, present) would be caused to fear for their safety. They require for their commission a minimum number of participants, respectively 12, three and two people. They can be committed in either private or public places, and attract a maximum penalty on indictment

of ten, five and five years. Theoretically, all such offences can be disposed of by way of a guilty plea in the District Court under the provisions of s13 of the *Criminal Procedure Act 1967*, but inevitably the more serious cases will be sent forward for trial.

## Man in a tracksuit attacked me

S18 creates the offence of assault with intent to cause bodily harm or with intent to commit an indictable offence. This was drafted to cure a perceived lacuna in the law, but has now (probably) been overtaken by the *Non-Fatal Offences against the Person Act 1997*. Conviction on indictment can result in a five-year sentence.

The only other offence created by the act that is capable of being tried on indictment is, these days, a true rarity, giving as it does the right to the accused to elect for trial by judge and jury. This is the alleged offence of assaulting a peace officer (defined as a garda, a prison officer, or a member of the Defence Forces). Again, the penalty in the Circuit Court upon conviction is possible imprisonment for up to five years. In my experience, most such charges are now withdrawn and replaced by a charge of assault contrary to s2 of the 1997 act, thus denying the defendant the right of election (a practice found lawful in England when like provisions were challenged by way of judicial review).

The remaining offences under the act are triable summarily only, and include a number where the penalty is a monetary one only. This latter group, self-evidently the least ‘serious’ in the act, includes some of those most frequently-charged offences. Perhaps the most commonly seen is the s4 charge – intoxication in a public place. The fine on

## MAIN POINTS

- Riot, rout, unlawful assembly and affray
- Assaulting a peace officer
- Threshold of intoxication far higher than mere drunkenness
- Trespass-type offences



# A RIOT

conviction is limited to €127, but part of the penalty is the acquisition of a criminal record, in many cases a far more serious proposition than a fine. In these cases, and indeed in all of the cases that follow, that consequence should, in theory at least, lead the gardaí to the consideration as to whether or not any first-time offenders should be dealt with by way of the Adult Caution Scheme, announced by the DPP in February 2006, and intended to divert such minor offences, and more particularly offenders, away from the criminal justice system.

As to the proofs required for the s4 offences, it should be noted that the threshold of intoxication is far higher than mere drunkenness, requiring proof that the accused “is intoxicated to such an extent as would give rise to a reasonable apprehension that he might endanger himself or any other person in his vicinity”. Also worthy of note are provisions in s4(3), permitting the seizure by gardaí of “any container” suspected to contain an intoxicant. Intoxicants, in this section, are widely defined by s4(4), and are not limited to alcohol.

### Watching the people get lairy

The remaining non-imprisonable offences in the act are created by s5 (disorderly/offensive conduct) and s9 (wilful obstruction of the passage of persons), both offences being punishable only by fines. The loose definition of ‘offensive conduct’ in s5 (‘any unreasonable behaviour’, and so on) has always been controversial, allowing, as it does (and about which complaint is often made by aggrieved defendants), for a subjective interpretation by a zealous garda, leading to arrest for what is, by most standards, considered a trifle. Note that s5 actually creates two

separate offences, one of which is limited to the hours of midnight to 7am, the other requiring for its commission a failure to desist following a garda request (this is also a feature of the s8 offences, seen in more detail below).

Section 4 intoxication is often charged as one of a trio of offences alleged against a given accused, the other two being s6 (breach of the peace) and s8 (failure to comply with a garda direction). Section 6 is also a lift from the 1986 English act, in turn an import from the common law. Extremely widely drafted (“use or engage in any threatening, abusive or insulting words or behaviour”) – and controversial for that reason – it is often forgotten that a second limb of the offence must also be proved prior to conviction (“with intent to provoke a breach of the peace”, and so on). The act is strangely silent as to what constitutes a breach of the peace, but English case law (*DPP v Errol Howell*) suggests that evidence of actual, likely or impending violence or criminal damage is an essential proof. The penalty on summary conviction is a fine or possible imprisonment for three months.

### MENACES MISPLACED?

Somewhat idiosyncratically, bearing in mind the subject matter of the act, the offence of blackmail has been created by s17, consisting of making an “unwarranted demand with menaces” and attracting a penalty on indictment of 14 years, making it the most serious offence in the act. ‘Menaces’ is nowhere defined, a surprising omission given that the word appears four times in the section. Also apparently misplaced are the offences in s23, relating to advertising for brothels and prostitutes, punishable with a substantial fine.



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Very rarely prosecuted is a similar offence of distributing or displaying “any writing, sign or visible representation which is threatening [and so on, as above] or obscene”, combined with the required breach of the peace element. The penalties are identical. The last occasion I can recall this section being used was in the heyday of the Youth Defence (anti-abortion) movement. This offence is created by s7 of the act.

#### Walking through town is quite scary

Much more often seen, however, is the group of offences created by s8. Where a garda finds a person (or, commonly, persons) in a public place, and suspects the commission of an offence contrary to ss4, 5, 6, 7 or 9, or, loosely, loitering, the garda is entitled to direct the person to desist from the suspect conduct and leave the vicinity. An offence is created by the failure to comply with the direction. This was criticised by many during the passage of the act through the Oireachtas, both in and outside the legislature, as being possibly open to abuse or misunderstanding. Every criminal practitioner will recall cases, often with bizarre facts, where those criticisms appear justified. Realistically, many young people will congregate in public places, will often drink when so doing, and will often attract the attention of the gardaí without any real criminality being involved. The criminal offence is then created by a failure to obey the garda instruction to move on. In *DPP v Galligan and Daly*, Laffoy J held that an accused was entitled (that is, obliged) to be informed of the penal sanctions for non-compliance as an essential proof of the offence.

Trespass-type offences are created by ss11 and 13. Section 11 makes it an offence to enter or be in any building or curtilage as a trespasser, or, further, in s11(1)(b), “in the vicinity of any such building ... for the purpose of trespassing”, “in circumstances giving rise” to a reasonable inference as to the intention to

commit an offence. As criminal statutes go, this can be faulted for a significant dilution as to proof of both *mens rea* and *actus reus*. A sort of ‘burglary-lite’, the penalty can be up to six months’ imprisonment.

Section 13(1) makes it an offence to trespass in “such a manner as causes or is likely to cause fear in another person”. A further offence is created in subsection 2, by way of failure to comply with the now-familiar garda direction to desist and move on. Penalties are up to 12 months and six months respectively.

The last commonly seen prosecutions in the act are for the offences in s24, where a power of arrest without warrant is vested in the gardaí. The section also creates the offence of failing or refusing to give name and address on demand, or giving a name or address that is false or misleading, leading to a possible six-month sentence.

#### Not very sensible

Part 3 of the act creates crowd-control powers, but includes novel offences whereby a variety of failures to comply with directions of a garda can result in arrest, prosecution, and punishment with a fine.

As can be seen, while public-order legislation is obviously an essential measure in modern times, many of the offences created by the act are vaguely drafted, and are capable of subjective interpretation to a greater extent than is generally considered desirable in penal legislation. In a significant number of instances, the offences themselves actually do not occur at all, except by way of adverse interreaction with the gardaí. While there is no statistical evidence to show that these significant powers are abused, anecdotal evidence from criminal lawyers all over the state suggests that over-zealous assertion of authority can lead to conflict – surely what well-drafted law should seek to avoid. **G**

*Dara Robinson is a partner in the Dublin law firm Garrett Sheehan & Partners.*

## LOOK IT UP

### Cases:

- *DPP v Errol Howell*, 1981 3 All ER 383 (England)
- *DPP v Galligan and Daly* (1995, High Court, unreported)

### Legislation:

- *Criminal Justice (Public Order) Act 1994*
- *Criminal Procedure Act 1967*, s13
- *Non-Fatal Offences against the Person Act 1997*
- *Public Order Act 1986* (England)



A loose definition of ‘unreasonable behaviour’ may lead to arrest for what is, by most standards, considered a trifle

# IN BAD

**It is unlawful for a company to give financial assistance for the purpose of purchasing or subscribing to shares in that company or its holding company. Kate Browne breaks open the piggy bank to assess the significance of the *Companies Acts* on such matters**

**T**he relationship between a financial institution and a corporate borrower is based upon ordinary contract law, with a debtor and creditor relationship in existence. There are various forms of loan arrangements and facility terms that can be agreed between the borrower and its lender. However, it is important to ensure that the borrower can comply with all the special conditions and conditions precedent in a loan agreement without being in breach of the *Companies Acts 1963-2005*.

Section 60(1) of the *Companies Act 1963* provides that it is unlawful for a company to give any financial assistance for the purpose of, or in connection with, the purchase or subscription of shares in that company or its holding company. If an acquisition company is providing security to a lender, be it in the form of a fixed and floating mortgage debenture or a guarantee to enable the target company to purchase the shares in the acquisition company, this constitutes the giving of financial assistance and is prohibited by section 60. The consequences of a breach of section 60 are that the financial assistance is voidable at the instance of a company, and the directors are guilty of a criminal offence. However, only a company can give financial assistance and be in breach – directors cannot be.

Firstly, it is important to identify if acts constitute financial assistance and a breach of section 60 and then look at whether there are any exceptions to the prohibition. The exception procedure is set out in section 60(2) and subsequent subsections of section 60. It involves the approval of the financial assistance by the directors and shareholders of the company.

The directors must meet and swear a statutory declaration of solvency stating that, having made a full enquiry into affairs of company, they are satisfied that, after entering this financial assistance

transaction, the company will still be able to pay its debts in full as they become due. The declaration should refer to the form the financial assistance will take and who the assistance is being given to. The directors need to know the risks involved in swearing this statutory declaration, as they may be held guilty of a criminal offence in the future if problems arise. If the company is wound up within 12 months of the making of the declaration, then it is presumed there were no reasonable grounds for the directors' opinion. Directors should make a full enquiry into the financial affairs of the company and discuss the matter with the company's auditors before making the declaration, and they must be satisfied that the company will remain solvent after carrying out the financial assistance. If there are only two directors, both must sign the declaration. Otherwise, the majority of the directors must swear it.

The statutory declaration has to be filed within 21 days of the date of the giving of the financial assistance and cannot be made earlier than 24 days before the passing of the resolution. A copy of the declaration together with a notice convening the EGM is sent to the shareholders. The special resolution (75% majority) of the shareholders approving the financial assistance can be given by a resolution passed at a duly convened EGM or by way of a written resolution signed by all the shareholders of the company, if the articles of association provide for written resolutions. The financial assistance must be given within 12 months of the passing of the resolution. There is no requirement for an independent person's report in the section 60 exception procedure (unlike the section 31 procedure).

If all the shareholders entitled to vote do not vote unanimously in favour, the company must wait 30 days after the special resolution before giving the

## MAIN POINTS

- *Companies Act 1963* – section 60 and the consequences of a breach
- 'Whitewash' procedure
- Swearing a 'statutory declaration of solvency'
- *Companies Act 1990* – sections 29 and 31

# COMPANY



PIC: REX FEATURES

assistance. The minority shareholders need to apply to court within 28 days of the passing of the resolution and, if that occurs, then await the court's decision on the special resolution.

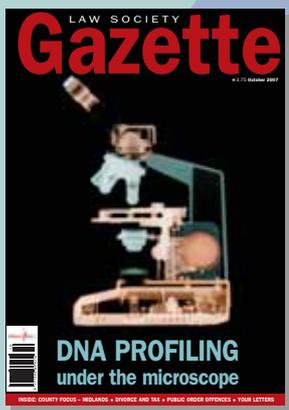
### **Companies Act 1990 – section 31**

Section 31 of the *Companies Act 1990* (as amended by the *Company Law Enforcement Act 2001*) prohibits a company from making a loan, quasi-loan, credit transaction or entering into a guarantee, or providing any security in connection with a loan, quasi-loan or credit transaction for the benefit of a director or person connected with a director of the company or its holding company.

It is important to note that a lease of land is a credit transaction and is prohibited, as it is

instalment finance leasing the use of land in return for periodical payments of rent. The 2001 act introduced an exception for ground-rent leases by inserting section 25(3)(A) into the 1990 act. It provides that, where the lease reserves a nominal annual rent of less than €12.70/£10 and the company grants the lease with an open-market-value premium, then it is not a credit transaction.

If the transaction is for the benefit of a director of the company, a director of its holding company, a person connected with such a director (parent, brother, sister, child, spouse, or body corporate controlled by a director), then it may be in breach. A body corporate is a connected person if the director controls it (either he is entitled to exercise 50% or more of the voting power or interested in 50% or



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more of the equity share capital). Controlled bodies corporate are dealt with in section 26(3) of the 1990 act (as inserted by section 76(b) of the 2001 act).

If there is a breach of the section, then there is a need to examine the exceptions set out in sections 32-37 of the 1990 act:

- Section 32 – value of transaction and all other prohibited transactions, less than 10% of the company's net assets (*de minimis* exception).
- Section 34 – 'whitewash' procedure. However, this procedure only validates the entering into a guarantee or providing any security in connection with loans, quasi-loans or credit transactions.
- Section 35 deals with intra-group transactions between members of a group of companies.
- Section 36 deals with directors' expenses being paid by company, where properly incurred.
- Section 37 – if the transaction is in the ordinary course of business of a company, for example, a lending institution.

The section 34 'whitewash' procedure requires a statutory declaration of solvency of the directors (which must state the benefit accruing to the company from giving the financial assistance), a special resolution and an independent report from an auditor stating that the declaration is reasonable. A copy of the statutory declaration must be filed in the Companies Office within 21 days after the date on which the guarantee was entered into or the date on which the security was provided. Again, there exists a right of dissenting shareholders (provided they hold not less than 10% in nominal value of the company's issued share capital or any class thereof) to apply to court for a cancellation of the relevant resolution. The same time limits in terms of filing requirements apply as with section 60 above.

The consequences of a breach of section 31 are that the transaction is voidable at the instance of a

company and there is a possibility of a criminal offence against the directors. The directors may also be held personally liable for the debts of the company if the company goes into liquidation, and they must account for any gain made or reimburse the loss.

#### **Companies Act 1990 – section 29**

Section 29 of the *Companies Act 1990* (as amended) prohibits a person who is connected with a director of a company from acquiring a non-cash asset of the requisite value from the company, unless the arrangement is first approved by ordinary resolution of the shareholders. 'Requisite value' is set out in section 29(2), and exists if the value of a transaction is more than €1,270 and also exceeds either €63,486.90 (IR£50,000) or 10% of the value of the company's net assets. Such a property transaction needs prior shareholder approval by ordinary resolution. The consequences of a breach of section 29 is that the transaction is voidable at the instance of a company, and the director and person connected may have to account for gain and make good any loss.

Thus it is important to understand the sanctions for breach of the *Companies Acts*' provisions in relation to commercial lending, the mechanics of a borrowing transaction and the issues involved in the completion of a borrowing transaction. The post-completion procedures and filing requirements in commercial lending are extremely relevant. There is no longer stamp duty on charges since December 2006. The form C1 is used to file the company charge in the CRO within 21 days of charge creation, and the charge may also need to be registered in the Land Registry and/or Registry of Deeds, if relevant. 

*Kate Browne is principal of the Wicklow Town law firm Browne & Company.*

## LOOK IT UP

### Legislation:

- *Companies Act 1963*
- *Companies Act 1990* (as amended)
- *Company Law Enforcement Act 2001*
- *Investment Funds, Companies and Miscellaneous Provisions Act 2005*

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## MAIN POINTS

- Testing the water
- Fighting corners
- The 'Hidden Ireland'

President of the MBA  
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association secretary  
Fiona Hunt

“I'm a modern man!” exclaims Charlie Kelly with a laugh, as we pass his alma mater. His continuous flow of stories had lighted on the fact that he was one of the first generation of pupils to enter the Mullingar Christian Brothers' Primary School. The newest school in the country at the time, it was featured on the montage screened after the RTÉ news each night, due to the fact that the television station was also new in those days.

The 1960s architecture of the building has faded

somewhat, but Charlie has not. He is indeed modern, yet also traditional, mirroring the outlook of the town in which he grew up. As we stroll around the bustling town, noting the various solicitors' offices scattered on various streets, the footpaths thronged with uniformed schoolchildren, the president of the Midland Bar Association told me of his hiking trips to South America and elsewhere. He confirmed the link between acting and solicitors, uncovered in last month's *Gazette*, recalling a number of solicitors who act – but was very modest in his descriptions of his own exploits on the stage. Luckily, fellow solicitor and bar association secretary Fiona Hunt was there to spill the beans, telling me that Charlie has won acting awards for local productions, mostly musicals, including one for 'best comedian' and 'best supporting actor'. Far from the sleepy town some might imagine it to be, Mullingar boasts a wide variety of activities, from arts to sport to music, most of which Charlie seems to take an interest in.

Architecture is another of his passions. The bar association president took an intimate interest in the design of his firm's office building, incorporating symbols of historical significance to Mullingar. Excavations in the town centre, on the site of one of the three monasteries known to have existed in Mullingar, have uncovered several skeletons of friars, accompanied by large sea shells, which indicated that the wearer had completed the mediaeval pilgrimage to Santiago de Compostela in north-western Spain, the purported final resting place of St James the Apostle. This fact is commemorated in a large street





PIC: PHOTOCALL IRELAND

sculpture of two friars, one wearing the shell, the other preparing to leave on his own pilgrimage. It is also celebrated in a Spanish-style band of blue tile around the top of the Kelly Caulfield Shaw building on Friars Mill Road. Combined with small Romanesque arches, in tribute to the monasteries, and several pieces of specially commissioned art inside, the offices are a most interesting addition to the local architecture, although one elderly lady did ask if the solicitor was building a mosque. He assured her that Shariah law was not coming to Mullingar yet.

#### A shot in the arm

This energy is a vital force that the new president brings to the local bar association, which apparently could use a shot in the arm. The association here faces problems shared by others, such as poor attendance at meetings and lack of participation by younger solicitors. According to Kelly, no meetings had been held for some time, so he decided to test the water. A survey was composed and distributed to the 60 firms in the association, asking the members three simple questions. Firstly, did they see the need for a bar association? Secondly, what did they think its role should be, and finally, what functions would they like their bar association to perform? This simple review afforded the officers of the association an opportunity to gauge the willingness of their members to participate, and also allowed them to see member expectations. They voiced an understandable desire to have a group that fights their corner for them. Fiona and Charlie proceeded to do just that.

The president and secretary believe that the profession, as a whole, is on the defensive. Damage has been done on several levels, from public perception of the profession due to the level of charges for tribunal lawyers, to government legislation such as the recent *PIAB Act 2007*. Kelly is also concerned at the increase in the cost of overheads affecting the members of the profession, such as the anticipated increase in the cost of professional indemnity insurance cover. The downturn in conveyancing due to reduced building in the country

Midlands solicitors  
hunting for allegators

### BROUGHT TO BOOK!

Tullamore solicitor Michael Byrne, of Hoey and Denning, praises the refurbishment work carried out on Tullamore Courthouse, saying that the €15 million spend has maintained the architectural integrity of the original building, restoring it to its former glory. Michael is also a local historian, and when he says "former", he means the 1830s, rather than the rebuilding job done in 1927, which left out many important original features.

Byrne is writing a book on the legal profession in Offaly from 1800 onwards. Since records only start in 1880, he is asking any solicitors or barristers with any connection to the legal profession in the county to contact him, in the hope of gathering more information that might help him in his task.

He has a wealth of interesting facts, such as the five generations of the Mitchell family that practised in Birr, or the struggle between Daingean and Tullamore for the location of the courthouse, which was viewed as a profitable asset for a town. The situation was not solved until an act of parliament was passed to transfer the assizes to Tullamore. Equally notable was the local 'Hanging Judge' Lord Norbory who "didn't wait very long to hear a defence". He presided over the trial of Robert Emmett, who suffered a grisly fate in Dublin in 1803.



## PUBLIC CONSULTATION ON STATUTE LAW REVISION

### PRE-1922 LOCAL, PERSONAL AND PRIVATE ACTS, CHARTERS AND STATUTORY RULES AND ORDERS

Following the enactment of the Statute Law Revision Act 2007 in May 2007, the Office of the Attorney General, in conjunction with the Department of the Taoiseach, has commenced a further Statute Law Revision Project which will involve a review of certain pre-1922 legislation.

The current review will focus on Local and Personal Acts, Private Acts, Charters and Statutory Rules and Orders made or enacted prior to 6th December 1922.

The objective of the review will be to repeal any such legislation save where it is considered necessary to retain the legislation for specific reasons.

Any person affected by any pre-1922 Local or Personal Act, Private Act, Charter or Statutory Rule or Order is therefore invited to make known their interest in such legislation by contacting the Office of the Attorney General at the contact points set out below **on or before 8 December 2007**.

A list of the Local and Personal Acts and the Private Acts is available on the website of the Attorney General at [www.attorneygeneral.ie](http://www.attorneygeneral.ie) or in hard copy from the address provided below. The Office of the Attorney General intends to publish a list of Charters and Statutory Rules and Orders at a later stage in the review process.

**By post:** Ciara Kennedy  
Statute Law Revision Project  
Office of the Attorney  
General  
Government Buildings  
Upper Merrion Street  
Dublin 2

**By telephone:** 01 661 6944

**By email:** [slr@ag.irlgov.ie](mailto:slr@ag.irlgov.ie)

## COMHAIRLIÚCHÁN POIBLÍ AR ATHCHÓIRIÚ AN DLÍ REACTÚIL

### ACHTANNA ÁITIÚLA, PEARSANTA AGUS PRÍOBHÁIDEACHA, ORDUITHE AGUS RIALACHA REACTÚLA AGUS CAIRTEACHA A ACHTAÍODH ROIMH 1922

Tar éis achtú an Achta um Athchóiriú an Dlí Reactúil 2007 i mí na Bealtaine 2007, chuir Oifig an Ard-Aighne, i gcomhar le Roinn an Taoisigh, tús le Tionscadal Athbhreithnithe breise ar an Dlí Reactúil, a mbeidh athbhreithniú ar reachtaíocht áirithe a achtaíodh roimh 1922 i gceist leis.

Beidh an t-athbhreithniú reatha ag díriú ar Achtanna Áitiúla agus Pearsanta, Achtanna Príobháideacha, Rialacha agus Orduithe Reactúla agus Cairteacha a rinneadh nó a achtaíodh roimh an 6 Nollaig, 1922.

Is é cuspóir an athbhreithnithe ná aon reachtaíocht den sórt sin a aisghairm ach amháin sa chás go meastar gur gá an reachtaíocht a choinneáil ar chúiseanna sonracha.

Mar sin iarrtar ar dhuine ar bith a ndéanann aon Acht Áitiúil nó Pearsanta, Acht Príobháideach, Rial nó Ordú Reactúil nó Cairt a achtaíodh roimh 1922 difear dóibh a c(h)uid suime i reachtaíocht den sórt sin a chur in iúl trí theagmháil a dhéanamh le hOifig an Ard-Aighne ag na pointí teagmhála a leagtar amach thíos ar nó roimh an 8 Nollaig 2007.

Tá liosta de na hAchtanna Áitiúla agus Pearsanta agus de na hAchtanna Príobháideacha ar fáil ar láithreán gréasáin an Ard-Aighne ag [www.attorneygeneral.ie](http://www.attorneygeneral.ie) nó is féidir cruachóip a fháil ón seoladh a chuirtear ar fáil thíos. Tá sé i gceist ag Oifig an Ard-Aighne liosta de Rialacha agus Orduithe Reactúla agus de Chairteacha a fhoilsiú tráth níos déanaí sa phróiseas athbhreithnithe.

**Ar an bPost:** Ciara Ní Chinnéide  
Tionscadal Athbhreithnithe ar  
an Dlí Reactúil  
Oifig an Ard-Aighne  
Tithe an Rialtais  
Sráid Mhuirfean Uachtarach  
Baile Átha Cliath 2

**Ar an teileafón:** 01 661 6944

**Ar an ríomhphost:** [slr@ag.irlgov.ie](mailto:slr@ag.irlgov.ie)



– which makes up 80% of the turnover of a typical rural practice – has tightened the screws for Midland solicitors. Midland practices are at a disadvantage compared with the larger Dublin firms, which, though only an hour away by car, can specialise in certain niche areas of law.

The level of service they provide for clients often means that local firms actually work at a loss in areas like family law, debt collection and District Court work. Kelly is concerned that a race to the bottom, especially in conveyancing, may result in slapdash work being done on titles, which will have serious consequences for the profession. This can happen in response to pressure from clients, who increasingly demand immediate results but are not prepared to pay an appropriate fee for the service (see the Letters page in the last and current issues). Kelly tells of a solicitor who was noted for never allowing himself to be rushed. When an important client arrived at his office one day, explaining that he had some very important business, to be dealt with right away, the solicitor replied, “Oh well, it’s not that important then.” The confused client protested that he did not understand. The solicitor replied, “If it was important, it would deserve some time and consideration.”

Charlie Kelly and Fiona Hunt obviously feel strongly about their profession and the issues faced by the members of their association, but their outlook is far from doom and gloom. They stress the positive aspects of legal life in a town of Mullingar’s size. Kelly talks of the emphasis on honour between local firms. “We wouldn’t let a colleague down and that is something we would like to maintain.”

#### Tullamore attraction

The level of personal contact with clients, engagement in the life of a small community and an awareness of local needs in a changing society are qualities equally appreciated by Bernadette McArdle, a younger-generation solicitor working for Conway and Kearney in Tullamore. While Mullingar has been the focus of this article thus far, as it is the current seat of the rotating presidency, the other towns contain many active members.

McArdle is an ex-secretary of the association. She hails from Dundalk, but has been practising in Tullamore since moving there to gain experience in 1996. Far from being a first-generation solicitor, several of her family members are involved in the profession. McArdle admits that she may have on her rose-tinted glasses when she expresses her love of the small Offaly town, but that this is testimony to its attractions. She appreciates the fact that it is a slightly old-fashioned area, where colleagues are friends, and feels that it is “a small town, but without a small-town mentality”. Her ardour for Tullamore causes her to be surprised at the fact that vacant positions in the town’s firms are not immediately snapped up by younger colleagues, perhaps explained by what she describes as the ‘hidden Ireland’ nature of the town – a place many



Sacred space –  
Mullingar’s cathedral

*“The level of service they provide for clients often means that local firms actually work at a loss in areas like family law, debt collection and District Court work”*

have heard of, but not yet managed to visit.

When asked about the Midland Bar Association, McArdle has a different perspective on why member participation has, at times, been less than energetic. Distances between the towns, while not overly large, can seem longer on a cold winter’s night. The Mullingar-Athlone road is notoriously poor. Also, the nature of the association – with the rotating presidency and membership dispersed over a broad area – means that there are less meetings compared with more localised associations around the country.

Nonetheless, recent association events have been successful, including a wine-tasting evening, where I was assured that everyone behaved themselves. Adding towards CPD points has been a focus, with seminars on ‘Resilience and stress’ by psychologist Marian O’Brien Hughes, the new digital mapping of Westmeath by the Property Registration Authority, and a Courts Service seminar. Forthcoming events include a ‘Troubleshooting in the profession’ seminar (or how to avoid being sued!), as well as the AGM and Christmas function. These events often combine a social function with an educational one, such as the get-together dinner in July or a tour of the newly-refurbished courthouse in Tullamore. If you’re interested in pumping some new life into the Midland Bar Association, or would like to attend any of these seminars, you should contact Charlie Kelly (president) or Fiona Hunt (secretary) at Kelly Caulfield Shaw, tel: 044 934 8412. 

*The series will continue next month. Bar associations that are interested in participating should contact the Gazette at: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie) or tel: 01 672 4826.*



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#### Diploma first

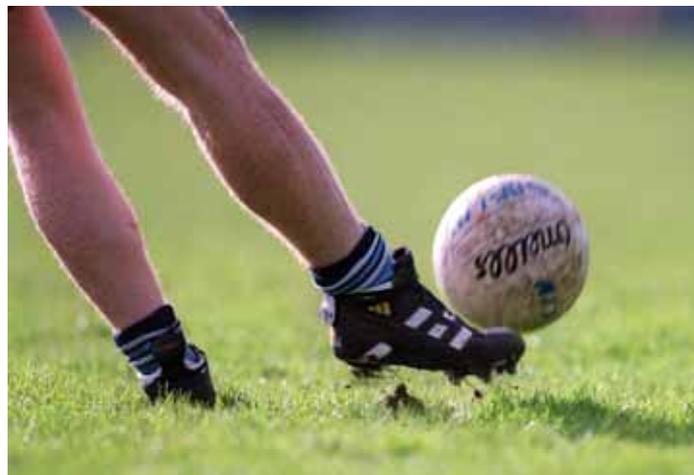
The first ever diploma conferral ceremony in the Law School in Cork took place on 12 September at the Law Society's premises at Courthouse Chambers. Attending the conferral for the 2006/07 Diploma in Property Tax were (*front, 1 to 5*): Mary Singleton (Law Society, Cork), Eamonn Harrington (president, Southern Law Association), Philip Joyce (president of the Law Society), Stuart Gilhooly (chairman, Education Committee), Maire McMahon and Valerie Morrison (Law Society, Cork). (*Back, 1 to 10*): Michelle Nolan (Law Society, Dublin), Freda Grealy (diplomas manager), Caroline McDonnell, Susan O'Farrell, Margaret Comerford, Veronica Kelleher, Maura Twomey, Patrick Lane and Sinead Fitzgerald

## Your Society team needs you!

Following on from the recent success at intervarsity level of trainees attending the last three years of PPCI, the Law Society of Ireland has finally established a Gaelic football team to compete against other professionals in a Dublin league.

The Dublin Inter-Firms League has been running for 75 years and, according to its secretary Liam Dwyer, matches in the past have attracted crowds of nearly 15,000. In the hope of reigniting crowd attendances, a team made up of trainees, solicitors and anyone else working within the legal field has been entered.

The team will be known as 'The Legal Group' and, at this early stage, we would like to acknowledge and thank Murray Flynn Maguire Solicitors for their sponsorship of the jerseys.



PIC: SPORTSHILE

The league starts every April. This year, however, to get it up and running, it is effective as and from September. It has divisions at junior, intermediate and senior levels in both hurling and football.

In his eternal wisdom, manager Martin Coen has entered the team at junior level – which should suit most players – and we have already

had an impressive, if unsuccessful, debut against Print and Radio (full of celebs!). The other teams in The Legal Group's division are Dublin City Council (two teams) and the Revenue Commissioners.

Now for the important part – The Legal Group wants you! As it stands, there is only a skeletal panel in place, so, if you are based in Dublin, working in

a legal firm and in need of extra training (nothing too demanding) or matches, then please get in touch.

Both the Leinster Council and the Dublin County Board have ratified the league, so there is no danger of any club issues. This is effectively a separate competition and being registered with a 'home' club (or not) does not make a difference.

In addition, as this is still early days, we would be interested in any financial backing (however small) as equipment, pitch hire and referees costs, for example, will not come cheap.

If you're interested, please get in touch. We look forward to hearing from you in the near future. Contact Martin Coen at: [mcoen@murrayflynn.ie](mailto:mcoen@murrayflynn.ie) or Marcus Ó Buachalla at: [marcus.obuachalla@williamfry.ie](mailto:marcus.obuachalla@williamfry.ie)

# Solicitor strikes three for Kerry

Top-flight footballer and legal eagle, Eoin Brosnan helped for a third time to bring the crown back to the Kingdom, writes Aidan O'Connor

Typical of his nature, Eoin Brosnan is glad that the Kingdom's All-Ireland party has subsided and that things are back to normal. That's just the way he likes things.

The unassuming and somewhat shy Killarney solicitor was never one for post-match extravagance. Like many of his colleagues – on and off the field – Kerry's 35<sup>th</sup> All-Ireland is another job well done. Now there are other things to look after – like running a thriving legal practice with his father Niall. And then there's his wedding in December.

When real commitment to club and county and GAA are scrutinised in relative terms, Eoin Brosnan's dedication stands firm against even the toughest scrutiny. For all of his adult life, he has committed himself to Kerry football, while at the same time maintaining relentless loyalty to his Dr Croke's club. And a career choice in the legal profession was as natural to Brosnan as a 'one-two' with clubmate Gooch Cooper.

While Brosnan's legal career may have strained under the pressure, it didn't break. He was well on his way to wearing the green and gold jersey at u-21 level by the time he finished his law degree at UCC. But once he began studies for his PPCI exams in Blackhall Place in October 2002, the Kerry senior squad had already earmarked Bronson as somebody who could dominate the centre-forward line and inflict terror on any defence that was unlucky enough to have witnessed his wicked burst of speed.

"Of course it was tough at times, keeping it all together. I remember getting up two or three mornings a week at 6.30, catching the 7.30 train to



Brosnan puts the boot in at Croker, undeterred by the radioactive hands

Dublin and being in Blackhall at 10.30. The following evening, I'd leave Dublin at 3.20 on a train to Mallow to be collected at 5.30 and taken to Killarney to do a session with Kerry. But to be fair, that was just for a couple of months a year."

Lest he be wrongly accused of self-pity or unwarranted sympathy, he quickly points out that players like Nigel Crawford (Meath), Karl Mannion (Roscommon) and Niall Finnegan (Galway) all went through similar strains as emerging solicitors and inter-county players.

Not for the first time, Brosnan admits that football has been good to him, as if all those frantic trips from Kerry to Dublin and back were truly

worth it all. At the age of 27, his record is as good as most. On the mantelpiece beside his graduation pictures hang three All-Ireland senior medals, five Munster senior medals, one Munster minor medal, and two National League medals. He has 45 senior appearances for his county to his name.

In December, the 6ft 3in speed merchant marries local Killarney girl Mary Collins, a schoolteacher in the town and somebody who has come to know life as the other half of an inter-county player.

Unlike many of his fellow graduates, Brosnan never did spend time in a professional legal capacity in Dublin. His father Niall has a long-established practice in Killarney

and it was there that he trained and plans to remain.

"That's the great thing about a small-town practice, I suppose. You could get a call at eight o'clock to go to the hospital to make a will, and the following morning you're in the local District Court dealing with a public order charge. I couldn't be anywhere else, to be honest."

Whether for county or for client, in jersey or in suit, Eoin Brosnan appears to have made himself at home with the whole representation scene. For the time being at least, nobody in Kerry is complaining. And in the Kingdom, that's a resounding vote of confidence. **G**

*Aidan O'Connor is news editor with The Kerryman.*

## books



# Law and Taxation of Trusts

Aileen Keogan, John Mee, JCW Wylie. Tottel Publishing Limited (2007), Fitzwilliam Business Centre, 26 Upper Pembroke Street, Dublin 2. ISBN: 978-1-84592-202-3. Price: €175.

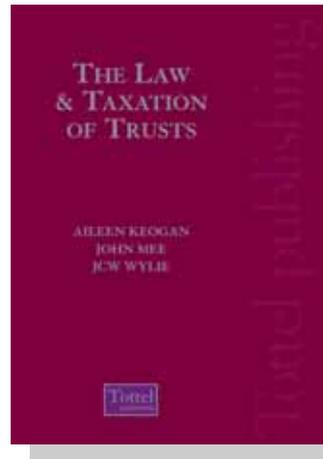
**T**he *Law and Taxation of Trusts* has lived on my desk for the past six months, which I think, says more about it than any review could. It deals, in the Irish context, with the law of trusts and with the taxation of trusts – it is a welcome development to have the two areas dealt with in the one text.

This area of law is becoming a common feature of any general solicitor's practice, as the increase in client wealth is demanding a service for the passing on and protection of that wealth. Solicitors are, by demand, being forced to become proficient in this area of law, but it is a complex and diverse area to grapple with. For that reason, this text is an invaluable reference book for those who are familiar, and

indeed unfamiliar, with the working of trusts and the complex taxation provisions that follow.

For the practitioner, there is a very well set-out series of chapters on the nature and definition of trusts and the powers and duties of trustees. I was also delighted to see a section on the appointment, retirement and removal of trustees, which is an area that tends to be glossed over in other texts, but which can cause real headaches for practitioners.

The section of the book that I have used very frequently is the section on the taxation of trusts, and my version is already well thumbed and marked. It includes the background to the taxation of trusts, territoriality, and issues of administration and



accountability. Each type of trust is considered in the context of capital acquisitions tax, capital gains tax, income tax and stamp duty. This is very helpful as, previously in the consideration of any trust issue, it was usual to have a stack of

books on the desk for each tax. It gives welcome and practical examples of the working of the different types of taxes and, in many cases, has provided not just the theory for me, but the answer to the particular question being researched. It sets out all of the reliefs and exemptions for the four taxes and, most importantly, brings the mind of the practitioner to bear on the interaction of the various taxes. There is also a chapter on 'tax tips and pitfalls', which I have found very useful.

I am delighted to have this clearly-expressed and practical book as a permanent fixture on the crowded desk – it deserves its place. **G**

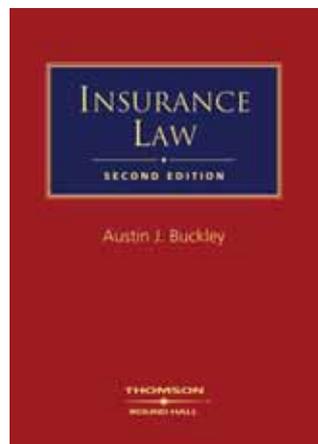
*Paula Fallon is principal of Paula Fallon and Associates.*

# Insurance Law (second edition)

Austin J Buckley. Thomson Round Hall (2006), 43 Fitzwilliam Place, Dublin 2. ISBN: 9781858004419. Price: €245.

**A**ustin Buckley, along with Henry Ellis, was a pioneer author of specialist publications on Irish insurance law. The first edition of Buckley's book was a seminal work, identifying and putting into context the Irish cases on insurance law. Since then, the law has been developing rapidly and the second edition is a welcome addition to the library of any insurance compliance officer or legal adviser grappling with insurance law.

The second edition is published in a market better served than ever with insurance law publications. Nonetheless,



it serves a very important role. Buckley writes from the unique perspective of both a long-

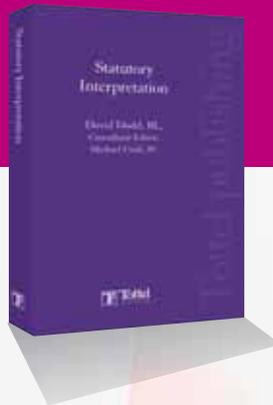
standing insurance industry professional and lawyer. A constant frustration for the busy practitioner is that textbooks will always recite the law, but all too rarely will address its practical application to issues we face in our daily practice. More so than any other Irish author in this field, Austin Buckley addresses these practical issues. Readers will find helpful explanations of issues such as establishing when an insurance intermediary is acting as the agent of the client or of the insurer, how the courts are likely to treat a passenger who accepts a lift

from an intoxicated driver, whether motor insurers are obliged to cover passengers in a caravan hitched to an insured vehicle, and the circumstances in which a third party can recover against an insurer.

In addition to this practical focus, the author's long experience in the insurance industry shows in two other ways. First, he does not confine his text to the law. He includes references, for example, to the standard industry contract for appointing intermediaries and explains typical clauses found in particular types of policy. Second, he is prepared to express

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KEY TITLE

## Clinical Practice and the Law

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### About the author:

Dr Simon Mills is a doctor and barrister. He qualified in medicine from TCD in 1993 and completed general practice training in 1997. While working in a general practice, he completed a law degree from UCD in 2000 and was called to the Bar in 2002. He now practices as a barrister and lectures in medical law in the Law Society – where he is also Internal Examiner in Medical Law – and in medical law and ethics at the Royal College of Surgeons of Ireland.

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Price: €65.00 Pub date: **October 2007**

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forthright and common-sense views (supported by appropriate reasoning) where he believes that the courts have got it wrong. He is quick, too, to debunk industry myths, such as the widespread view that compulsory insurance of passengers in a vehicle only applies to passengers in fixed seats.

Refreshingly, and in keeping with his practical approach, nowhere does the author agonise over issues such as the meaning of insurance but, instead, addresses the law as it affects insurance.

The second edition also has the considerable advantage of being by far the most up-to-date Irish insurance law book on the market. It provides a valuable update on Irish and British case law and on developments such as the establishment of PIAB. However, in a rapidly developing world of insurance law, 'up-to-date' is a relative term. In the short interval since publication, for example, the Financial Regulator has imposed the legally binding *Consumer*

*Protection Code*. This instrument supersedes the handbooks for insurance intermediaries described in the book and imposes significant new obligations on both intermediaries and insurers. The code creates a radical change in the relationship between the insurer and the insured. As such, it affects a number of other issues addressed in the book, including, for example, the decision in *Carna Foods Limited v Eagle Star Insurance Limited*, in which the High Court held that an insurer was not obliged to give reasons for non-renewal or cancellation of a policy. Other relevant developments since publication include new fitness, probity and competence requirements impacting on insurers and intermediaries, and the implementation of the *Insurance Mediation Directive*, which has led to a significant body of operations, not categorised as insurance intermediaries under the legislation covered in the book, being required to register as intermediaries.

None of this is to take away from this practical and helpful book but to demonstrate the limitations of any fixed-leaf publication in a time of rapid legal and regulatory development. If the law and regulation continue to develop at the current pace, the third edition of this book will be even more eagerly awaited than the second!

The organisation of the book is practical and efficient. It provides a general overview of insurance and the law, it then describes the law affecting insurance intermediaries, the duty of disclosure, the general principles of insurance, general policy terms and conditions, policy interpretation, rights of action against insurers and, finally, it addresses specific types of insurance and the torts that give rise to claims under those types of insurance.

The book deals only with general (that is, non-life) insurance, although life insurance features briefly in the sections on insurable interest and third-party rights against

insurers.

If I have a criticism of this book, it is that minor proofreading errors (such as cross-references) could be corrected.

I would also mention that, like all textbooks, this publication is an aid to research and not a substitute.

Like every text, this book has its imperfections. For example, in relation to insurable interest, section 26 of the *Insurance Act 1989* (allowing the persons interested in the policy to be identified as a category) is not addressed in this book. Also, as with any textbook, statements not backed up with specific statutory or judicial authority cannot be taken as statements of the law. These are minor quibbles and do not detract from the value of this book as a research source. This book provides access to a wealth of knowledge and experience and Irish legal publishing is the richer for it. **G**

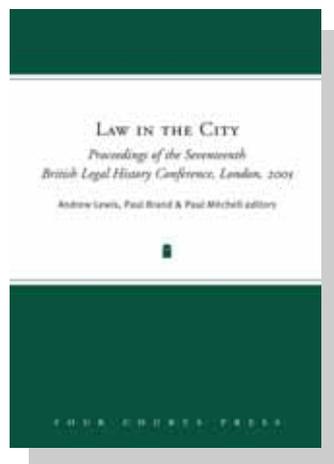
*James Grennan is a partner in A&L Goodbody.*

## Law in the City: Proceedings of the 17<sup>th</sup> British Legal History Conference, London, 2005

Andrew Lewis, Paul Brand and Paul Mitchell (eds). Four Courts Press (2007), 7 Malpas Street, Dublin 8. ISBN: 978-1-84682-038-0. Price: €65.

This volume contains the texts of what its editors consider to be among the best of the papers presented at the 17<sup>th</sup> British Legal History Conference, held at University College, London, in July 2005. The last morning of the conference on 7 July 2005 will be particularly recalled by those present, as the '7/7' London transport explosions occurred very close by.

The immediately preceding 16<sup>th</sup> biannual conference had been held in Dublin in 2003, with its compendium of papers being subsequently also published by Four Courts Press



(under the general title *Adventures of the Law*) with one of the editors being Prof WN

Osborough – a name well associated with the Irish equivalent body, the Irish Legal History Society.

The selected papers from the 2005 conference are gathered under the title *Law in the City*, reflecting the subject matter of the first in sequence of the papers, concerned with law in medieval London, but otherwise a distinctive catch-all for the many and varied topics addressed, which range over a time period of some seven centuries, from the 13<sup>th</sup> to the 19<sup>th</sup>. The scholarship manifested in all of the contributions reflects the high

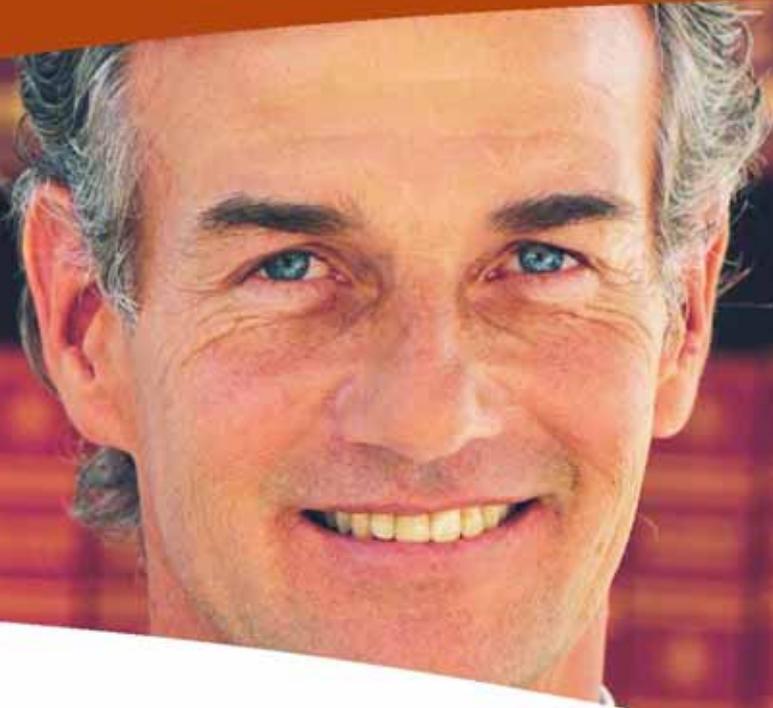
academic credentials of the contributors.

Lawyers have at least some awareness from their student days that where our law is today in some respects reflects its genesis in different societies, cultures and values throughout the last millennium. For this reviewer, reading papers on a wide diversity of detailed historical analyses was like peering through a microscope at spots on the 'entrails' of this legal legacy we share.

The range of topics addressed is diverse indeed. The initial paper ("The city and the common law: the contribution



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of London to modern English law”, by Penny Tucker) gives us a glimpse at the administration of the law in the London of the 13<sup>th</sup> to 14<sup>th</sup> centuries, where local customary law morphed over time into law of more general application in geographical terms, and points to the influence of legal practitioners in this development. The final paper in sequence (“Urban commons: from customary use to community right on Scotland’s bleaching greens”, by Andrew

Lou Jarman) considers, through a review of a number of 18<sup>th</sup> and 19<sup>th</sup> century court decisions, the essential economic imperative for commonage (that is, ‘greens’) in urban Scotland, in the particular context of the ‘bleaching’ in the manufacture of textiles, which required access to both water to wash the wool or linen and land upon which to dry the treated materials.

In between, there are papers on consanguinity and the common law (showing the

influence of medieval canon law on the principles relating to property inheritance rights); legal education in the 19<sup>th</sup> century – the creator of the default judgment; and the medieval practice of prisoners making payments of money to keepers of prisons (known as *suete de frissone* or ‘sewet’) to ensure less stringent conditions of imprisonment, most commonly the removal of irons. This latter topic has some resonance, albeit remote, to the recent publicity about some

inmates of Irish prisons having mobile phones, TV sets and even birds in their cells, making their stay in ‘stir’ a mite easier.

The editors of this volume, Prof Andrew Lewis (UC London), Paul Brand (All Souls, Oxford) and Paul Mitchell (Kings College, London) are deserving of praise for ensuring the perpetuation of the multi-faceted proceedings of the BLH Conference 2005. **G**

*Michael V O'Mahony is past president of the Law Society.*

## O'Connor's Irish Notary Supplement

**Emonn G Hall and E Rory O'Connor.** Faculty of Notaries Public in Ireland (2007), 34 Upper Baggot St, Dublin 4. ISBN: 9780950501208.

It's hard to find the words to describe this piece of work. 'Niche' and 'specialist' are probably the fairest. I suppose I suffer from not being a member of this fairly exclusive club, but you would need to be in the whole of your health before starting on this one.

When Rory O'Connor wrote *The Irish Notary* in 1987, he

provided what the Chief Justice describes in the foreword to the supplement “an invaluable insight in the work and role of the notary, a position that is of prime importance in a modern, expanding economy”. He goes on to note that the changes in notarial practice in the intervening period makes the supplement particularly useful.

Of particular importance are the chapters written by David Walsh on foreign adoption and by Judge Gerard Griffin on money laundering.

It is certainly a comprehensive and well-written account of all issues that a notary public is likely to meet in course of the myriad transactions that require the

notary's input.

Put simply, this is a book that is presumably essential to those who are notaries public or wish to become one, but it is hard to see how it can be of interest to anyone else. Not recommended for the beach. **G**

*Stuart Gilbooly is a partner in the Dublin law firm HJ Ward & Co.*



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## tech trends

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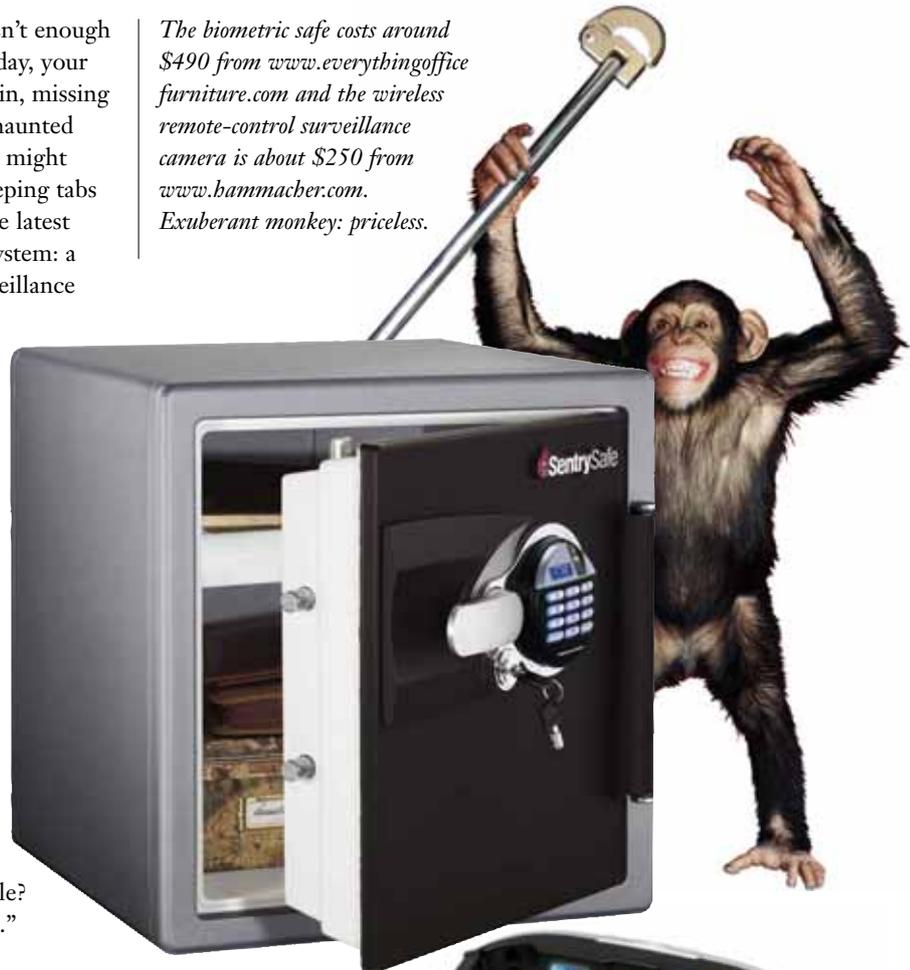
## They have opposable thumbs, don't you know

Regular readers will recognise the concern – some might say paranoia – in these parts regarding the dangers of monkey-related office incursions. But we all know, in our heart of hearts, that it's only a matter of time until some cheeky chimp with chubby chops charges chuckling into your charmless chambers, chasing your chary chattels and chattering while chewing your champion charts. Well, that's enough of that, then.

But were you to be of that frame of mind, you might want to consider some protection from monkey mania, in the form of a biometric safe. In short, not only is this unit fireproof for up to an hour at nearly 1,000 degrees Celsius, but it also uses your unique biometric print to control access. Up to ten fingerprint access users can be added, and the heavily insulated steel safe also has alternative key lock or keypad entry.

Sometimes that isn't enough though, and if, one day, your office junior arrives in, missing a finger and with a haunted look about him, you might want to consider keeping tabs on your safe with the latest anti-simian sentry system: a remote-control surveillance camera that pans and tilts, better than any fixed-position CCTV unit, at a touch of a button, sending crystal clear images and audio to an LCD on the handheld remote and allowing real-time monitoring from up to 330ft away. So you should no longer have to say to the disciplinary tribunal: "Oh that file? Em, a monkey ate it."

*The biometric safe costs around \$490 from [www.everythingofficefurniture.com](http://www.everythingofficefurniture.com) and the wireless remote-control surveillance camera is about \$250 from [www.hammacher.com](http://www.hammacher.com). Exuberant monkey: priceless.*



## Is it for this that Mussolini died?

Dark shades and epaulettes are *de rigueur* for your fashion-conscious fascist dictator, but something tells us that this item won't help make the trains run on time. Indeed, it may cause you to step in front of them.

What we're talking about, of course, are these ezVision Video glasses that plug into your iPod video or portable video/DVD player and display them on what looks like the equivalent of a 50" screen.

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headphones built into the glasses' arms and have an eight-hour rechargeable battery, an integral volume control, and they come with adaptors to connect to various players, including games consoles. So you can play at conquering the world while, er, conquering the world.

*Available from [www.iwantoneofthose.com](http://www.iwantoneofthose.com) for about Stg£150.*

# Hotspot? What hotspot?

These days it seems that every second-rate café or seedy bar boasts WiFi connectivity. What this means in practice, however, is a far cry from the theory. Well here's a handy little device that should save you time and energy: it's a pocket-sized unit that detects WiFi availability and signal strength wherever you may roam. Not only that, the

Digital WiFi Detector, which has a range of up to 300ft, also displays network info, including network ID (SSID), encryption status (WEP and WPA) and channel. And when multiple networks are present you can scroll through info for each individual network. Whatever that means. *The WiFi detector is around Stg£69 from www.amazon.com.*

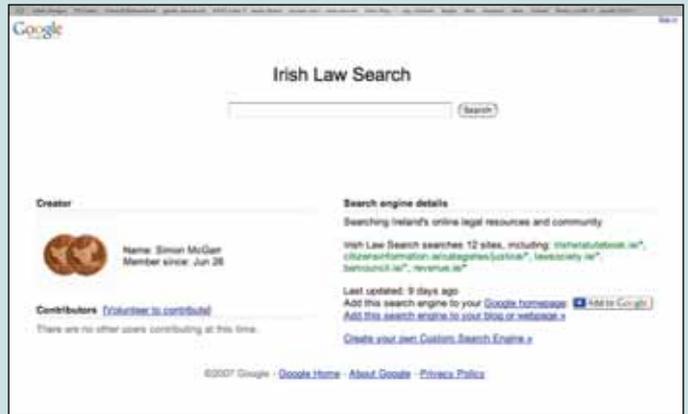


# SITES FOR SORE EYES



**Seven gates of hell** ([www.4degrez.com/misc/dante-inferno-test.mv](http://www.4degrez.com/misc/dante-inferno-test.mv)), left. If you've ever wondered which circle of hell you'll end up in (apparently there's a whole one reserved for lawyers), this one will keep you amused. Take this online test to determine where in Dante's dreams you'll go. Respectively, the members of the *Gazette* team are going to the sixth (heretics, infernal Furies, burning tombs, fields of distress and terrible torment), fifth (wrathful and gloomy, slothful, sullen and withdrawn from the world, having lived a cruel, vindictive and hateful life) and purgatory (the least worst result, reserved for repenting believers). Guess who got what ...

**I didn't know you could do that!** (<http://url.ie/5mv>), right. Simon McGarr of McGarr Solicitors (Dublin) has put together a customised Google legal search engine that searches only in sites of interest to Irish legal practitioners. What he calls "Irish Law Search" searches within 12 sites, including the online statute book, the citizens' information site, lawsociety.ie, the Bar Council and Revenue sites. The engine should help cut down on all the extraneous and irrelevant matter that comes up from your standard Google search. Simon is interested in hearing from practitioners with ideas for other sites to add to the list of those trawled.



**Satisfying your techno cravings** ([www.cnet.com.au](http://www.cnet.com.au)), left. This Australian site is a seemingly exhaustive compilation of tests and user reviews of a massive range of cutting-edge tech, including PDAs, printers, digital cameras, phones, music players, software, backup drives, games, computers and laptops, projectors and more. There is also an archive of informative and often witty articles on technology subjects, including, for example, Bluetooth security, camera phone tips, the top ten reasons not to buy an iPhone, and that dinner-party favourite, 'Plasma v LCD: which is best for you?' We know where we'll be getting our review ideas from in future.



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## council report



## Report of Law Society Council meeting held on 7 September 2007

### Draft practice note on solicitors' terms and conditions of engagement

The Council considered a draft practice note on solicitors' terms and conditions of engagement, prepared by the Guidance and Ethics Committee. A number of amendments were suggested, and it was also agreed that the draft should be 'plain-English' proofed before being issued to the profession.

### Ninth annual report of the independent adjudicator

The Council considered the ninth annual report of the independent adjudicator and noted that, even with the exclusion of complaints arising from the redress board cases, there had been a 20% increase in the number of complaints received during the period in question. The Society would

forward the report to the Minister for Justice, Equality and Law Reform.

### Media advertising campaign

Michele O'Boyle reported that it had been agreed to conduct a survey of the profession in relation to the media advertising campaign. The results of that survey, and of a separate survey of public opinion, would be presented to the Council at its October meeting.

### Meeting with Minister for Justice

The director general briefed the Council in relation to a meeting with the newly appointed justice minister, at which a broad range of issues had been discussed, including the Society's submissions in relation to

matters that might be addressed in the *Civil Law (Miscellaneous Provisions) Bill*.

### Education

Stuart Gilhooly reported that the 2007 PPCI Dublin course, with 560 students, would begin on 12 September 2007. The numbers attending the Cork course, to start the end of September 2007, currently stood at 99. Over the summer months, the Education Centre lecture theatre had been expanded to accommodate 280 students at any one time.

### Address by president of Law Society of Northern Ireland

President of the Law Society of Northern Ireland, James Cooper, addressed the Council, noting the similarity of issues being addressed by both societies. He complimented the Society on the

manner in which it engaged at political level and ensured that its representations had the maximum impact. Mr Cooper said that it was a great pleasure for him and for his wife Margaret, also a solicitor, to attend in Dublin and to be admitted to the Roll of Solicitors later that day.

### Appointment of scrutineers

Pursuant to bye-law 6(9)(a) of the Society's bye-laws, the Council approved the appointment of the scrutineers for the annual and provincial elections.

### Rugby World Cup

The Council agreed that a joint message of support should be sent to the Irish rugby team from the president of the Law Society of Ireland and from the president of the Law Society of Northern Ireland. **G**

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# committee reports

## TAXATION

### The proposed new VAT on property regime

The Revenue published a report (the 'Revenue report') dated 9 March 2007 entitled the *VAT on Property Review Project*, which included draft legislation for a new VAT regime for property transactions. It is understood that legislation based on the Revenue report will be enacted in the *Finance Act 2008*. It is expected that the new legislation will operate from 1 January 2009.

On 26 July 2007, the Minister for Finance issued a tax policy notice (TPN) regarding VAT and the supply of a leasehold interest in immovable property for a term of ten years or more under the new VAT on property regime. This TPN was apparently prompted by representations made to the minister in relation to specific inward investments proposed for the financial services sector. The TPN will be of interest to a landlord and a tenant with less than 90% VAT recoverability. When negotiating the terms of a lease of developed commercial property to be granted after the publication of the *Finance Bill 2008* (likely to be early February 2008), a tenant who is engaged in an exempt or partially-exempt business for VAT purposes would be wise to consider the advantages of the TPN, even if the proposed lease is to be granted before 1 January 2009.

The Law Society Taxation Committee's submission on the Revenue report and the TPN are set out below.

## Revenue eBrief No 40/2007, 26 July 2007

### VAT on property review

The Tánaiste and Minister for Finance, Brian Cowen TD, in his budget speech in December 2006, announced a public consultation process in relation to the proposals to simplify and rationalise the rules for applying VAT to commercial property transactions. Please refer to Revenue eBrief 15/2007 to view the details of the proposals.

The Tánaiste issued a tax policy notice on 26 July 2007, in relation to the position for certain property transactions that are under negotiation prior to the publication of the *Finance Bill 2008*. When completed, these transactions may be taxed in accordance with the present rules as if those rules were still in place, subject to the following conditions:

- Negotiations must have started in relation to the granting of a leasehold interest in a newly developed property prior to publication of new measures in the *Finance Bill 2008*\*;
- The prospective tenant must not be entitled to deduct 90% of the VAT charged;
- The development of the property must have started before the publication of the *Finance Bill 2008*\*;
- The transaction must be an arm's-length, commercial, *bona fide* transaction

between unconnected landlord and tenant;

- Full details of the transactions must be notified to Revenue.

If these conditions are met, the landlord may treat the transactions for VAT purposes as if they had taken place prior to the enactment of the new rules, so, in effect, the new provisions will not apply to those transactions.

\*As practitioners will be aware, the *Finance Bill* is normally published in late January or very early February.

### Information required by Revenue Commissioners

In order to avail of these transitional arrangements, the landlord should notify Revenue, in writing, prior to the date of passing of the *Finance Act 2008*, of his or her intention to avail of the transitional arrangements in respect of a specific property transaction and include the following details:

- The name and address of the landlord and tenant and their respective VAT numbers, where they have VAT numbers;
- The address of the property in question;
- Full details of the transaction, eg, draft letting agreement, building agreement or whatever form of docu-

mentation is necessary that illustrates, to the satisfaction of the Revenue Commissioners, how the transaction will be completed between the two parties;

- Confirmation by the tenant that in its most recent complete financial year its entitlement to deduct, as agreed with the Revenue Commissioners, was less than 90% or that the property is to be used for an activity that will give rise to a less than 90% entitlement to deduct VAT;
- A joint confirmation by the landlord and the tenant that the transaction is an arm's-length, commercial, *bona fide* transaction and that the landlord and tenant are unconnected parties.

This information should be furnished to the local Tax Office of the landlord or to the Large Cases Division if the landlord normally has his or her tax affairs dealt with by that division. Upon receipt of the documentation, Revenue will acknowledge that it has been received.

Revenue reserve the right to request further information if required.

### Further information

Enquiries or further information may be obtained from your local Revenue District.

### New VAT on property regime

*The Gazette publishes here the text of the letter sent to the VAT Interpretation Section of the Revenue Commissioners on 18 May 2007:*

Following the Society's participation in the VAT on Property Review Project and on foot of further meetings of the Society's Taxation Committee, the Society is of the view that

certain aspects of the new regime, as currently proposed, will serve to complicate rather than simplify the system of VAT on property, and other aspects of the proposed meas-

ures require further clarification. Therefore, the Taxation Committee would make the following comments:

- 1) 90% deductibility requirement for a tenant taking a lease of developed property in order to avoid landlords' capital goods payment of VAT.** If, under the proposed new regime, a long lease (in excess of ten years) is granted to a tenant with less than 90% VAT recoverability (for example, say he has 85% VAT recoverability), and the landlord pays the VAT and passes on the irrecoverable VAT and associated costs by way of rent or premium, or a combination of both, the direct and indirect tax effect of the lease transaction will be as follows:
- a) The tenant will suffer a trapped VAT burden on the value of the property leased because the landlord will collect this from him under the lease.

Currently, such a tenant (in this example) recovers 85% of the VAT charged on the capitalised value of the long lease.

- b) The tenant will bear an increase in his stamp-duty liability for the premium or increased rent in his lease.
- c) The landlord will suffer an increase in direct taxes because the landlord must increase the rent paid by the tenant, not only to cover the VAT cost to the landlord referred to at (a) above, but also to cover income tax/corporation tax on such increased rent (in other words a payment of the net VAT cost will not be adequate), and where the amount payable by the tenant is rentalised, there will be a cost of funds issue to be addressed, which will again be passed on to the

tenant in a cost-inefficient manner.

In connection with (c) above, it will be appreciated that if (because the option to tax is not available) the landlord discharges the VAT imposed on him on the granting of the lease, this will be regarded as a capital item for income and corporation tax purposes, and the increase in rent (and, if applicable, any premium) charged to compensate him for this cost will be regarded as a revenue item producing a mismatch to the disadvantage of the landlord, who will pass on the burden to the tenant in the form of a substantially increased rent. In this example, and in similar cases, the net result will be a significant additional burden of costs for the tenant who does not have at least 90% recoverability for VAT purposes. Because of

this difference in costs to a landlord, a landlord will commence quoting two significantly different rents for the same property that he wishes to let – one for those tenants with 90% or more VAT recoverability and one for those with under 90% VAT recoverability.

The requirement for 90% deductibility for tenants is impractical. This restriction (which is not applied in any other EU member states that have capital goods schemes) is a source of many of the complaints from clients and professionals relating to the new proposed regime and should be abandoned.

- 2) Landlords responsible for VAT clawback where tenant falls below 90% VAT recoverability level.** Under existing conventions in property transactions, a landlord does not have the ability or resources to supervise VAT

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compliance by a tenant. It is unfair and unreasonable for a landlord to suffer a clawback of VAT if, during the course of the lease, the tenant ceases to have at least 90% recoverability for VAT purposes. Under Irish landlord and tenant legislation, a landlord cannot unreasonably withhold his consent to the assignment of a letting by a tenant. The assignment of a letting by a tenant to a third party could increase the exposure of a landlord to a VAT clawback, as the third party will have been introduced by the tenant and not selected by the landlord. The burden of any clawback during the landlord's capital goods period should be imposed on the tenant and, where appropriate, on his assignee exclusively. To avoid exposure, landlords will be inclined either to avoid opting to tax altogether when letting new property or to use guarantee procedures that will result in additional expenses for tenants. Unless there is a change of heart on this feature, and tenants, not landlords, are made to bear the burden of a tenant failing to maintain a 90% plus deductibility ratio for VAT purposes, pressure on the Revenue and the Depart-

ment of Finance from the property investment industry to make the change will become intense.

**3) Unclear transitional provisions.**

The transitional provisions for VAT on assignments of leases granted prior to the operative date for the new VAT regime ('D-Day') do not cover a lease of a developed property that was occupied under a lease for less than one year (see draft section 4(2)(b)). Apparently, this omission relates to an anti-avoidance provision considered by the Revenue but not included in the draft legislation. Effectively, this means that solicitors cannot advise their clients properly in relation to leases granted in the run-up to D-Day. This oversight should be rectified without delay and the position made clear.

**4) The treatment of current leasehold interests.**

The transitional provisions create considerable uncertainty for the holder of a long leasehold interest, as the charging of VAT on the assignment must be agreed to by the assignee. If this is not agreed to, then the holder of such an interest can suffer a significant VAT cost. A tenant proposing to acquire a leasehold interest prior to D-Day will also be

concerned at this potential exposure to VAT clawback on any sale of his interest.

Long leasehold interests created prior to the introduction of the new regime should be ring-fenced and the current rule should continue to apply to them.

**5) Prohibition on cancelling option to tax.**

Under current rules for short-term letting, the option/waiver can be cancelled when the VAT charged matches the VAT recovered. The prohibition on cancelling the option to tax a lease should be removed and a position similar to the current waiver rule should apply, because if VAT is collected over the life of, say, a 35-year lease, at the 21% rate, in all probability the VAT will far exceed the VAT recovered on the acquisition and/or development.

**6) Mechanism for ending new period too complicated.**

One of the trigger-points for ending the taxable period is based on second or subsequent supply after the expiration of a period of two years from the date of occupation, with sales between connected persons being excluded. This is surely a most complex trigger-mechanism. It ought to be possible to provide a simpler mechanism that taxpay-

ers could more easily understand (for information, the other trigger-point is five years after completion of the development).

**7) Omission in charge.**

There is no mention of the tax treatment of a property that is unoccupied and sold after five years from development. Is it taxable property when sold or, if vacant for more than five years, does it automatically become second-hand?

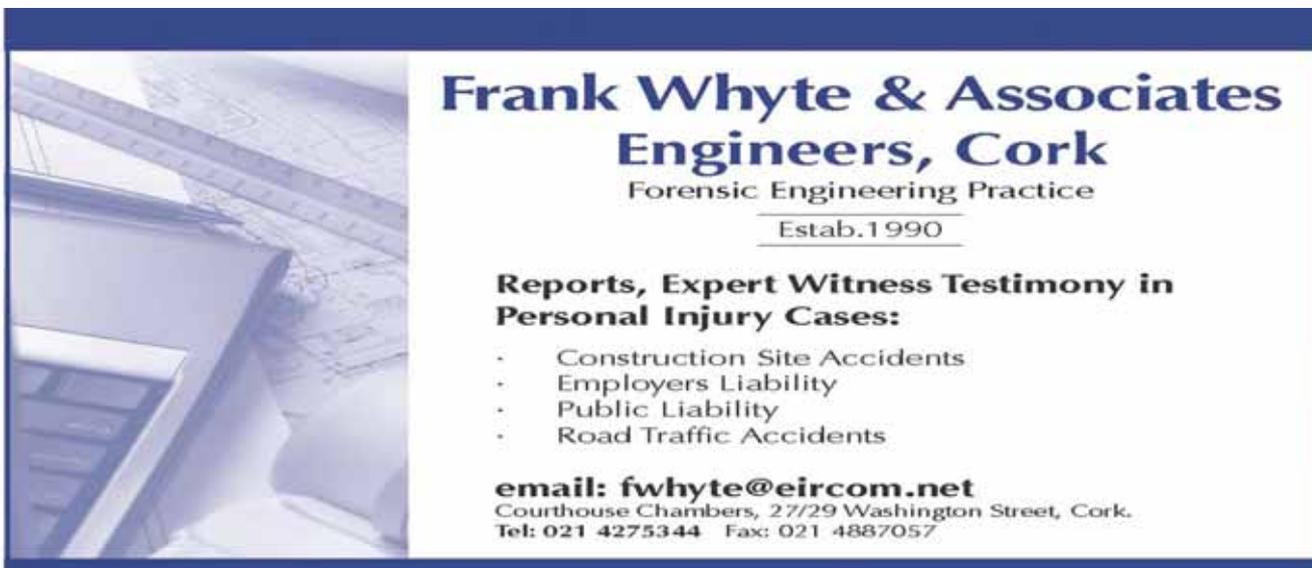
**8) Omissions and mistakes.**

There are a number of drafting mistakes and incomplete sections in the draft text (see, for example, section 4(2) which refers to subsection 5, which does not exist). These make it difficult to understand the intention of the draftsman.

**9) Complexity.**

The new regime is likely to be significantly more complex and administratively burdensome than the current regime. More effort should be made to reduce the administration burden on taxpayers.

The committee has welcomed the opportunity to participate in the review process and should you wish to meet with any of the members of the committee to discuss the above matters, please do not hesitate to contact me. **G**

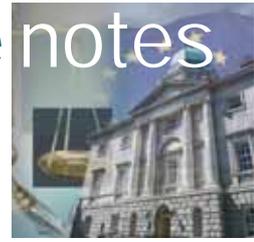


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**email: fwhyte@eircom.net**  
 Courthouse Chambers, 27/29 Washington Street, Cork.  
 Tel: 021 4275344 Fax: 021 4887057



## LIENS AND UNDERTAKINGS FOR LAND CERTIFICATES – CLARIFICATION

Since publication of the committee's practice note and news item on the above topic in the July 2007 issue of the *Gazette* (pages 53 and 10 respectively), the committee has received notification from the Property Registration Authority that an equitable

deposit of a land certificate may still lawfully occur between 1 January 2007 and 31 December 2009 in cases where a land certificate issued before 31 December 2006 (and has not since been cancelled), and that such interest can be converted to

a registerable lien under the provisions of section 73 of the *Registration of Deeds and Title Act 2006*. Practitioners should therefore note that the statement in the final paragraph of its practice note (p53) and news item (p10) published in the July 2007

*Gazette* does not apply in respect of land certificates issued before 31 December 2006 and not since cancelled. Nevertheless, it would be prudent of lenders and their solicitors to note that legal charges are preferable.

*Conveyancing Committee*

## EC (COMPANIES) (AMENDMENT) REGULATIONS 2007

The above regulations came into effect on 1 April 2007. As a consequence, the obligation to include certain company particulars on certain hard-copy documentation, for example, letters, order forms, and so on, are extended to company websites and electronic communications.

With effect from 1 April 2007, where a company has a website, it must display in a prominent and easily accessible place on that website the following particulars:

- The name and legal form of the company;
- The place of registration of the company and the number with which it is registered;

- The address of the registered office of the company;

- In the case of a company exempt from the obligation to use the word 'limited' or 'teoranta' as part of its name, the fact that it is a limited company;

- In the case of a company that is being wound up, the fact that it is being wound up;

- If reference is made on the website to the share capital of the company, the reference shall be to the capital that is subscribed and paid up.

In addition, from 1 April 2007, all electronic communications

by limited liability companies must also contain the above information.

The new requirements do not apply to:

- Irish-registered unlimited liability companies,
- Branches of foreign-registered bodies corporate.

Failure to comply with the new regulations will mean that the company and every officer of the company who is in default, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and to whose directions or omissions the default is attributable, is

guilty of an offence. On summary conviction, a person is liable to a fine not exceeding €2,000. Where there is a continuation of the offence by the person after his or her conviction, the person is also guilty of a further offence on every day on which the contravention continues, and for each and every such offence shall be liable, on summary conviction, to a fine not exceeding €100 for each day on which the offence is so continued.

It is therefore imperative that all companies review their websites and electronic documentation to ensure compliance with the above regulations.

*Business Law Committee*

## CRIMINAL LEGAL AID SCHEME

### CRIMINAL JUSTICE (LEGAL AID) (TAX CLEARANCE CERTIFICATE) REGULATIONS 1999

#### NOTICE TO PRACTITIONERS

**Retention of name on Criminal Legal Aid Panel for the panel year commencing 1 December 2007:** The Department of Justice, Equality and Law Reform has advised that a solicitor who wishes to have his/her name retained on the Legal Aid Panel(s) beyond 30 November 2007 must submit to the relevant county registrar(s) a tax clearance certificate (TCC) with an expiry date later than 30

November 2007.

A solicitor whose TCC has an expiry date on or before 30 November 2007, and wishes to have their name retained on the Criminal Legal Aid Panel(s) for the panel year beginning on 1 December 2007, must apply to the Revenue Commissioners for a new TCC.

#### Applying for a TCC in writing:

Local Revenue Districts now deal with the processing of written

applications for TCCs. The contact names, addresses and telephone numbers of the relevant Revenue Districts are available on the Revenue's website, [www.revenue.ie](http://www.revenue.ie). You should contact your local Revenue District office for an application form (TC1).

#### Applying for a TCC through Revenue's online application facility:

Arrangements have been introduced to allow taxpayers to apply online for a tax clearance

certificate. The facility is to be found at Revenue's website address: [www.revenue.ie](http://www.revenue.ie).

**On receipt of your certificate, it should be forwarded to the relevant county registrar(s).**

**NB –** No fees under the *Criminal Justice (Legal Aid) Regulations* shall be payable to a solicitor who accepts an assignment to a case if his/her name is not, at the time of assignment, on the relevant solicitors' panel. **G**



# legislation update

## 21 August – 17 September 2007

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – [www.lawsociety.ie](http://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.

### SELECTED STATUTORY INSTRUMENTS

#### *Asset Covered Securities (Amendment) Act 2007 (Commencement) Order 2007*

**Number:** SI 591/2007

**Contents note:** Appoints 31/8/2007 as the commencement date for all sections of the act, except section 30. The act makes a number of amendments to the *Asset Covered Securities Act 2001*.

#### *Criminal Justice Act 2006 (Commencement) (No 3) Order 2007*

**Number:** SI 600/2007

**Contents note:** Appoints 10/9/2007 as the commencement date for section 132 of the *Criminal Justice Act 2006*, insofar as it relates to the insertion of section 76A(1)(c) (as amended by section 16 of the *Child Care (Amendment) Act 2007*) of the *Children Act 2001*. Section 76(A)(1)(c) (as amended) provides that, in any criminal proceedings against a child, the court may exercise its powers under section 77 of the *Children Act 2001* to direct the Health Service Executive to convene a family welfare conference in respect of the child.

#### *European Communities (Income Tax Relief for Investment in Corporate*

#### *Circuit Court Rules (Criminal Law (Insanity) Act 2006) 2007*

**Number:** SI 596/2007

**Contents note:** Insert a new order 68B, 'Criminal Law (Insanity) Act 2006 (No 11 of 2006)', in the *Circuit Court Rules 2001* (SI 510/2001) to provide for the form of, and procedure concerning, the notice required under section 19 of the *Criminal Law (Insanity) Act 2006* to be given to the prosecution where the defence intends, in proceedings before the Circuit Court, to adduce evidence as to the mental condition of the accused.

**Commencement date:** 26/9/2007

#### *Circuit Court Rules (Pensions Ombudsman) 2007*

**Number:** SI 588/2007

**Contents note:** Insert a new order 63E, 'Pensions Ombudsman', in the *Circuit Court Rules 2001* (SI 510/2001) to prescribe procedures for applications brought under section 137 of the *Pensions Act 1990* for an order requiring a person to comply with a requirement made of that person by the Pensions Ombudsman, and to prescribe procedures for an order under section 141 of the *Pensions Act 1990* for the carrying out of determinations of the Pensions Ombudsman.

**Commencement date:** 13/9/2007

#### *District Court Districts and Areas (Amendment) Order 2007*

**Number:** SI 579/2007

#### *District Court Districts and Areas (Amendment) Order 2007*

**Number:** SI 593/2007

**Contents note:** These two orders amend the first and second schedules to the *District Court (Areas) Order 1961* (SI 5/1961) by the substitution of new schedules of District Court areas for the purposes of the transaction of the business of the District Court exercising its summary jurisdiction and its civil jurisdiction. Business transacted in the District Court that is initiated and not completed before the commencement of these orders shall be continued and completed as if these orders had been in force at the time at which such business had been initiated. In addition to the lists of District Court areas set out in SI 579/2007, SI 593/2007 lists the places in each District Court area in which sittings are to be held and the days and hours of sittings.

**Commencement date:** 1/1/2008

#### *District Court (Districts) Order 2007*

**Number:** SI 584/2007

**Contents note:** Abolishes the District Court districts created by the *District Court (Districts) Order 1961* (SI 6/1961) and creates new District Court districts formed from the District Court areas created by the *District Court (Areas) Order 1961* (SI 5/1961) (as amended) for the purposes of the transaction of the business of the District Court exercising its summary jurisdiction and its civil jurisdiction.

**Commencement date:** 1/1/2008, immediately following the coming into operation of SI 579/2007 above

#### *Trades – Business Expansion Scheme and Seed Capital Scheme) Regulations 2007*

**Number:** SI 613/2007

**Contents note:** Provide for temporary amendments, which will remain in force until the passing of the *Finance Act 2008*, to section 19 of the *Finance Act 2007* in order to give effect to the decision of the European Commission approving the Business Expansion Scheme and the Seed Capital Scheme. That approval was conditional on the changes being made by these regulations.

**Commencement date:** 5/9/2007

#### *Finance Act 1997 (Commencement of Section 19(1)) Order 2007*

**Number:** SI 614/2007

**Contents note:** Commences section 19(1) of the *Finance Act 2007*, resulting in retrospective effect, as per the dates in section 19(2) of the act, being given to the provisions of section 19(1) (as construed with reference to the *European Communities (Income Tax Relief for Investment in Corporate Trades – Business Expansion Scheme and Seed Capital Scheme) Regulations 2007*, SI 613/2007).

#### *Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (Commencement) Order 2007*

**Number:** SI 586/2007

**Contents note:** Appoints 9/8/2007 as the commencement date for the following provisions of the act: sections 1, 2, 3, 4, 5; part 3 ('Miscellaneous', ss28-29) and schedule 2. Section 28 gives effect to the 1996 *Protocol to the International Convention on Limitation of*

*Liability for Maritime Claims 1976* and consequently amends the *Merchant Shipping (Liability of Shipowners and Others) Act 1996* to provide for higher levels of compensation in individual cases.

**Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007**  
Number: SI 617/2007

**Contents note:** Provide for revised professional indemnity insurance regulations for solicitors that effect a number of changes to the Law Society's professional indemnity insurance regime. The existing *Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance*

**Rules of the Superior Courts (Criminal Law (Insanity) Act 2006) 2007**

Number: SI 597/2007

**Contents note:** Insert a new rule 11 in order 85 of the *Rules of the Superior Courts 1986* (SI 15/1986) to provide for the form of, and procedure concerning, the notice required under section 19 of the *Criminal Law (Insanity) Act 2006* to be given to the prosecution where the defence intends, in proceedings before the Superior Courts, to adduce evidence as to the mental condition of the accused.

**Commencement date:** 26/9/2007

*Regulations 1995* (SI 312/1995), as amended, are revoked as from 1/1/2008, subject to transitional arrangements. The principal changes under the new regulations are: firms rather than individual solicitors will be covered; a uniform renewal date of 1 December

from 2008 onwards; no limit on the level of self-insured excess, which will be a matter of contract between a firm and an insurer; the requirement to have six years' run-off cover; provisions to ensure that an insurer cannot repudiate a policy on any ground, thus

ensuring that a solicitor and his/her clients will be covered at all times; provision of automatic cover by the assigned risks pool to prevent any gap in cover; increased minimum level of cover in the assigned risks pool; a restructuring of the Law Society Professional Indemnity Insurance Committee, resulting in the committee performing regulatory functions without representation from the insurers, and a separate Qualified Insurers Liaison Committee on which the insurers will be represented.

**Commencement date:** 1/11/2007 

*Prepared by the Law Society Library*

## SEMINAR

# The impact of the fight against terrorism on EU law

Since 2001, terrorist attacks have acted as a catalyst for counter-terrorism legislation. The immediate reaction of the EU was an action plan and subsequent framework decision on combating terrorism. In the light of the London attacks, the European Council set out an EU counter-terrorism strategy with the objective of confronting "the networks of terror with networks against terror".

To enforce such networks, significant legislative initiatives have been launched to enhance the exchange of information and to improve police and judicial cooperation in criminal matters in the EU. The *Data Retention Directive* of 2006 and the proposal to establish the 'principle of availability' are examples of enhanced information ex-change. Judicial co-oper-

ation today is supported by the European arrest warrant and political agreement has been reached on a European evidence warrant.

Aside from the impact on the judicial and law enforcement sector, anti-terrorism legislation such as the EU *Money Laundering Directive* of 2005, has affected the private sector.

### Dublin seminar

A seminar, titled 'The impact of the fight against terrorism on EU law' will assess the EU counter-terrorism legislation in the field of police and judicial co-operation in criminal matters, focusing particularly on their practical implications.

Furthermore, the impact of the respective legislation on the private sector will be evaluated.

The seminar is being organ-

ised by the Academy of European Law (ERA) with the support of the Director of Public Prosecutions, the Law Society of Ireland, and the European Union. It takes place on 2 November 2007 in the Royal Irish Academy, Dublin.

**Speakers:** Max Barrett (practising solicitor and head of legal and compliance, Rabobank Ireland); Michèle Coninx (Belgian Member of Eurojust, The Hague); Jonathan Faull\* (director-general, DG Justice, Freedom and Security, Brussels); Mr Justice Nial Fennelly (judge of the Irish Supreme Court and former advocate general of the European Court of Justice); Peter Gridling\* (head of the Counter-Terrorism Unit, Europol, The Hague); James Hamilton (Director of Public Prosecutions); TJ McIntyre (lec-

turer in law, UCD, and chairman of Digital Rights Ireland); Thomas O'Malley (senior lecturer in law, NUI Galway, and practising barrister); Dick Oosting\* (director of Amnesty International's EU office, Brussels); Dermot Walsh\* (professor in law, University of Limerick).

**Chairpersons:** Andrew Beck BL (Director of the Irish Centre for European Law), James Hamilton (Director of Public Prosecutions), James MacGuill\* (Law Society of Ireland), Cornelia Riehle (Academy of European Law).

(\*To be confirmed.)

For further information, contact: Ute Beissel, tel 0049 (0)651 937 37 31, fax 0049 (0)651 937 37 95, email: ubeissel@era.int, online registration: www.era.int.

# BRIEFING

## Solicitors Disciplinary Tribunal

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

### THE HIGH COURT 2007

#### No 37 SA

**In the matter of Sean Allen, a solicitor formerly practising as Sean Allen & Company, Solicitors, 67 Pembroke Road, Dublin 4, and in the matter of the *Solicitors Acts 1954-2002* [4212/DT65/06, 4212/DT12/06, 4212/DT56/06]**

*Law Society of Ireland (applicant)*

*Sean Allen*

*(respondent solicitor)*

On 29 March 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had: 4212/DT65/06:

- a) Failed to correspond with his client, the complainant, in a timely manner or at all in relation to his cases;
- b) Failed to respond to the Society's letters, and in particular the letters of (i) 1 November 2005, (ii) 14 November 2005, (iii) 6 December 2005;
- c) Failed to pay €250 levied by the Complaints and Client Relations Committee at its meeting of 30 November 2005;
- d) Failed to comply with the direction of the Complaints and Client Relations Committee, at its meeting of 30 November 2005, to furnish a report on the complaint prior to the 18 January 2006 meeting;
- e) Failed to attend the meeting of 18 January 2006, despite being requested to do so.

4212/DT12/06:

- a) Failed to pay a sum of €2,722.50, which was received by him in or

around August 2002 from named solicitors as a party-and-party cost, representing fees due to the complainant, in a timely manner or at all;

- b) Failed to respond to the Society's correspondence in a timely manner;
- c) Failed to respond to 20 reminders sent by the complainant to the solicitor's firm.

4212/DT56/06:

- a) Failed to stamp and register his client's title to a named property, despite same having been purchased on 22 March 2000 and having been put in funds to stamp and register same in a timely manner or at all;
- b) Failed to respond to the Society's correspondence, and in particular to the Society's letters of 25 August 2005, 12 September 2005, 24 October 2005, 4 November 2005, 6 December 2005;
- c) Failed to attend at the Complaints and Client Relations Committee meeting on 18 January 2006, despite being requested to attend;
- d) Failed to discharge the levy of €250 imposed at the Complaints and Client Relations Committee meeting of 30 November 2005.

On 14 May 2007, the President of the High Court ordered:

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

by the Law Society of Ireland;

- b) That the respondent solicitor pay a fine of €500 in respect of each of three complaints, totalling €1,500 fines to the compensation fund;
- c) That the respondent solicitor pay the costs of the proceedings before the disciplinary tribunal and the costs of the High Court proceedings.

**In the matter of Colm Murphy (otherwise John C Colm Murphy), a solicitor formerly practising as Colm Murphy & Company, Solicitors, at Market Street, Kenmare, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002* [5306/DT26/05]**

*Law Society of Ireland (applicant)*

*Colm Murphy (respondent solicitor)*

On 10 July 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply in full with the directions of the Registrar's Committee made on 4 November 2003 up to the date of the swearing of the Society's affidavit (on 27 April 2005),
- 2) Failed to respond to correspondence from the Society, in particular, letters dated 12 May 2004, 27 May 2004, 17 June 2004, 1 July 2004 and 12 July 2004.

The tribunal made an order:

- a) Censuring the respondent solicitor,
- b) Directing the respondent solicitor to pay a sum of

€4,000 to the compensation fund,

- c) Directing the respondent solicitor to pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court in default of agreement.

**In the matter of Colm Murphy (otherwise John C Murphy), a solicitor formerly practising as Colm Murphy & Company, Solicitors, at Market Street, Kenmare, Co Kerry, and in the matter of the *Solicitors Acts 1954-2002* [5306/DT27/05]**

*Law Society of Ireland (applicant)*

*Colm Murphy (respondent solicitor)*

On 10 July 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- a) Failed to respond to numerous letters from the solicitor acting for the person entitled to administer an estate;
- b) Ignored multiple requests from the solicitor acting for the person entitled to administer the estate to submit the original grant of probate of the estate of the deceased to the Probate Office for cancellation;
- c) Caused the solicitor for the administrator to have to make an application to have the grant revoked;
- d) Through his conduct, caused delay and obstructed the solicitor in the administration of the estate of the deceased.

The tribunal made an order:

- a) Censuring the respondent solicitor,

- b) Directing the respondent solicitor to pay the sum of €10,000 to the compensation fund,
- c) Directing the respondent solicitor to pay the whole of the costs of the Law Society of Ireland, and witnesses' expenses, as taxed by a taxing master of the High Court in default of agreement.

**In the matter of Lorna J Burke, a solicitor practising as Burke & Company, Solicitors, Top Floor, Prospect House, Prospect Hill, Galway, and in the matter of the *Solicitors Acts 1954-2002* [3166/4/DT94/06]**

**Law Society of Ireland (applicant)**  
**Lorna J Burke (respondent solicitor)**

On 30 July 2007, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

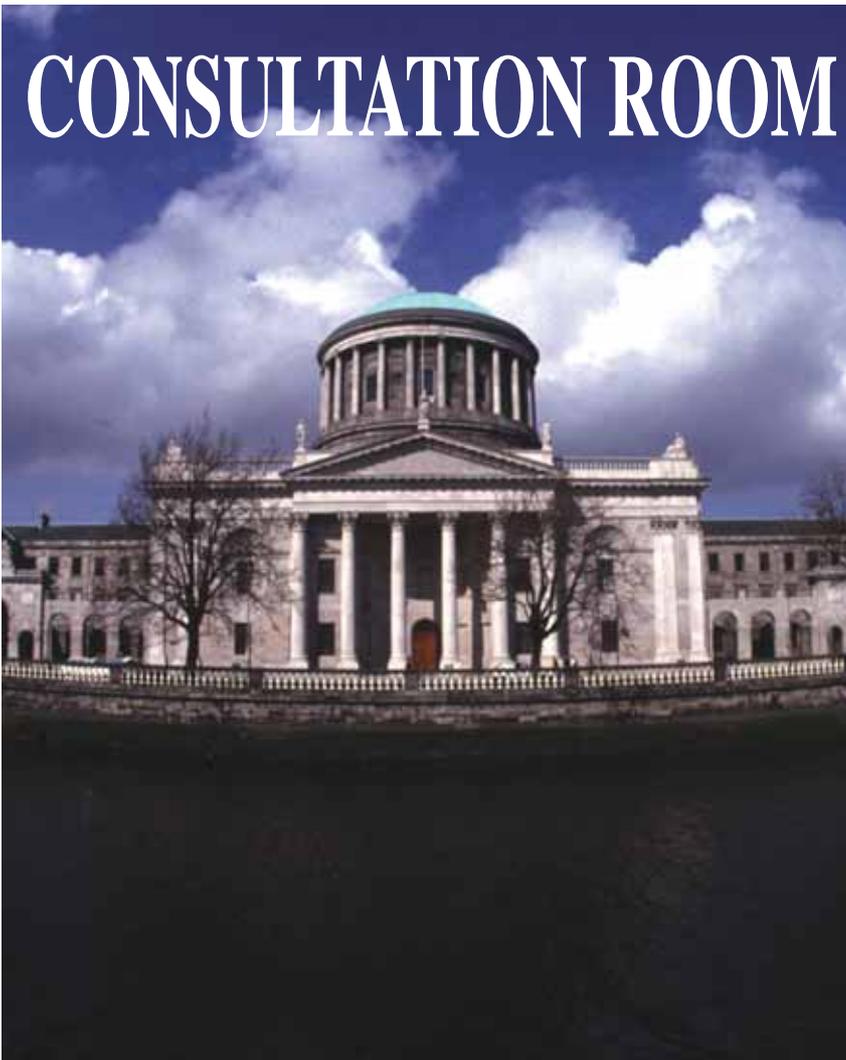
- a) Breached regulation 21(1) of the *Solicitors' Accounts Regulations*, SI no 421 of 2001, in failing to ensure that there was furnished to the Society an accountant's report covering her financial year ended 31 March 2005 within six months thereafter, that is, by 30 September 2005;

- b) Failed to attend a meeting of the Compensation Fund Committee, now the Regulation of Practice Committee, when required to do so on 8 December 2005, arising out of her failure to file the outstanding accountant's report;
- c) Breached regulation 21(1) of the *Solicitors' Accounts Regulations*, SI no 421 of 2001, in failing to ensure that there was furnished to the Society an accountant's report covering her financial year ended 31 March 2006 within six months thereafter, that is, by 30 September 2006;

- d) Through her conduct, showed a disregard for her own statutory obligations and the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients, the solicitors' profession and the public.

The tribunal ordered that the respondent solicitor:

- a) Do stand censured,  
b) Pay a sum of €5,000 to the compensation fund,  
c) Pay the whole of the costs of the Law Society of Ireland as taxed by a taxing master of the High Court, in default of agreement. **G**



## CONSULTATION ROOM HIRE RATES

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- If invoiced €60 for one hour (if greater than 1 hour, €45 per hour)
- €60 for 2 hours
- €200 per day

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No laptop? Simply use the internet kiosks in the Four Courts consultation room office.

The Law Society's partners in this initiative are GlobalAirNet International Ltd.

**TEL: 01 668 1806**

# firstlaw update



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

## COMMERCIAL LAW

### Trademarks

*Registration of a trademark – notice of opposition – additional evidence – statutory declaration – Trade Marks Rules 1996 – Trade Marks Act 1996.*

The plaintiff made an application to register the word 'Aircoach' as a trademark in respect of transport services, passenger transport and cargo transport services and other services. The second defendant served a notice of opposition to the registration of the mark, pursuant to s43 of the *Trade Marks Act 1996*. The proceedings were brought as an appeal from a decision of the controller, where he refused to grant the applicant leave pursuant to the *Trade Marks Rules 1996* to file additional evidence in the form of a statutory declaration and the exhibits referred to therein.

Miss Justice Laffoy held that an order would be given setting aside the decision of the controller and granting the applicant leave to file the statutory declaration in evidence.

***Bus Éireann/Irish Bus (plaintiff) v The Controller of Patents, Designs and Trade Marks and Last Passive Limited (defendants), High Court, Ms Justice Laffoy, 13/6/2007, 2005 No 453 SP [FL14083]***

## CONSTITUTIONAL LAW

### Children and young persons

*Practice and procedure – discovery – separation of powers – autistic children – resource allocation – therapies sought – role of courts – justiciability – whether trial on point of law appropriate – whether*

*documents relevant to main issue – Education Act 1998.*

The plaintiffs sought to appeal a decision of the Master of the High Court as to discovery of documents in the plaintiffs' proceedings relating to the needs of the autistic twin plaintiffs for appropriate therapies and education, pursuant to the *Education Act 1998*. The defendant alleged that the decision related to non-justiciable questions as to distributive justice.

Smyth J held that there was no justification for ordering discovery of documents in respect of a non-issue. The core issue here was as to the legal entitlements of the plaintiffs and not the application of resources by the defendant. The court set out questions for resolution that did have a bearing upon distributive justice questions, which would not be marked upon lightly.

***(E)F and T(F) (plaintiffs) v Minister for Education and Science (defendant), High Court, Mr Justice Smyth, 12/1/2007, 1999/12903 P [FL14179]***

## CRIMINAL LAW

### Double jeopardy

*Judicial review – trial for same offence twice – acquittal – jury disagreement – quashing of verdict on appeal – common law – trial in due course of law – article 38.1 of the Constitution.*

The applicant sought a permanent injunction restraining the respondent from prosecuting the applicant, who had already been tried twice for the same offence. The repeat trials had been the result of jury disagreement. The applicant

alleged that the prosecution was a violation of his right to a fair trial and that he could invoke the special plea of *autrefois* acquit or convict.

O'Neill J allowed the relief claimed, holding that the third trial of a person for the same offence, where in previous trials the jury had disagreed, would not be a trial in due course of law.

***S(D) (applicant) v Judges of the Cork Circuit and Director of Public Prosecutions (respondents), High Court, Mr Justice O'Neill, 16/10/2006, 2004 No 906 JR [FL14199]***

### Extradition

*European arrest warrant – whether respondent fugitive from justice – European Arrest Warrant Act 2003, s10.*

The surrender of the respondent to the Czech Republic was sought on foot of a European arrest warrant. The respondent contended that he was not a person on whom a sentence had been passed and who, after passing of sentence and before commencing serving that sentence, had fled the country.

Peart J made the order of surrender sought, holding that the respondent had failed to discharge the evidential burden upon him to prove that he had not left the issuing state in order to avoid prosecution and sentence if convicted.

***Minister for Justice, Equality and Law Reform v H, High Court, Mr Justice Peart, 22/5/2007, 2007 No 16 Ext [FL14101]***

### Extradition

*European Arrest Warrant Act 2003 – whether the application*

*for the surrender of the respondent ought to be adjourned pending the determination of the trial of the respondent in this state on charges arising out of the same set of acts as set out in the warrant.*

The applicant sought an adjournment of the surrender proceedings relating to the respondent, as sought by the Belgian judicial authority to face prosecution for the offence of "illicit trafficking in narcotic drugs and psychotropic substances". According to the warrant, the respondent was believed to have been involved in the exportation of drugs out of the Netherlands and the smuggling of drugs into Ireland. Consequently, the respondent was charged in this state with importing drugs into Ireland and was awaiting trial in that regard. The applicant sought to adjourn the application for surrender of the respondent until after his trial in Ireland was completed. The respondent sought to consent to his surrender and argued that any adjournment of the surrender application would amount to an abuse of process.

Peart J refused the application for an adjournment, holding that section 42 of the 2003 act quite clearly provided that, once the DPP had decided to prosecute the respondent for an offence arising out of the facts underlying the offence referred to in the warrant, then this court could not order surrender. Consequently, it would be inappropriate to grant an adjournment of the application for surrender, since it would serve no useful purpose, as regardless of the outcome of the prosecution of the charges in this state, the

court would be required to refuse the order for surrender sought under section 16 of the 2003 act.

**Minister for Justice, Equality and Law Reform (applicant) v Kinsella (respondent), High Court, Mr Justice Peart, 20/6/2007, 2006 No 128 Ext [FL14154]**

## FAMILY LAW

### Custody

Child Abduction and Enforcement of Custody Order Act 1991 – Hague Convention – *whether respondent wrongfully removed children from the jurisdiction of SA.*

In the course of divorce proceedings between the applicant (father) and the respondent (mother), issues regarding custody, guardianship and potential relocation of their three children were raised. Both the applicant and respondent were citizens of Ireland, but were resident in South Africa with their children between 2002 and 2006. Pending the determination of the divorce proceedings, the respondent, on 20 September 2006, applied for and was granted an *ex parte* order permitting her to travel to Ireland with the children. When making that application, the respondent failed to mention the existence of the divorce proceedings, the fact that the applicant had an application for access listed on the following day, and also that the applicant paid maintenance in relation to the children. Subsequent to the respondent's departure from SA with the children, the applicant obtained an order rescinding the 20/9/06 order on the basis that it was obtained by fraud. That order was not appealed. In these proceedings, the applicant sought the return of the children to SA.

Feeney J determined that the applicant was entitled to an order for the return of the chil-

dren to the jurisdiction of SA, holding that the applicant, respondent and the children were all habitually resident in SA at the time the children were removed from that country. As of 20 September 2006, the rights of custody in relation to the children vested in the SA court, and consequently the removal of the children from SA was wrongful and in breach of article 3 of the *Hague Convention*. Furthermore, there were no legally excusing circumstances in this case. The respondent was not entitled to rely on the order of 20/9/06, as that order was deemed to be void *ab initio*. Furthermore, the respondent failed to establish that, if the children were returned to SA, an intolerable situation would arise.

**PMP (applicant) v PKT (respondent), High Court, Mr Justice Feeney, 19/1/2007, 2006/37 HLC [FL14214]**

## LANDLORD AND TENANT

### Residential Tenancies Board

*Special summons – appeal against determination order – error of law – part 4 tenancy – non-payment of rent – overholding – notice of termination – whether board erred in law – Residential Tenancies Act 2004.*

The applicant appealed against a decision of the respondent, alleging an error of law on its part in the determination. The respondent found that the applicant was entitled to damages for a defective heating system and ordered the applicant to pay all arrears of rent. Prior to the final determination, the landlord served notices of termination. Subsequently, in dispute resolution proceedings, the applicant was ordered to vacate the premises and the notices of termination were held to be valid.

Laffoy J held that the respondent erred in law in determining that a valid notice of increase in

rent had been served. The first notice of termination had not been validly served, while the second notice was valid. The determination order would be varied.

**Canty (applicant) v Residential Tenancies Board (respondent), High Court, Ms Justice Laffoy, 8/8/2007, 2006 No 519 SP [FL14206]**

## LIBEL

### Practice and procedure

*Preliminary issues of law – public interest privilege – whether a defence of public interest privilege existed – procedural rules if the defence existed – whether evidence was adduced to establish the Reynolds test.*

The plaintiff sued the defendant newspaper for damages for a news article published on 17 December 2004. The article reported on a live call-in radio programme, where a caller unexpectedly made an allegation of improper conduct between the plaintiff (a communications consultant) and a government minister. The first issue before the court was whether a defence of public interest existed and procedures attached to that defence if it did exist. Secondly, whether a public interest defence was made out and, if so, the plaintiff's case should be withdrawn from the jury.

Mr Justice Charleton held that the defence of public interest can arise where the subject matter of a publication, considered as a whole, was a matter of public interest. The court found that there was a professional duty on the part of journalists to both seek out information and to impart it to the public as a matter of responsibility. The court held that the decision was to follow the ordinary course and see whether the defence of public interest arose on the evidence. In relation to the second issue, it was held that, since there was malice in this case, the relevant

test is that of public interest privilege of responsible and professional journalism. In order to establish the *Reynolds* test, the person who took the decision must be in court to establish the privilege. There was no evidence of this, and the court held that the defence of public interest would not be put to the jury.

**Leech (plaintiff) v Independent Newspaper (Ireland) Ltd (defendant), High Court, Mr Justice Charleton, 27/6/2007, 2005 No 513P [FL14107]**

## PLANNING AND ENVIRONMENTAL LAW

### Judicial review

*Applicant failed to meet substantial interest test – s50 of the Planning and Development Act 2000.*

The applicant sought leave to bring judicial review proceedings concerning a notice by the first-named respondent of intention to grant planning permission to the notice party. The application was in respect of an integrated tourism resort. The applicant failed to meet the substantial interest test as imposed by s50 of the *Planning and Development Act 2000*. To appeal the decision, the applicant required leave of the court, where the High Court certifies that its decision involved a point of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to the Supreme Court.

Mr Justice Clarke held that the point of law concerned was one of exceptional public importance and goes to the constitutionally important question of the entitlement of persons to have access to the courts to challenge decisions in the planning and environmental field. Further, it was held that there would be a public benefit in having a determination by the Supreme Court as to the principles applicable to a considera-

tion of whether a person has standing under the substantial interest test.

**Thomas Harding (applicant) v Cork County Council and An Bord Pleanála (respondent) and XCES Projects Limited, now known as Kinsale Harbour Developments Ltd (notice party), High Court, Mr Justice Clarke, 30/11/2006, 2005 No 1323 JR [FL14090]**

#### REFUGEE AND ASYLUM LAW

##### Judicial review

*Deportation – injunction – whether in the circumstances of this case it was appropriate to grant an interim injunction or to place a stay on the deportation order.*

The applicants sought leave to seek judicial review on a similar basis as applied in a previous case known by the name of *Kumar*. The applicants also applied for an interim injunction or, in the alternative, an order staying the operation of the second-named respondent's order directing that they be deported. The applicants did not challenge the deportation order itself.

Feeney J allowed the leave application but refused the application for an injunction, holding that leave to seek judi-

cial review ought to be granted in respect of paragraph 4, sub-paragraph 1, and paragraph 4, sub-paragraph 3 only, having regard to the *Kumar* case. It was inappropriate to grant an injunction or a stay on the deportation order pending the determination of these proceedings, having regard to the fact that the deportation order itself was not challenged and therefore was an extant order, and furthermore the judicial review proceedings centred around a technical/legal argument and therefore the applicants' presence was not required at those proceedings.

**O(J) and S(J) (applicants) v The Minister for Justice, Equality and Law Reform and the Governor of Cloverhill Prison (respondents), High Court, Mr Justice Feeney, 1/3/2007, 2007 No 54 JR [FL14147]**

#### TAX LAW

##### Double Taxation Agreement

*Ireland and Italy – Vienna Convention – interpretation – midnight test – resident in Italy – tax avoidance – legitimate expectation – liability – disposal of shares – income tax – wealth tax – bona fides – whether Double Taxation Agreement applied to capital gains*

*tax – whether Irish revenue law definition of 'day' applied – Taxes Consolidation Act 1997 – Double Taxation Relief (Taxes on Income) (Italy) Order 1973, SI no 64 of 1973.*

The plaintiff, an Italian tax resident and Irish citizen, had engaged in tax avoidance measures seeking to avoid a liability for capital gains tax as to the disposal of €19 million of Ryanair shares, and alleged that the *Double Taxation Agreement* signed between Ireland and Italy on 11 June 1971 should apply. The issue arose as to the interpretation of the word 'day' in the convention and whether the definition provided for under Irish law of a 'midnight' residency test should apply.

Kelly J found for the plaintiff as to both issues, holding that capital gains tax, while not being a tax on wealth but on gains, was captured under the terms of the convention, pursuant to either article 2.2 or, alternatively, article 2.4, under ordinary canons of interpretation of such conventions. The word 'day' was not captured under the convention and fell to be determined under national law.

**Kinsella (plaintiff) v Revenue Commissioners (defendant), High Court, Mr Justice Kelly,**

**31/7/2007, 2006 No 2306P, 2006 No 66 COM [FL14227]**

#### TORT

##### Medical negligence

*Failed sterilisation – assessment of damages – cost of rearing children.*

This was a claim for negligence arising out of a failed sterilisation of the plaintiff. The plaintiff sought damages for the physical consequences of the failure of the operation and the cost of rearing the two children.

Kelly J held that the plaintiff was entitled to damages for the pregnancies, but was not entitled to damages for the upbringing of the children.

**Byrne (plaintiff) v Ryan (defendant), High Court, Mr Justice Kelly, 20/6/2007, 2002 No 15260P [FL14141] G**

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

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

## Economics grinds for the Competition Authority?

For an agency that consistently (and rightly) champions economics as core to its mission, the recent Supreme Court verdict dismissing the Irish Competition Authority's flagship abuse-of-dominance case – the Irish League of Credit Unions (ILCU) case – as “artificial” and “counter-intuitive” was a setback. By the Supreme Court's own account, the ILCU case was the first to come before it involving the application of substantive competition law. The Competition Authority itself trumpeted the case as its “first ever” abuse-of-dominance case, outlawed back in 1991.

There was also an important issue of substance at stake. Indeed, according to the then chair of the Competition Authority, Dr John Fingleton, speaking before the Oireachtas Public Accounts Committee, “this [was] a really important case”. More specifically, he told the committee that “this case has implications way beyond credit unions. What the High Court decides in terms of monopolisation of representative services will be relevant to a wide range of other markets, including legal services where monopoly representation exists at the moment.” The novelty of the Competition Authority's argument was that there existed a market for “credit union representation services” by reference to which ILCU activities could be scrutinised on competition law grounds. That was a radical proposition of

potentially enormous precedent-setting value, particularly for professional and trade representative bodies.

Considering the case's far-reaching potential, what happened and what are the implications for future enforcement?

In 2001, following disputes within ILCU (in particular, after large costs were incurred in the unsuccessful development of a new IT system for credit unions, in what was known as the ISIS project), a number of credit unions – 21 in total – established a new representative body, the Credit Union Development Association (CUDA).

CUDA credit unions are generally larger than other ILCU credit unions and generally have a more affluent membership profile. By virtue of this membership profile, CUDA credit unions were able to obtain loan protection/life savings insurance (LP/LS) cover at more preferable rates than those provided by ECCU Assurance Company Limited (an authorised insurance company wholly owned and controlled by ILCU).

### Complaint

After the CUDA credit unions declined to purchase LP/LS cover from ECCU, ILCU moved to disaffiliate those credit unions, in line with its established procedures. To ensure due process and fair procedures, the disaffiliation

process takes a number of months. Before the process could be completed, however, the CUDA credit unions complained to the authority.

By all accounts, the focus of that complaint was on the savings protection scheme (SPS). In particular, CUDA argued that “its members have contributed in aggregate approximately €17 million to the SPS fund, which accounts for approximately 25% of the overall fund”. More specifically, CUDA argued that “the withdrawal of access to the SPS that occurs when credit unions are disaffiliated from ILCU constitutes a substantial penalty”. Thus, the Supreme Court ultimately found, the “real objective” of the complainant credit unions was “to have some form of proprietary, beneficial or equitable interest in the SPS fund”.

### Reaction

It is fair to say that the authority was receptive to the CUDA complaint.

Indeed, the authority pursued the CUDA complaint, notwithstanding that it required adopting an approach in conflict with an earlier stated position on the ILCU rules.

In a previous decision (Decision No 440, 20 November 1995), the authority had certified that ILCU rules fell outside the scope of Irish competition rules. In that decision, the authority concluded that “given the tiny proportion

of the market involved and the fact that credit unions can opt out of these arrangements”, the arrangement could not be said to prevent, restrict or distort competition. In addition, in the same decision, the authority had found ILCU to be an association of undertakings within the meaning of section 3(1) of the *Competition Act 1991* and that the ILCU rules constituted an agreement between undertakings and/or a decision by an association of undertakings. No mention of the possibility that ILCU might be considered an undertaking independent of and, indeed, dominant in respect of its membership was made in the decision.

Following the CUDA complaint, the authority revoked this earlier certificate (via Decision No 596), on the basis that there had been two material changes in market circumstances since 1995.

Revocation of Decision No 440 did not, however, mean that ILCU's rules were thereby anticompetitive. Indeed, with the coming into force of the *Competition Act 2002*, all individual certificates issued by the authority were revoked. In this new, post-modernised environment, “companies must satisfy themselves that agreements they enter into are not in breach of the act”.

Accordingly, ILCU took legal advice, including the commission of an expert economist report, on the application of Irish competition rules

to its rules. Following receipt of that advice, ILCU moved forward with its plans to disaffiliate certain credit unions for failure to purchase LP/LS cover from ECCU.

Before such disaffiliation proceedings could be finalised, however, the Competition Authority issued civil proceedings against ILCU.

### The authority's case

According to the Competition Authority, the impact of the proposed disaffiliation procedure had to be assessed by reference to the effect on "the market for credit union representation".

The authority's reasoning in concluding that this was the relevant competition law market was as follows. First, as a general principle, the authority contended that "a market exists where there are transactions between distinct entities and consequently that the services which are the subject of those transactions are traded and are therefore tradable services".

The authority then argued that "ILCU is distinct from its members – this is evidenced, *inter alia*, by the dissatisfaction of individual credit unions at various actions taken by the ILCU, such as the prices charged by it and its decision to use the SPS to fund the ISIS project". Given that the provision of those services by ILCU to its members involved "transactions between distinct entities", the authority considered that the services concerned were "traded and are therefore tradable services".

Further, according to the authority, there was clearly demand for credit union representation services. Thus, the authority stated: "There is demand on an ongoing basis for the interests of credit unions to be represented to the Irish government, the Commission of the European Union and to regulatory authorities, such as the

Department of Finance, the Irish Financial Services Regulatory Authority and the Registrar of Friendly Societies. There is also demand for the interests of credit unions to be put before elected representatives, in particular when legislation is being considered that might impact on credit unions."

"Most significantly", however, the authority relied "on the emergence of CUDA, which clearly indicates that there is a market for the provision of services of the kind at issue in the instant case".

On that market for credit union representation services, the authority considered that ILCU was dominant. In support of this assertion, the authority argued: "Representative services independently sourced by individual member credit unions are not an adequate substitute for those provided by a credit union representative body which represents a number of credit unions. Credit union representative bodies have particular knowledge of the issues affecting credit unions than [sic] professional lobbyists or consultants do not have. In addition, legislators and regulators are more likely to entertain representations made by a credit union representative body mandated to make representations on behalf of a number of credit unions rather than from an individual credit union."

In addition, the authority argued that ILCU was dominant because "nearly all of the credit unions in the state are members of the ILCU and ... ILCU credit unions account for 90 to 95% of all credit union assets and membership in the state".

On that basis, the authority took the view that denial of access to the SPS, via disaffiliation from ILCU, constituted an abuse of dominance. According to the authority, loss of access to the SPS would discourage credit unions from leaving ILCU and would therefore reduce compe-

tion in the market for credit union representation. More specifically, according to an affidavit sworn by the then chair of the Competition Authority and dated 22 July 2003, "the actions of the ILCU significantly raise the cost of establishing a rival to the ILCU in the market for credit union representation, thereby protecting its dominant position from competition".

Just before trial, the authority came up with an even more novel proposition, namely that ILCU's SPS constituted not just a separate product that could be unlawfully tied to "representation services", but an actual market unto itself (and one on which, of course, ILCU could be said to enjoy a "monopoly"). To be fair to the Competition Authority, that theory was supported by its external economic expert. It was to become the lynchpin of its case.

### High Court judgment

After a 12-day hearing, the High Court found that ILCU breached both article 82 EC and its equivalent under national law, section 5 of the *Competition Act 2002*, by 'tying' the provision of the SPS to the provision of credit union representation services.

In a 172-page judgment, the judge adopted "the 'intuitive' or 'innate characteristics' test to find that there are two markets at work in the instant case, being respectively a market for credit union representation services (excluding SPS), and the savings protection market". On that basis, the High Court found that ILCU enjoyed "super dominance" and a "monopoly" (at least in the provision of SPS). The trial judge also found that "the very survival of CUDA in the medium or long term appears to be contingent on resolution of the issue of access to the SPS" and therefore that the tie-in was "pernicious". Accordingly, the High Court made an order effectively mandating non-discriminatory

access to the SPS for unaffiliated or disaffiliated credit unions. More specifically, the court considered that those arrangements constituted an abuse of ILCU's dominant position on the SPS market. ILCU appealed that decision to the Supreme Court.

### Supreme Court judgment

According to Mr Justice Fennelly, who delivered the unanimous Supreme Court verdict, the "entire superstructure" of the Competition Authority's case was "laid on the substratum or foundation of the relevant product market". Indeed, he found that the "threshold question and a predication to the application of the 'tying' analysis is whether the representation services and the SPS provided by the ILCU to its members are economically to be regarded as separate products".

In a clear and insightful analysis of the law relating to abusive tying, Mr Justice Fennelly made it clear that the Competition Authority's case fell at the first fence (the need to show that each of the allegedly tied products is, in fact, a separate product). In this context, Mr Justice Fennelly's quote from Professors Areeda, Elhague and Hovenkamp (all US antitrust law experts, although admittedly taken from a book on article 82) was particularly significant: "However, under the competitive market practices test, a distinct market for the tied item does not imply separate products, absent widespread sales of the tying item in unbundled form. For example, an independent market for carburettors does not make a car with a carburettor installed two products, because no significant independent market exists for cars stripped of their carburettors."

In addition, the Supreme Court placed emphasis on the evidence of how SPSs have been provided in Ireland and elsewhere. It is clear that the court had little time for economic the-

arising in light of the available contradictory factual evidence: "The fact is that the SPS has always existed as an integral part of the bundle of services that ILCU had provided to its own members and it has never been provided independently ... Nobody has provided any evidence whatever of the existence of an independently commercially provided SPS anywhere."

Accordingly, Mr Justice Fennelly concluded that it would be "counter-intuitive" and "artificial" to consider that the SPS and representation services are distinct products.

#### Possible conclusions

First, the case provides a classic illustration of the continuing challenges that competition law enforcement agencies confront in distinguishing action that protects competition from that which protects competitors. As the Supreme Court put it, the authority "appeared to stand in the shoes of potential com-

plainant credit unions".

Second, the case provides a signal reminder of the perils of an overly theoretical and doctrinaire approach. According to the Supreme Court judgment, proper enforcement action – particularly where involving highly novel economic claims – must be based on "cogent factual evidence". Unsubstantiated economic theory (even where endorsed by a retained economist) is not, in other words, sufficient grounds to prosecute a complex abuse of dominance case.

Third, against the background of an ever-increasing emphasis on effects-based, case-by-case analysis, the case provides a good example of the continuing importance of precedent and, to put it grandly, the rule of law. In pursuing its inventive claim – that ILCU was dominant in the "market for representation of credit unions" – the authority appears to have considered itself almost entirely

unconstrained either by its own decision-making practice or by relevant court precedent. The novelty of the claim, the lack of any supporting precedent, and the apparent conflict with established practice should have given rise to pause in prosecuting the case.

As was recognised by the Supreme Court, "one of the most readily foreseeable implications of the authority's analysis" in the ILCU case was that any representative association with a large share (which, as the Supreme Court noted, need not amount to 50%) of a particular trade or profession could be considered dominant in the market for representation services for the trade or profession in question.

The court found this contention "troubling" and doubted whether representation services, which seem "more naturally to meet the description of common pursuit of common interests", could be considered economic

services in these circumstances.

Further, the Supreme Court noted that "no evidence was presented of the existence of any market consisting of sellers and buyers of representation services".

The *obiter* statements of Mr Justice Fennelly suggest that representation services are not economic services and therefore that providers of such services will not be acting as an undertaking when providing those services. That is a welcome clarification, as the characterisation of collective representation as an economic activity could well have led to inappropriate application of competition law to a wide variety of associations. **G**

*Philip Andrews is a partner and Ronan Dunne is a trainee solicitor in McCann FitzGerald's EU, Competition and Regulated Markets Group. McCann FitzGerald represented ILCU in this case.*

## RECENT DEVELOPMENTS IN EUROPEAN LAW

### COMPETITION

On 1 March, the commission sent a statement of objections (SO) to Microsoft for failing to comply with certain of its obligations under the March 2004 commission decision. Part of that decision found Microsoft to have infringed the *EC Treaty* rules on abuse of a dominant position (article 82) by leveraging its near monopoly in the market for PC operating systems onto the market for work-group server operating systems. Microsoft therefore had to disclose complete and accurate interface documentation on "reasonable and non-discriminatory terms", allowing non-Microsoft work-group servers to interoperate with *Windows* PCs and servers. The

SO indicates the commission's preliminary view that there is no significant innovation in the interoperability information, rejecting as unfounded 1,500 pages of submissions by Microsoft from December 2005 onwards and, hence, that the prices proposed by Microsoft are unreasonable. Microsoft had four weeks to reply to the SO, after which the commission could impose a daily penalty for failure to comply with the March 2004 decision. The issue of whether the interoperability information is complete and accurate was still under consideration by the commission. Microsoft provides two separate licensing arrangements to companies wishing to obtain the interoperability information as foreseen by the 2004 deci-

sion's remedy. The first is a 'no-patent agreement', allowing licensees to use the protocols that together comprise the interoperability information, but without taking a licence for patents that Microsoft claims necessary, a claim disputed by some third parties. The second (the 'all-IP agreement') combines this first licence with a licence for these disputed patents. Companies therefore have a choice of agreement, depending on whether they consider they need a patent licence. Both licences confirm that an assessment of the reasonableness of Microsoft's prices depends on whether there is innovation in the protocols, and, if there is, the price of comparable technologies in the market. The commission's

preliminary view is that there is virtually no innovation in the 51 protocols in the no-patent agreement where Microsoft has claimed non-patented innovation and that Microsoft's current royalty rates for this agreement are therefore unreasonable. This takes into account the advice of both the monitoring trustee and the commission's technical advisors, TAEUS, who both consider that there is no innovation in any protocol in the Gold and Silver categories. These protocols represent more than 95% of the price of the total technical documentation. The trustee considers that, of the total of 160 claims, only four, relating to relatively minor Bronze protocols, represent even a limited degree of innovation. As regards the

all-IP agreement, the commission has assumed that the existence of patents indicates some associated innovation, although third parties remain free to challenge Microsoft's patent claims before an appropriate court or to implement software that, in their view, does not infringe the patented technology. In any event, the trustee's analysis is that most of the information relates only to solving problems specific to *Windows* and will not improve the functionalities of the licensee's own operating systems. The trustee also provided evidence to the commission that comparable technologies to these were provided royalty-free. In light of these elements, the commission took the preliminary view that Microsoft's current royalty rates for its all-IP agreement are also unreasonable.

#### HUMAN RIGHTS

*Jorgic v Germany* [2007] ECHR 583. Jorgic was a Bosnian Serb who had been a permanent resident in Germany when he left to go to Bosnia in 1992. He served as the leader of a paramilitary group. Acts of ethnic cleansing were attributed to this group. When he returned to Germany in 1995, he was arrested and tried on charges of genocide. The prosecution called witnesses from abroad. The German Court of Appeal dismissed a request from Jorgic to call witnesses from abroad. It found that the testimony would be of little evidential value and the prosecution had established that Jorgic had not been in prison (as he claimed) at the material time. He was found guilty of genocide and sentenced to life imprisonment. His appeals to the higher German courts failed. He made an application to the European Court of Human Rights in 2001. He argued that the German

courts did not have jurisdiction to try him for offences committed in another state. German law clearly provides for the extraterritorial jurisdiction of the German courts in cases of genocide. The ECtHR also found that, under article 1 of the *Genocide Convention*, the contracting states are under an *erga omnes* obligation to prevent and punish genocide. The prohibition of genocide is also a peremptory norm of customary international law. Thus, the German courts had jurisdiction to try Jorgic, even though the genocidal acts took place in another state. Jorgic also argued that the trial was unfair, as his request to summon witnesses had been refused. The ECtHR held that the German court was entitled to refuse the request for the reasons it had given. Thus, it held that the trial was fair. The final matter considered was whether the wide interpretation of genocide was in breach of article 7 of the *European Convention* (no punishment without law). German law interpreted the element of "intent to destroy a group" in genocide as not necessitating a physical or biological destruction of a group. The ECtHR held that this was not an overly wide interpretation. The applicant's acts, committed in the course of ethnic cleansing with the intent to destroy a group of Muslims as a social unit, could reasonably be regarded as falling within the ambit of the offence of genocide.

#### INTELLECTUAL PROPERTY

Case C-48 /05, *Adam Opel AG v Autec AG*, 25 January 2007. Opel is a car manufacturer and registered the Opel logo as a trademark on 10 April 1990 in Germany for motor vehicles and toys. Autec manufactured and marketed in Germany a remote

controlled model of an Opel car, with the Opel logo on its radiator grille like the original vehicle. Opel had not consented to this. Opel sought an order that Autec should cease using its logo. It argued that Autec had infringed its trademark for toys. The ECJ considered the application of Directive 89/104/EEC on trademarks. A registered trademark confers on its proprietor the exclusive right to prevent all third parties, acting without his consent, from using in the course of trade a sign that is identical to the trademark in relation to goods that are identical to those for which the trademark is registered. That right is granted to ensure that the trademark can fulfil its functions, in particular to guarantee to consumers the origin of the goods. The use by Autec of the Opel logo, which is identical to the trademark registered for toys, can be prohibited only if it affects or is liable to affect the functions of the trademark. It is for the referring court to determine, by reference to the average consumer of toys in Germany, whether those conditions are met.

#### TELECOMMUNICATIONS

The CFI judgment on 30 January 2007 (Case T-340/03) dismissed in its entirety the appeal by France Télécom SA, formerly Wanadoo Interactive SA, in respect of the commission's 2003 decision concerning predatory pricing and confirming the €10.35 million fine imposed by the commission. In this case, the CFI upheld the commission's decision finding that France Télécom abused its dominant position on the French market for internet access. Predatory pricing that does not allow either variable or full costs to be recovered, as part of a plan to pre-empt the market for high-speed internet access, con-

stitutes an abuse of dominance. On 16 July 2003, the commission fined Wanadoo €10.35 million for charging predatory (below cost) prices for its Pack eXtense and Wanadoo ADSL services as part of a plan aimed at excluding competitors from the market for high-speed internet access. The CFI rejected Wanadoo's appeal in its entirety and confirmed all aspects of the commission decision. Regarding predatory pricing, the court held that prices below average variable cost must always be considered abusive. Furthermore, prices below average total costs but above average variable costs are to be considered abusive if an intention to eliminate competitors can be shown. The court held that the commission applied the correct methodology in concluding that there was predatory pricing and that it provided solid and consistent evidence as to the existence of a plan of predation for the entire infringement period. The product concerned was high-speed internet access for residential customers. The CFI considered that the European Commission was right to find that a sufficient degree of substitutability between high-speed and low-speed access did not exist and to define the market in question as that of high-speed internet access for residential customers. The commission decision held that Wanadoo, a subsidiary of France Télécom, had a dominant position in this market. The commission found that the retail prices charged by Wanadoo were below cost. The practice coincided with a company plan to pre-empt the strategic market for high-speed internet access. This practice restricted market entry and development potential for competitors, to the detriment of consumers, on a market that is key to the development of the information society. **G**

## LOST LAND CERTIFICATES

### Registration of Deeds and Title Acts 1964 and 2006

An application has been received from the registered owners mentioned in the schedule hereto for an order dispensing with the land certificate issued in respect of the lands specified in the schedule, which original land certificate is stated to have been lost or inadvertently destroyed. The land certificate will be dispensed with unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

Property Registration Authority, Chancery Street, Dublin 7

(Published 5 October 2007)

Regd owner: Peter Shiels (ors Shields), Drumhowragh, Loughduff, Co Cavan; folio: 22200; lands: Ballytrust, **Co Cavan**

Regd owner: Denis Hayes; folio: 29478; lands: townland of Lisduff and barony of Tulla Upper; area: 5.1900 hectares; **Co Clare**

Regd owner: Denis Benn and Bridget Benn; folio: 29188; lands: townland of Leagard South and barony of Ibrickan; **Co Clare**

Regd owner: John G Corrigan; folio: 25032; lands: townland of Cooldeery and barony of Tulla Lower; **Co Clare**

Regd owner: Mr Peter Donnallan; folio: 15905; lands: townland of Ballymaconna and barony of Bunratty Upper; **Co Clare**

Regd owner: Jerle Trading Limited; folio: 21148F; lands: Carrowkeel East barony of Inchiquin; **Co Clare**

Regd owner: County Council of the County of Clare and the Council of the Urban District of Kiltrush; folio: 18629; lands: townland of Ballyvarra and barony of Corcomroe; area: 2.2334 hectares; **Co Clare**

Regd owner: Saint Flannans (Killaloe) Diocesan Trust; folio: 17437; lands: townland of (1) and (3) Rathfolan and (2) Newmarket and barony of Bunratty Lower; area: (1) 0.7157 hectares, (2) 0.2428 hectares, (3) 1.2267 hectares; **Co Clare**

Regd owner: James Denis Anthony Conway; folio: 15714; lands: townland of (1) Lecarrow Upper, (2) Clashmore, (3) Coolreagh and barony of Tulla Upper; area: (1) 10.0058 hectares, (2) 20.2216 hectares, (3) 0.3465 hectares; **Co Clare**

Regd owner: Margaret O'Gorman; folio: 8221 and 28394; lands: townland of Kilbaha North, Kilbaha South, Carrowmore South and barony of Moyarta, Ibrickan; **Co Clare**

Regd owner: Daniel Corkery; folio: 15525; lands: plot of ground situate in the townland of Rooves More and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: Patrick Fitzgerald; folio: 15077; lands: plot of ground situate in the townlands of (1) Lyremountain, (2) Rearour North and barony of Kinatalloon in the county of Cork; **Co Cork**

Regd owner: George Samuel Hunt and Elizabeth Hunt; folio: 35822, 35828, 35830; lands: plot of ground situate in the townland of Cooranuller and barony of Carbery West (West Division) in the county of Cork; **Co Cork**

Regd owner: Margaret Kennedy; folio: 3630L; lands: plot of ground known as 145 Connolly Road, situate in the parish of St Finbar's and in the city of Cork; **Co Cork**

Regd owner: Kilnap Management Company Limited; folio: 110184F; lands: plot of ground situate to the south-west of the railway line leading from Dublin to Cobh, in the parish of St Anne's Shandon, in the city of Cork; **Co Cork**

Regd owner: Eric Lisson; folio: (1) 43724F, (2) 56235F; lands: plot of ground situate in the townland of (1) Grange (ED Douglas), (2) Carrigaline Middle and barony of (1) Cork, (2) Kerrycurrihy and in the county of Cork; **Co Cork**

Regd owner: Thomas Coughlan; folio: 90389F; lands: plot of ground situate in the townland of Ballinglanna and barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Charles Gallagher, Drumleem, Ballindrait, Co Donegal, and Charles Gallagher of Drumleem, St Johnstown, Co Donegal; folio: 4309F; land: Drumleene and Creaghadoos; **Co Donegal**

Regd owner: Louise Kelly, Dooish,

Ballybofey, Co Donegal; folio: 55622F; lands: Dooish; **Co Donegal**

Regd owner: Michael McLaughlin and Catherine McLaughlin, Glackrow, Linsfort PO, Co Donegal; folio: 38791; lands: Sharagore; **Co Donegal**

Regd owner: Kathleen Quinn, c/o James Boyle & Co, Solicitors, Stranorlar, Co Donegal; folio: 4722; lands: Corcam; **Co Donegal**

Regd owner: Anthony McGee, Clonglash, Buncrana, Co Donegal; folio: 29177F; lands: Baylet; **Co Donegal**

Regd owner: Maureen Geoghegan; folio: DN6854; lands: property situate in the townland of Loughlinstown and barony of Rathdown; **Co Dublin**

Regd owner: Brian P Dooley and Anne Chung; folio: DN112198F; lands: property situate in the townland of Ballalease North and barony of Nethercross; **Co Dublin**

Regd owner: Brian P Dooley and Ann Dooley; folio: DN39710L; lands: property situate north of Seamount Road in the town of Malahide and in the townland of Malahide and barony of Coolock; **Co Dublin**

Regd owner: James McCarthy and Brigid Regina McCarthy; folio: DN2635; lands: property situate in the townland of Blanchardstown and barony of Castleknock; **Co Dublin**

Regd owner: David Manley; folio: DN31299F; lands: property situate in the townland of Blanchardstown and barony of Castleknock; **Co Dublin**

Regd owner: Noel Molloy and Catherine Molloy; folio: DN6669; lands: property situate in the townland of Boggyheary and barony of Nethercross; **Co Dublin**

Regd owner: Seamus Walsh and Theresa Walsh; folio: DN31052L; lands: property situate to the east of Balglass Road, in the townland of Howth and barony of Coolock; **Co Dublin**

Regd owner: Stephen Duane and Maura Duane; folio: 5614L; lands: townland of Caheroyan and barony of Athenry; **Co Galway**

Regd owner: Joseph A Gorham; folio: 16573; lands: townland of Inishnee and barony of Ballynahinch; **Co Galway**

Regd owner: Patrick Hughes and Michael McCarthy (as tenants-in-common); folio: 38966; lands: townland of Lemonfield and barony of Moycullen; area: 1.4341 hectares; **Co Galway**

Regd owner: Oliver Maloney; folio: 7598; lands: townland of Shoodaun and barony of Tiaquin; area: 18.4940 hectares; **Co Galway**

Regd owner: Ralph John Walker; folio: 12951; lands: townland of Cloncannon (part) and barony of Killian; **Co Galway**

Regd owner: Martin Carr, ors Mattie Carr; folio: 27204F; lands: townland of Ballindooly and barony of Galway; area: 0.1469 hectares; **Co Galway**

Regd owner: William Foran and Rachel Foran; folio: 20767F; lands: townland of Cloonalour and barony of Tralee; **Co Kerry**

Regd owner: Brian (Bernard) Hickey; folio: 1929; lands: townland of Ballingowan and barony of Trughanacmy; **Co Kerry**

Regd owner: Jeremiah Looney; folio: 31012; lands: townland of Tralee and barony of Trughanacmy; **Co Kerry**

Regd owner: Michael O'Connell; folio: 21828; lands: townland of Ahalahana and barony of Iraghticonnor; **Co Kerry**

Regd owner: Colm Nagle; folio: 48351F; lands: townland of Corbally and barony of Magunihy; **Co Kerry**

Regd owner: Patrick C O'Shea; folio: 29148F; lands: townland of Gearhadiveen and barony of Glanarought; **Co Kerry**

Regd owner: Karl Jones, of Lauriston, 19

# LAW SOCIETY Gazette

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7 Argus House,  
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Dublin 6W.Phone: 01 4737455  
Email: trevorf@o2.iePark Drive, Dublin 6; folio: 9110;  
lands: townland of Ballyteige North,  
in the barony of Connell, in the elec-  
toral division of Kilmagee North;  
townland of Littleton, in the barony  
of Connell, in the electoral division of  
Kilmagee South; **Co Kildare**Regd owner: Raymond Morris of  
Killinagh, Carbury, Co Kildare; folio:  
23899F; lands: townland of Killinagh  
Lower and barony of Carbury and  
townland of Ballybrack (Carbury By)  
and barony of Carbury; **Co Kildare**Regd owner: Patrick Munnely (com-  
pany director), of Castlekealy, Caragh,  
Naas, Co Kildare; folio: 39621F;  
lands: townland of Castlekealy and  
barony of Clane; **Co Kildare**Regd owner: Mary C O'Hagan,  
Glenboy, Manorhamilton, Co  
Leitrim; folio: 18371; lands: Lurgan,  
Gortnalibbert; **Co Leitrim**Regd owner: Michael Davis and Marian  
Davis; folio: 9933F; lands: townland  
of Kilmihill and barony of Connello  
Upper; **Co Limerick**

Regd owner: Declan Flynn and Jacinta

Flynn; folio: 36306F; lands: townland  
of Dunnaman and barony of Coshma;  
**Co Limerick**Regd owner: David PL Hewson; folio:  
9468; lands: townland of Ballyengland  
Upper and barony of Connello  
Lower; **Co Limerick**Regd owner: George Keane and Marie  
Keane; folio: 2640L; lands: parish of  
St Munchins and county borough of  
Limerick; **Co Limerick**Regd owner: Mary A O'Keeffe; folio:  
147; lands: townland of Meanus and  
barony of Smallcounty; **Co Limerick**Regd owner: John Wallace and Grace  
Wallace; folio: 13444F; lands: town-  
land of Ballyhahill and barony of  
Shanid; **Co Limerick**Regd owner: Patrick Flynn, Carrick,  
Drumlish, Co Longford; folio: 5804;  
lands: Brocklagh; **Co Longford**Regd owner: Kieran Connolly, Main  
Street, Clogherhead, Co Louth; folio:  
11477F; lands: Ganderstown; **Co  
Louth**Regd owner: Thomas Flynn; folio: 3453;  
lands: townland of Cloonrarriff (ED  
Knock South) and barony of Costello;  
area: 1.0238 hectares; **Co Mayo**Regd owner: John William Holmes;  
folio: 47006; lands: townland of (1)  
Deerygaury, (2) Cuing Beg, and  
barony of Tirawley; area: (1) 1.7850  
hectares, (2) 61030 hectares; **Co  
Mayo**Regd owner: Frank O'Connor, 376  
Highfield Park, Kilcock, Co Kildare;  
folio: 11585F; lands: Doolystown and  
county of Meath; **Co Meath**Regd owner: Margaret Farrell,  
Bannonstown, Hayes, Navan, Co  
Meath; folio: 3494; lands: Harristown;  
**Co Meath**Regd owner: Joseph Boylan, 10  
Dunscrim, Scotshouse, Clones, Co  
Monaghan; folio: 1409F; lands:  
Dunstrim; **Co Monaghan**Regd owner: Thomas McCluskey,  
Cargaghoge, Shercock, Co  
Monaghan; folio: 5182; lands:  
Cargaghoge; **Co Monaghan**Regd owner: Joseph Eivers of New  
Road, Clara, Co Offaly; folio: 15731;  
lands: townland of Erry  
(Maryborough) and barony of  
Kilcoursey; **Co Offaly**

Regd owner: Kiernan K Kenny; folio:

4411F; lands: Ballylin and barony of  
Garrycastle; **Co Offaly**Regd owner: Robert Porteus Goulden;  
folio: 9178; lands: townland of Car-  
rowmacarrick and barony of Leyny;  
area: 27.2378 hectares; **Co Sligo**Regd owner: Theresa Hosey and Brian  
Hughes; folio: 11101F; lands: town-  
land of Knocknaganny and barony of  
Carbury; **Co Sligo**Regd owner: Francis Waters; folio: 2956;  
lands: townland of Doonowney and  
barony of Carbury; area: 4.6285  
hectares; **Co Sligo**Regd owner: Michael Buckley; folio:  
34744; lands: townland of Raheen  
Lower and barony of Clanwilliam; **Co  
Tipperary**Regd owner: William Cahill; folio:  
25202; lands: townland of Tinderry  
and Rockforest and barony of Ikerrin;  
**Co Tipperary**Regd owner: Michael Byrne and  
Catherine Byrne; folio: 30273F;  
lands: townland of Knockgraffon and  
barony of Middlethird; **Co  
Tipperary**Regd owner: Mary B Ryan; folio: 7322;  
lands: townland of Cloneen and  
barony of Ikerrin; **Co Tipperary**Regd owner: Michael G Kennedy and  
Nora Kennedy; folio: 20620F; lands:  
townland of Derry and barony of  
Ormond Lower; **Co Tipperary**Regd owner: Thomas Fox, Doon,  
Ballymacmorris, Kilbeggan, Co  
Westmeath; folio: 9494; lands:  
Ballinlaban; **Co Westmeath**Regd owner: Andrew O'Brien, late of  
Knockatillane, Manor Kilbride, Co  
Wicklow; folio: 5799; lands: the  
townlands of Kilbride and  
Threecastles, Co Wicklow, and  
barony of Talbotstown Lower; **Co  
Wicklow**Regd owner: Maria Sweeney, of  
Barronstown, Grangcon, Dublavin,  
Co Wicklow; folio: 5648; lands: a plot  
of ground with building thereon situ-  
ate on the north side of Chapel Street  
in the village of Stratford, being part  
of the townland of Winetavern and  
barony of Talbotstown Upper, con-  
taining 0.0607 hectares, shown as  
plan(s) 1 edged red on the registry  
map (OS map ref(s) 21/10); **Co  
Wicklow****WILLS****Dunne, James Raymond (otherwise  
Jim) (deceased)**, late of 15 Margaret  
Place, off Bath Avenue, Ringsend,  
Dublin 4, retired journalist, who died on  
25 June 2007. Would any person having  
knowledge of a will made by the above-  
mentioned deceased please contact  
Fitzsimons Redmond, Solicitors, 18  
Herbert Street, Dublin 2; tel: 01 676  
3257; fax: 01 661 2448; email:  
kdunne@fitzsimonsredmond.ie**Fleming, Susan (deceased)**, late of 318  
Fir Tree Road, Epsom Downs, Surrey,  
KT 17 3NW, England. Would any per-  
son having knowledge of a will made by  
the above-named deceased, who died on  
27 August 2003, please contact James J  
Kearns & Son, Solicitors, Portumna, Co  
Galway; tel: 090 974 1003, fax: 090 974  
1298**Ledwith, Mary (deceased)**, late of  
Derrycasson, Dring, Co Longford.  
Would any person having knowledge of  
a will made by the above-named  
deceased, who died on 11 November  
2000, please contact Messrs Garrett J  
Fortune & Co, Solicitors, 11 Church  
View, Church Street, Cavan; tel: 049  
436 1233, fax: 049 436 1154, email:  
info@gjfortune.ie**McCann, Elizabeth (otherwise Betty)  
(deceased)**, late of 70 St Lawrence  
Road, Clontarf, Dublin 3, and formerly  
of Tudor House, Clontarf, Dublin 3,  
who died on 5 August 2007. Would any  
person having knowledge of the where-  
abouts of any will made by the above-  
named deceased please contact Paul  
Brady & Co, Solicitors, Suppletown  
House, Main Street, Dunshaughlin, Co  
Meath; tel: 01 802 4058**Murphy, Maureen (otherwise Mary  
Josephine) deceased, otherwise  
Mairin Murphy deceased**, late of  
22 Upper Beechwood Avenue,  
Dublin 6. Would any person having  
knowledge of the whereabouts of a will  
dated 18 August 1995 or any other will  
executed by the above-named  
deceased, who died on 25 February**Construction Solicitor****Dublin 2 €70k+**

Our client is a highly regarded top tier practice that currently has a requirement for an experienced solicitor to join its dynamic team. This role will suit an ambitious and pro-active individual with previous experience within commercial property. Gain exposure to a high profile international client base. Ref: 78512

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2007, please contact Donal T McAuliffe & Company, Solicitors, 57 Merrion Square, Dublin 2; tel: 01 676 1283, fax: 01 661 9459

**O'Connor, Bridget (deceased)**, late of 13 Heidelberg, Roebuck Road, Dublin 14, who died on 25 January 2007. Would any person having knowledge of a will made by the above-named deceased please contact JB Healy Crowley & Co, Solicitors, Market Street, Killorglin, Co Kerry; ref: T.C382.1; tel: 066 976 1116, fax: 066 976 1733, email: jbhcl@hotmail.com

**Stanton, Sarah (née O'Flaherty)**. Would any person having knowledge of a will made by the above-named deceased, late of 18 Donard Road, Drimnagh, Dublin 12. Replies to McKenna Murphy Solicitors, Stonebridge House, Stonebridge Close, Shankill, Co Dublin; tel: 01 272 1344, fax: 01 2721353

## MISCELLANEOUS

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**Untraced shareholders of the Irish Christian Endeavour Holiday Homes Limited – in members' voluntary liquidation**

**Ms Matilda Emily Anderson**, last known address: Tamlaght O'Crilly, Upperlands, Maghera, Co Londonderry, BT46 5QQ; **Mr William Stirling**, last known address: Roe Park House, 40 Drumrane Road, Limavady; Ms Evelyn McCarroll, last known address: 'Marfello', 15 Ridgeway Park North, Portadown, Co Armagh; **personal representatives of Reverend John McCaffrey**, last known address: Methodist Manse, Saul Road, Downpatrick; **Ms Dorothy Vivien Malcolmson**, last known address: 18 Cranmore Park, Belfast, BT9 6JG; **Mr Albert B Northridge**, last known address: 20 Alexandra Park, Holywood, BT18 9ET; **personal representatives of Ms Edith Doris**, last known address: Main Street, Castledawson, Co Londonderry, BT45 8AA; **personal representatives of Mr Alexander Reginald Wakefield Richardson**, last known address: Drumlyn House, Gilford Road, Portadown; **Mr Dickson Scott**, last known address: 4 Orangefield Crescent, Belfast; **Ms Mary King Simmons**, last known address: 6 Gloucester Crescent, Portstewart, BT557NR; **personal representatives of Mary Elizabeth A Smyth**, last known address: 24 Osbourne Gardens, Belfast, BT9 6LF; **personal representatives of Mrs Jean Stirling**, last known address: c/o F Johnston, 2 Lincoln Heights, Old Galgorm Road, 72

Craigs Road, Cullybackey, Ballymena, Co Antrim; **Mr Philip Godfrey**, last known address: 306a Upper Newtownards Road, Belfast, BT4 3EU; **Mrs Elizabeth Kinkead**, last known address: Lenaderg, Banbridge, BT32 4PT; **Mrs Elizabeth J Dowling**, last known address: 8 Deramore Park, Belfast; **Mrs L Lorimer**, last known address: C/O Mrs T Brown, 16 Albert Street, Bangor, BT20 5EF; **Ms Winifred McDowell**, last known address: 17 Windmill Avenue, Carrickfergus, BT38 8DH; **Ms Elizabeth M Thornton**, last known address: Granogue, Stewart Avenue, Portadown, BT63 5DA; **Ms Margaret Wynne**, last known address: 166 Kingsway, Dunmurry, Belfast, BT17 9AH.

Would any solicitor having any knowledge of the whereabouts of any of the above persons or their personal representatives, please contact Ms Brigid Napier, Liquidator, Napier & Sons, Solicitors & Insolvency Practitioners, 1/9 Castle Arcade, Belfast, BT1 5DF; tel: 028 9024 4602; fax: 028 9033 0330; email bn@napiers.com

## TITLE DEEDS

**Estate of John R Walker**, property at Kinnewry, Killwalla, Westport, Co Mayo; area: 305 acres, 1 rood, 11 perches. Would anybody having knowledge of the original title documents relating to the above property please contact John Morahan of Oliver P Morahan &

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**In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) Act 1967: an application by Kate Devane**

Take notice that any person having an interest in the freehold interest or any superior interest of the following property at Grove Street in the barony of Ikerin, town of Roscrea and county of Tipperary, being part of the premises demised by an indenture of lease dated 9 February 1894, made between Martin Fanning of the one part and Edward Joyce of the other part, subject to an apportioned yearly rent of three pounds and 15 shillings.

Take notice that Kate Devane, as legal

personal representative of the late Richard Fairbrother's estate, intends to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest and all immediate interests in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the below named within 21 days from the date of this notice

In default of any such notice being received, Kate Devane intends to proceed with the application before the county registrar at the motions court in Clonmel on 26 November 2007, and will apply to the said county registrar 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 are unknown and unascertained

Date: 5 October 2007

Signed: Brady McGreevy (solicitor for the applicant), 35 Upper Fitzwilliam Street, Dublin 2

**In the matter of the Landlord and Tenant Acts 1967-1994 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 79 Morehampton Road, Donnybrook, Dublin 4. Applicant: Dr Hugh Joseph Galvin**

Take notice that any person having any interest in the freehold estate of the following property: all that and those the dwelling house, shop and premises known as number 79 Morehampton Road, together with the yard and plot of ground at the rear thereof, situate in the parish of St Mary's, Donnybrook, in the city of Dublin, together with the use of the passage or stable lane at the rear of the said premises entering on the Marlborough Road, held under an indenture of lease dated 10 May 1900 and made between Patrick J Newport of the one part and Michael Cullen of the other part for a term of 160 years from 1 May 1900, subject to a yearly rent of six pounds, 13 shillings and four pence (£13.64) and to the covenants and conditions therein contained.

The above-named applicant intends to submit an application to the county registrar for the county of the city of Dublin to acquire the freehold interest in the aforesaid premises, and any party

asserting that they hold a superior interest including the freehold reversion in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the applicant's below-named solicitors within 21 one days of this notice.

And take notice that, in default of any such notice being received, the applicant intends to proceed with the application before the county registrar, on the expiry of 21 days from the date hereof, to have the question of whether he is entitled to acquire the fee simple and all other intermediate interests in the above property under part II of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 or under any other statutory provision, where the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown and ascertained.

Date: 5 October 2007

Signed: O'Hagan Ward & Company (solicitors for the applicant), 31-33 The Triangle, Ranelagh, Dublin 6

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[mw@fearonlaw.com](mailto:mw@fearonlaw.com)

**PROPERTY**  
John Phillips  
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[ajp@fearonlaw.com](mailto:ajp@fearonlaw.com)

**PROBATE**  
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Web site: [www.berdagueraabogados.com](http://www.berdagueraabogados.com)

**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 Joseph O'Reilly**

Take notice that any person having an interest in the freehold estate or in any superior interest in the property known as 17/18 Henry Place, Dublin 1, comprised in folio DN117163L and held under a lease dated 26 July 1789 from William Betty to John Mooney for 999 years from 1 May 1789 at the since-adjusted yearly rent of £12.12.0, now €16.

Take notice that Joseph O'Reilly, of Usher House, Main Street, Dundrum, Dublin 14, being the person entitled under part 2 of the 1978 act intends to submit an application to the county registrar for the city of Dublin at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for the acquisition of the fee simple 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 to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, Joseph O'Reilly 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 said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to any such superior interest up to and including the fee simple in the aforesaid property is unknown or unascertained.

Date: 5 October 2007

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

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

Description of the property: all that and those the hereditaments and premises known as 107c Malahide Road (also known as 107CA and 107CB Malahide Road), Dublin 3, and formerly known as number 101 Malahide Road, in the parish of Clontarf and city of Dublin. An application by Amethea Limited (the applicant).

Take notice that the applicant 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, held under indenture of lease dated 8 August 1938 between John E Dagg of the one part and Thomas Bedford Junior of the other part, for a term of 146 years from 25 March 1936, subject to the yearly rent of 12 pounds, ten shillings thereby reserved and to the covenants and conditions on the part of the lessee contained therein.

Take notice that any person having an interest in the freehold estate of the aforesaid property and any party asserting that they hold a superior interest in the aforesaid property or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

**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*.

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

Date: 5 October 2007

Signed: Niamb B Moran & Co, Solicitors (solicitors for the applicant), 8 The Avenue, Tyrrelstown Town Centre, Dublin 15

**RECRUITMENT**

**TRAINEE SOLICITOR**

Hard-working, bright trainee (post-PPCI) seeks new training contract. Experience in conveyancing and litigation. Available to commence November 2007. CV on request. Enquiries to **box no 92/07** or email: Traineecontract@gmail.com

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Law Society of Ireland

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Law Society of Ireland

# Fostering successful partnerships



## ■ PRACTICE POSITIONS – DUBLIN

### **Commercial Property, Senior Associate level**

#### **Dublin CC - PP0284**

This well-regarded niche practice requires an ambitious practitioner to join as a Commercial Property specialist. The firm acts for a diverse range of domestic clients dealing with interesting and challenging work, advising on all aspects of commercial property work including landlord and tenant, investments, acquisitions and disposals. A highly competitive salary and benefits package will apply.

### **Corporate, Senior Associate level**

#### **Dublin CC - PP0281**

This successful Dublin-based law firm is seeking an experienced solicitor to join the Corporate Department. You will deal with drafting, negotiating and finalising acquisition documentation within a team. You will also lead transactions from time to time. You will have had exposure to mergers and acquisitions as well as general banking and financial services work. Attractive remuneration applies, commensurate with experience.

### **Tax Advisor, Senior Associate level**

#### **Dublin CC - PP0282**

This highly-rated Dublin-based law firm is seeking an experienced tax practitioner to join the team. The position will involve advising on all aspects of Irish taxation including inheritance tax, capital gains tax, income tax and stamp duty. You will also advise personal and business clients on the use of double tax treaties. You will have solid experience in general tax including some of the areas mentioned above. Outstanding remuneration and bonus will be offered to the successful applicant.

### **IP/IT, Associate level**

#### **Dublin CC - PP0272**

This highly regarded Dublin firm seeks to recruit an additional IT/IP solicitor to join its expanding department. The successful candidate will have previous exposure to IP, IT and general commercial work from a recognised practice together with sound academics. Our client will pay top salaries for first-class candidates.

### **EU/Competition, Associate level**

#### **Dublin CC - PP0278**

An opportunity has arisen for a competition lawyer to join this top firm's EU/Competition team. There is a wide range of work on offer including licensing and distribution, restrictive practices and market dominance. First-rate salary and benefits package applies, commensurate with experience.

### **Litigation, Associate level**

#### **Dublin CC - PP0276**

This highly successful law firm is seeking a senior solicitor to join the Litigation Department. You will deal with public sector work, contentious and advisory, as well as High Court litigation. You will have solid experience gained at a reputable firm. You will be accustomed to a target-driven work environment and have a commercial approach to your work. Very competitive remuneration applies, commensurate with experience.

### **Banking/Property Finance, Associate level**

#### **Dublin CC - PP0275**

Due to expansion, this highly successful law firm is seeking an experienced solicitor to join the Banking Department. You will have experience in the Banking and Financial Services sector, ideally in the areas of property-based lending, general asset and tax based finance and corporate/commercial lending. You will have strong interpersonal skills and the ability to build relationships at all levels across the firm. Very competitive remuneration, commensurate with experience.

### **EU/Procurement, Associate level**

#### **Dublin CC - PP0285**

This top-flight Dublin law firm is seeking an ambitious solicitor to join the EU team, focusing mainly on procurement issues. You will have solid experience coupled with a strong academic background and good technical skills. Excellent remuneration applies, commensurate with experience.

### **Litigation Paralegal**

#### **Dublin CC - PP0288**

This top-flight firm Dublin law firm seeks to recruit an additional paralegal to join its expanding Litigation Department. You will provide support to the solicitors in the department in all aspects of their transactions. You will have some legal experience, ideally in a litigation environment. The successful candidate will be a bright, enthusiastic individual with an interest in this practice area. Attractive remuneration applies, commensurate with experience.

### **Projects, Assistant level**

#### **Dublin CC - PP0286**

An opportunity has arisen for a solicitor to join the expanding Projects department of this well-regarded firm. You will deal with a mixture of interesting work including procurements. You should be a qualified solicitor with some projects experience, excellent academics and a keen interest in this practice area. Very competitive salary and benefits package will apply.

**For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at:  
Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.  
T +353 (0) 1 670 3997 E mbenson@benasso.com**

## Recognising talent's one thing... finding a truly successful fit is another

### ■ PRACTICE POSITIONS – LONDON

#### Corporate/M&A, Junior level

##### London - PP0261

An opportunity has arisen for an M&A lawyer to join the Corporate Department of this leading London law firm. The team offers a variety of top quality corporate and M&A work with a truly international flavour. You will benefit from training and mentoring whilst encouraged to work independently and develop your career. You will have strong academics and experience gained at a reputable law firm. Outstanding newly qualified solicitors will be considered. Excellent salary and benefits package applies.

#### Corporate/M&A, Associate level

##### London - PP0262

This highly-regarded London law firm seeks an experienced M&A lawyer to join the team. You will have solid corporate experience with strong exposure to M&A transactions. You will have strong interpersonal skills as well as the ability to work independently. A competitive salary and benefits package applies.

#### Corporate/Private Equity, Junior level

##### London - PP0259

An opportunity has arisen for a Private Equity lawyer to join the Corporate Department of this prestigious London law firm. You will be an ambitious lawyer with some prior exposure to Private Equity work. Outstanding newly qualified candidates will also be considered. You will have first class interpersonal skills and will be given the support and training you need to flourish. A competitive salary and benefits package applies.

#### Corporate/Private Equity, Associate level

##### London - PP0260

Due to expansion, an opportunity has arisen for an experienced Private Equity lawyer to join the Corporate Department of this prestigious London law firm. You will be an ambitious lawyer with a solid corporate background, including exposure to Private Equity. You will have good post-qualification experience, outstanding interpersonal skills and the ability to work independently. A competitive salary and benefits package applies.

### ■ IN-HOUSE POSITIONS

#### Head of Legal – International Financial Services

##### Dublin - IHNBO023

Reporting to the Global Head of Legal Affairs, you will be responsible for all legal matters in the Dublin office of this international financial services company. Key responsibilities will include perusing documentation from a legal prospective, preparing standard documentation and, if appropriate, credit facilities and foreign exchange facilities. You will also be expected to achieve commercial objectives and be responsible for risk management. There is a generous salary and benefits package available for the successful candidate.

#### Solicitor

##### Dublin CC- IHB0003

This first-rate Irish bank seeks a qualified solicitor, with experience in the funds industry, to join the legal team, working on the Securities side of the business. You will have good interpersonal skills and strong business acumen. You will also have the ability to build strong relationships within the business and across the legal function. A highly competitive salary and benefits package applies.

#### Senior Lawyer

##### Cork - IHNBO035

This leading Irish energy company is seeking a senior corporate solicitor to join the in-house legal team. You will provide advice on a wide range of legal and regulatory issues and supervise external legal advisors where appropriate. Duties will include drafting and negotiating a wide range of commercial agreements as well as the day-to-day running of the department. Experience in the areas of energy, regulation, commercial contracts, construction, projects or a related area will be a strong advantage. Excellent remuneration applies, commensurate with experience in addition to a strong performance element.

#### Lawyer

##### Cork - IHNBO036

This leading Irish energy company is seeking a corporate solicitor to join the in-house legal team. You will provide advice on a wide range of legal and regulatory issues. You will also be involved in the day-to-day running of the department. Excellent remuneration applies, commensurate with experience in addition to a strong performance element.

#### Legal Advisor

##### Dublin CC - IHB0004

The Corporate Banking arm of this highly regarded national bank seeks a Legal Advisor to join the legal team. The position reports to the Head of the Legal Department. You will be an experienced legal advisor with strong people skills and the ability to develop relationships at all levels. You will have a thorough understanding of the banking sector and familiarity with Market practice. You will have a proven track record of providing legal advice in a corporate context. You will be familiar with current legal and regulatory developments in the sector. A competitive salary and benefits package applies.

# Legal Advisor

## Dublin



Commission for  
Communications Regulation

€Excellent

The Commission for Communications Regulation (ComReg) is an independent agency which facilitates the development of the competitive communications sector in Ireland by implementing effective regulatory policies.

An exciting opportunity has arisen for an experienced professional to join as a Legal Advisor. The Commission for Communications Regulation is a fast-moving and dynamic environment which encourages professionals to fully utilise and expand their technical and managerial skills.

### The Role

- Provide solution focused and value added legal advice on communications and regulatory issues.
- Prepare and draft regulatory instruments including determinations, directions and enforcement measures.
- Manage and handle disputes including conduct of litigation.
- Provide guidance & mentoring on all legal issues for the company.

### The Person

- Should be an experienced lawyer with excellent analytical and drafting skills.
- Must have a practical understanding of EU law - preferably in the communications and/or regulated sectors.
- Experience in competition, public administrative law and litigation would be an advantage.
- Strong project management and communication skills.

Interested candidates should contact Hilary Flynn for a confidential discussion on 01 662 1000. Alternatively send your CV in strictest confidence to [h.flynn@brightwater.ie](mailto:h.flynn@brightwater.ie)



36 Merrion Square, Dublin 2.  
Tel: 01 662 1000

Email: [dublin@brightwater.ie](mailto:dublin@brightwater.ie)  
Web: [www.brightwater.ie](http://www.brightwater.ie)

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**CORPORATE LAWYERS - DUBLIN €70-120K**  
Top law firms in Dublin are now looking for commercial/corporate solicitors. You will have experience in some of the following areas: M & A, commercial restructuring, commercial advise, securities, private equity, fundraising, commercial contracts and compliance. These firms offer great opportunities for career development.

**IN-HOUSE COMMERCIAL LAWYER X 2 - CORK €80-100K**  
Our client, a leading and household known Irish company with an annual turnover of approximately €1bn is now looking for a Senior Commercial Lawyer and a Commercial Lawyer. Reporting to the Chief Legal Officer, the successful candidates will be key members of our client's legal department. The successful candidates will provide advice on a wide range of legal and regulatory issues across the business and will be responsible for supervising external legal advisers where required. Duties will include drafting and negotiating a wide variety of commercial agreements. The successful candidates will also be involved in the day-to-day running of the legal department.

**COMMERCIAL PROPERTY SOLICITOR - DUBLIN CITY CENTRE €80K+**  
A leading Commercial Law firm in Dublin are now seeking a commercial conveyancing solicitor with experience of drafting commercial leases, commercial site acquisition/disposal and landlord and tenant issues. The successful candidate will have experience in commercial conveyancing transactions advising investors, developers and financial institutions.

**EU / COMPETITION LAWYER - DUBLIN CITY CENTRE €75K+**  
Top 5 Law firm now require an experienced EU/Competition Lawyer to assist in providing expert advice on all aspects of EC Competition, Commercial and Regulatory matters, including merger control, cartel and dominance issues, public procurement law and state aid rules. Challenging desk for an ambitious lawyer.

**IP/IT SOLICITOR - DUBLIN 2 €65K+**  
A boutique practice with a growing reputation is now looking for an experienced IP/IT solicitor to advise its clients on IP/IT and related commercial matters. You should have good drafting skills, a commercial approach and the ability to work relatively independently.

**LITIGATION SOLICITOR - DUBLIN 2 €80K+**  
On behalf of a highly successful Top 20 law firm, we are now seeking a senior solicitor to join its Litigation Department. The successful candidate will deal with public sector work, contentious and advisory, as well as superior court litigation files. You will have experience ideally in Administrative law, Statutory law, Public Rights law, Judicial Review or Class Action, preferably gained at a reputable firm. This is an excellent opportunity in a progressive and growing law firm with excellent career advancement potential.

**CONSTRUCTION/PROJECTS LAWYER - PARTNER - DUBLIN CITY CENTRE €120K+**  
An opportunity now exists for a senior construction solicitor to set up and develop a Construction desk in a leading Top 15 Law Firm that has a strong client base of Commercial Property Developers. The firm is experiencing a high demand from its clients for this service as many other firms are conflicted. The ideal person has experience of a high level of involvement in a wide range of PPP projects dealing with private and public sector clients and would have gained exposure to high profile projects.

**CAPITAL MARKETS/FINANCIAL SERVICES SOLICITOR - DUBLIN 2 €70-100K**  
Established international law firm requires capital markets and banking lawyers at all levels to join its rapidly growing practice in Dublin. Working directly with partners and clients you need not have previous experience in capital markets law but have some commercial law work experience from a recognised law firm. Excellent career progression and financial package offered to the successful candidate.

## ARE YOU READY TO JOIN US IN GALWAY?

Ronan Daly Jermyn (RDJ), a leading commercial law firm, has agreed a merger with William B. Glynn Solicitors, a long-established and successful practice in Galway city. The newly merged Galway office is named RDJ Glynn.

This merger means we are now looking to grow our legal team in Galway, providing new specialist capabilities in key areas. With this in mind we are currently inviting applications in four practice areas: commercial, commercial property, employment and tax.

If you have the right skills, qualifications, experience, drive and ambition to reach the highest levels of professional achievement, we would very much like to hear from you.

### For further information

log on to our website, [www.rdj.ie](http://www.rdj.ie)

Please send your CV, marked 'Private & Confidential' to:  
Lynda O'Leary, HR Manager, Ronan Daly Jermyn, 12 South Mall, Cork  
or email [recruitment@rdj.ie](mailto:recruitment@rdj.ie)

All applications will be treated in strict confidence.

### Galway: RDJ Glynn

Aengus House, Long Walk, Galway, Ireland.  
Tel: +353 (0) 91 594777  
Fax: +353 (0) 91 567316

### Cork: Ronan Daly Jermyn

12 South Mall, Cork, Ireland.  
Tel: +353 (0) 21 480 2700  
Fax: +353 (0) 21 480 2790



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Please contact Michelle Nolan, Jo McAndrew and Marguerite Morgan and they will be delighted to assist you in your job search.

### Commercial Solicitor – Excellent Clients // Dublin

Applicants must have a good knowledge of contract law and possess first rate drafting skills. This is an ideal opportunity to work alongside experienced lawyers and develop your expertise across a broad commercial/corporate base. My client is looking for a talented individual with the drive and ambition to progress their career to the next level.

Ref: 478 - €70k + Excellent Bonus

### Corporate Lawyer - Top Dublin Firm

This role will allow you to handle a broad range of corporate transactions including mergers and acquisitions, private equity deals, fundraising and corporate governance. You are likely to have an impressive academic background, although applications are welcomed from all levels of Solicitors. Applications are welcomed from candidates who are interested in building on their experience in a medium/large City or regional firm where you have been supporting partners and other senior lawyers on some sizeable deals. Experience of private equity, fundraising and corporate governance would be useful. Applicants should be articulate, commercial, confident, and have strong technical skills.

Ref: 477 - €Neg + Benefits + Bonus

### Corporate/Commercial Solicitor // Cork

This progressive Cork city practice is currently looking to secure the services of a focused and career-driven Company Commercial specialist to continue developing and promoting this already busy part of the firm. This is an important strategic appointment and swift career progression is assured for a candidate with the requisite client-handling and technical skills. The successful candidate will be working alongside the existing Commercial partners and will be given first-rate opportunities for personal and professional development. Salary + healthy commission will be awarded to reflect current billings, skills and experience.

Ref: 296 - €Neg + Bonus + Benefits

### Lex Consultancy // Professional Roles

Michelle Nolan is your Professional Legal Staff Recruitment Consultant. Michelle is from Dublin and is a graduate of University College Dublin and has also completed a number of FE1's. She ensures that an advisory and friendly relationship is enjoyed by all the clients and candidates with whom she works with.

### Employment Lawyer // Dublin

An Employment solicitor is required to join this highly regarded and expanding firm. This is a prospect that doesn't arise too often as the firm prides itself on low turn over of staff. You will be dealing with your own caseload of contentious and non contentious matters. You will be actively involved with the team in providing seminars on employment matters.

Ref: 486 - €Neg

### Commercial Property & Banking Solicitor // Limerick

Join this expanding niche practice in Limerick city and be on time to move to bright and modern offices. Ideally, applicants should have experience in Banking & Commercial Conveyancing. This role might suit someone who is relocating home to Limerick or is no longer interested in working for a larger practice. Employees of the firm are well appreciated and in turn for a good working attitude you will be financially rewarded. There is an excellent salary on offer as well as a bonus and a very fair commission structure. In essence, the more money you bring in, the more you will make! The applicant will be advising developers and large financial organisations on legal issues. Tax experience is not necessary but would be welcomed. Excellent drafting skills are required. Ref: 453 - €Neg

### Commercial Property Solicitor // Dublin

My client who is based in Dublin city centre is looking for a commercial property solicitor with strong legal and marketing skills. You will be a commercially focused team player with the technical skills and experience to get involved in varied work dealing with a range of freehold and leasehold transactions. The successful candidate will have the right commercial approach and be keen to develop their career in a challenging but supportive environment. An ability to develop excellent relationships with existing and target clients is essential.

Ref: 474 - €75k + Benefits + Bonus

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Email: [sarahk@thepanel.com](mailto:sarahk@thepanel.com) or [stephen@thepanel.com](mailto:stephen@thepanel.com)



THE Legal PANEL

## PRIVATE PRACTICE

### Business & Legal Manager – Aviation SKJ23012 - to €130,000

Our client, a leading and highly acquisitive aviation leasing organisation is actively recruiting a Legal and Business Manager for their expanding Dublin office. You will be expected to perform a senior project management role, with a focus on execution, completion and compliance aspects of transactions relating to the fleet of modern passenger aircraft, together with higher management responsibilities within the Business & Legal group. This role involves a high degree of customer contact. Experience in aircraft leasing is highly desirable, however other experience in managing finance or commercial cross border transactions will be considered.

### Senior Legal Advisor – Global Markets SKJ23427 - to €120,000

One of Ireland's leading banking institutions is currently recruiting for their expanding Global Markets Division. You will be a qualified barrister or solicitor coming from a financial services background or from a banking department in private practice. Your duties will include drafting, reviewing and negotiation of legal documentation in the areas of Trade Finance, Treasury and Treasury products, payments and customer documentation including netting agreements (ISDA/CSA/GMRA). Managing the legal aspects of the implementation of business projects in the group, identifying legal risk in day to day business and participating in the risk management process for new product proposals. This position is well remunerated and includes a competitive benefits package including car allowance, stock options, pension and a substantial bonus.

### In House Counsel - IT Ref: SK J20978 to €100,000

Reporting to the Head of Legal, you will be the sole counsel based in Dublin with responsibility for the EMEA legal function. You will have experience preferably from the software/technology sector with good contract negotiation and

employment law experience. An additional European language is a distinct advantage for this role as you will be liaising with the European based entities. In addition you will be accountable for corporate governance for all European entities, ensuring all filings are up to date and legal obligations are respected. This is a challenging and exciting opportunity for the right candidate.

### Company Secretary – Top 10 Accountancy Firm Ref: SKJ2267 - €Negotiable

One of Ireland's leading accountancy firms is actively recruiting for an experienced Company Secretary to join their expanding department. You will be an experienced Corporate Secretary either at the final stages of the ICSA exams or a full member of the institute. This role involves managing and taking responsibility for a portfolio of clients so the ability to work autonomously is essential. This position is well remunerated in terms of salary and benefits.

### Legal Advisor – Regulatory body Ref: STK J27665 - €Negotiable

A large regulatory body currently has an interesting and varied position for a qualified lawyer with excellent analytical and drafting skills in their Dublin city centre office. Ideally you will have a thorough knowledge of EU law, with experience in public, competition, administrative law and litigation. This is a fascinating role with client interaction, solid benefits as well as continuous training and development.

### Legal Advisor – Leading Bank Ref: STK J24337 €55,000 - €70,000+

Leading Irish banking institution has a newly created opportunity for a qualified solicitor in their Corporate Banking Unit section. You will have an understanding of the workings of the banking sector and ideally will have experience of this area either through a highly regarded private practice law firm or in house position. Strong interpersonal skills, familiarity with the market and good academics are required for this role. Salary and benefits commensurate with experience.

## IN HOUSE

### Banking & Financial Services Lawyer – Mid Tier Firm Ref: SKJ19588 - €Negotiable

The successful candidate will report to the Head of the Unit and the position will involve a broad range of responsibilities including, but not limited to: Advising on corporate lending generally, advising lenders on acquisition financing, advising banks / borrowers in relation to secured / unsecured bilateral and syndicated loans. Clients include multi-nationals, financial institutions, owner managed businesses as well as public bodies and regulatory authorities.

### Corporate/Commercial Lawyer Ref: SKJ14953 to €85,000

One of the top 20 firms requires a lawyer to join their expanding commercial team. The successful candidate will be required to work on high profile and complex cases, M&A's, private equity and venture capital transactions. They will also deal with joint ventures and provide general advice to high level clients. On the commercial side they will be required to draft licensing agreements, contracts and all relevant policies and procedures.

### Commercial Property Lawyer – Top Tier Ref: STK J29087 to €70,000+

Leading Irish Commercial Property Department of top law firm has a vacancy for a talented, ambitious and focused solicitor with experience working with high end commercial property transactions to join their team. With a large and diverse range of clients, this position is suited to solicitors who are open to working in a challenging environment and learning from the market leaders in this field.

### IP Lawyers – Leading Law Firm Ref: STK J29887 - €70,000+

A hugely successful large firm currently require driven, focused and ambitious candidates to join their team in Dublin city centre. This is an excellent chance to develop your career in a firm which offers an opportunity to work mainly

their expanding Intellectual Property department. You will be expected to deal with copyright, patents, trademarks, design law, counterfeiting, data protection, media and entertainment law etc. Experience in some or all of these areas is preferred.

### Litigation Solicitor – North West Ref: STK J23498 €Negotiable

A very busy, expanding practice in the North West is looking for a solicitor to specialise in litigation with district, circuit and some high court work. There will also be family law casework from time to time. This firm is a modern, progressive outfit with a friendly working atmosphere and offers excellent career progression. You will be an enthusiastic solicitor who is possibly looking for a move back home after working for a few years in Dublin or alternatively just looking for a change in the North West.

### General Practice Solicitor – Wexford Ref: STK J23547 €Negotiable

A progressive and very friendly practice in Wexford has a vacancy for a solicitor with some experience working in Conveyancing, Probate and Litigation to join their team. Ideally you will have some knowledge from working in a similar environment and this role will suit someone who has high levels of motivation, efficiency and initiative. If you are looking for a move from Dublin back home to the South East this truly is an excellent opportunity.

### Part-time Lawyer – IT Ref: SK20945 - €Negotiable

Expanding software development co. requires a Company Lawyer, 3 days per week. City centre based. A background in IT is an advantage but not essential.



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## IRELAND

### EU / COMPETITION DUBLIN

With a significant EU practice and some of Ireland's leading lawyers, this top-tier firm offers an excellent prospect for those who seek a real career move. High profile contentious and non contentious work. Great prospects. **Ref: 16313**

### PROPERTY FINANCE DUBLIN

This Leading Dublin firm has an outstanding banking practice and now seeks to recruit a property finance lawyer to work within its highly-regarded team. A superb role offering a very competitive remuneration package. **Ref: 11973**

### BANKING DUBLIN

Join one of the largest dedicated banking teams in Ireland. Working on behalf of domestic and international banks and financial institutions. An outstanding range of high quality work and exceptional prospects. **Ref: 12303**

### CORPORATE DUBLIN

This firm has an impressive corporate team and works on behalf of a high profile international and domestic client base. It now seeks exceptional corporate lawyers to join its very successful team. Join a market-leader. **Ref: 16333**

### PENSIONS DUBLIN

This top-tier firm seeks to further strengthen its very impressive pensions offering with an associate level hire. An opportunity to work with one of the leading partners in the industry. Great opportunity. **Ref: 16323**

### COMMERCIAL PROPERTY DUBLIN

This firm houses one of Ireland's largest property teams and continues to follow a strategic expansion plan. Candidates with a track record in commercial development and investment work are of particular interest. **Ref: 12363**

### PROJECTS DUBLIN

This superb projects team has developed an impressive client portfolio and continues to make significant wins. This is a great role for those looking to gain experience with a larger firm across the board. **Ref: 12023**

### BANKING DUBLIN

A major player in the international finance market, our clients have one of the most impressive banking practices in Ireland. A fantastic role working offering a broad mix of quality work. Excellent transactional work. **Ref: 11953**

### IN-HOUSE CORK

In-house legal role working for this Cork based energy company. Ideally candidates will have expertise in the areas of energy regulation, commercial contracts, construction, projects or a related area will be a strong advantage. **Ref: 16283**

### IT / IP DUBLIN

Top tier firm seeks a strong technical commercial lawyer to join its non-contentious IT/IP team. The role offers a general mix of IP, IT, Data Protection and Commercial Contracts work. Excellent role with prospects. **Ref: 16363**

### INVESTMENT FUNDS DUBLIN

Market leader in Ireland advising fund promoters and service providers on all aspects of setting up, listing and operating all types of funds both domestic and offshore. Outstanding package is on offer to the successful candidate. **Ref: 16213**

### IN-HOUSE COUNSEL DUBLIN

This leading global reinsurance company requires an in-house lawyer to handle a range of financial services, corporate and reinsurance matters. Very competitive package and benefits. Some travel required. **Ref: 16233**

## LONDON

### PROPERTY £72,000

This strong national firm has a rare opportunity to join its outstanding real estate team. You will be exposed to a range of real estate work and will be supported to reach your career goals. Apply now. **Ref: 368300**

### FINANCE £64,000

Exciting opportunity has arisen for a finance lawyer to join a top UK law firm outside of the Magic Circle. Work on offer will include both investment funds and derivatives work along with more mainstream matters. **Ref: 390340**

### PENSIONS £72,000+

Excellent opportunity to join mid-sized City firm acting for high end client base with European reach. Working with established team, the work will include a percentage of stand-alone work. Great prospects. **Ref: 482890**

### PROJECT FINANCE £70,000

International firm recognised for its cutting-edge, international work offers a supportive culture within which to develop a first rate career. Interested in lawyers from the Irish. Superb opportunity not to be missed. **Ref: 440450**

### BANKING £70,000+

This is an excellent choice for a banking lawyer looking to undertake complex cross-border deals in a different environment from the Magic Circle. The team has a genuine reputation amongst banks. Good choice for a talented banking lawyer. **Ref: 360380**

### PRIVATE CLIENT £62,000+

Rare and exciting role has arisen within one of the City's leading private client teams at this international firm. Assistants advise on trust law and tax issues, wealth preservation and succession planning issues. **Ref: 555260**

### STRUCTURED FINANCE £98,000+

The London office of this US firm has a small but highly profitable and successful team. Focusing exclusively on international work, the team deals with structurings and derivatives. High quality work on offer. **Ref: 437750**

### CORPORATE £90,000+

Platinum opportunity to take career to the next level by joining collegiate team at leading US firm. Tremendous transactional work awaits, together with marketing/business development. Excellent role with prospects. **Ref: 478890**

### FUNDS £100,000+

New York firm actively seeks private equity lawyer looking to join expanding team offering close-knit and collegiate team environment. Excellent remuneration package and work/life balance is on offer to the successful candidate. **Ref: 494490**

### LITIGATION £90,000+

This top-class US firm is looking to add a talented litigation lawyer to its London office. The role will involve a broad range of fantastic quality work. Brilliant package awaits the successful candidate for its thriving London office. **Ref: 524970**

### ENERGY / PROJECTS £100,000+

Top role for an energy projects lawyer at this well-established New York firm. Associates receive high levels of responsibility at an early stage in an array of corporate, commercial and finance-related transactions. **Ref: 516980**

### BANKING £92,000+

This leading US firm boasts one of the best banking practices in the European and US market. It is currently looking for strong Irish lawyers to join its team. Mid-Atlantic rates. Exceptional career progression prospects. **Ref: 324810**



Erica MacKinnon

Alex MacKenzie

Contact Erica MacKinnon or Alex MacKenzie  
on +44 (0)131 226 0640.  
E: [ericamackinnon@taylorroot.com](mailto:ericamackinnon@taylorroot.com)  
E: [alexmackenzie@taylorroot.com](mailto:alexmackenzie@taylorroot.com)

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# Where will the future take you?

## Dublin Practice

### Commercial Property Solicitor €85,000 - €100,000+

The ideal candidate for this role will be able to demonstrate an understanding of acting in the acquisition and disposal of commercial properties, dealing with newly constructed retail, industrial & office developments and acting for landlords and tenants in relation to commercial leases of retail industrial & office premises. This is an outstanding opportunity to join one of Ireland's leading commercial property departments. Ref: 18421

### Corporate Solicitor €70,000 - €90,000

Our well respected client is a leading law firm based in the city centre. They are currently seeking to expand their corporate department. The successful candidate will be involved in all aspects of corporate and commercial law advising both Irish and international public and private companies in a relation to a broad range of corporate transactional and advisory work. This exciting position offers an excellent package. Ref: 33756

### Banking Solicitor €60,000 - €85,000

Our highly reputable client is currently seeking to recruit an experienced banking solicitor to join their busy team. The ideal candidate will be experienced in property-based lending, general asset and tax based finance as well as corporate/commercial lending. The successful individual will have strong business acumen along with excellent client communication skills. This is a superb opportunity for the right candidate. Ref: 18179

### Solicitors €55,000 - €60,000

One of Ireland's premier law firms seeks to appoint solicitors from various backgrounds to work as part of their team. Must have the drive and ambition to succeed in a corporate environment and ideally have experience with commercial law from an apprenticeship. This is an excellent opportunity to build a profile with one of the most highly regarded law firms in Dublin. Excellent salary and package on offer plus superb prospects. Ref: 16638

## Dublin In-House

### Solicitor In-House €120,000

Business & legal manager required to join a busy legal team. Must have several years in an airline/aircraft leasing company or in-house with a law firm working on aircraft leasing or finance transactions. The successful individual will actively manage contract compliance issues with a focus on default management including lease restructurings, repossessions & associated litigation and bankruptcy matters in jurisdictions around the world. Ref: 33454

### Funds Lawyer €80,000

Our well known client is seeking to hire a qualified solicitor who has solid experience in the funds industry either from in-house or practice. The ideal candidate will have excellent interpersonal skills, drive, professionalism and competence along with superb IT skills and strong business acumen. Must also have proven ability to build effective working relationships within the business and across group legal services. Ref: 31496

### Solicitor - In-House €75,000

This semi-state financial institution seeks a qualified solicitor/barrister with a qualification in Irish law. The role includes the analysis of legal issues, the provision of legal advice and liaison with external advisors. Successful candidates may be involved in legal proceedings such as administrative sanction inquiries, court applications, appeals, judicial reviews and statutory enquiries. May also provide advice for payments & settlements issues and financial market issues. Ref: 33003

### Solicitor/Barrister €60,000

This is an outstanding opportunity for an ambitious and confident professional to join a busy state owned company. This excellent position will report to the company lawyer and will provide legal advice and support to the company lawyer/company secretary. The successful individual will also support the procurement and regulatory function of the organisation. This exciting role offers an excellent package to the right candidate. Ref: 30687



## Connaught/Munster

### Corporate Lawyer - Practice

€Negotiable

Our client, based in Limerick city, seeks a solicitor for their corporate practice area. This team has a strong reputation for providing a high standard of legal advice to an expanding list of clients including financial institutions, SMEs, start up companies, multi-nationals and public bodies. The ideal candidate will have solid experience practicing in the area of business law and applications from more senior candidates will also be considered. Ref: 33716

### Corporate Lawyer - In-House

€110,000

This leading Irish company based in Cork seeks to make 2 key appointments within their legal department. This is a unique opportunity for experienced practitioners of corporate law to forge a challenging in-house career outside of Dublin. The senior corporate role requires candidates to have considerable senior experience and the applicant for the corporate lawyer position must have minimum mid-level experience. Ref: 30771

### Commercial Litigation - Practice

€65,000 - €95,000

A leading firm in Cork city now requires a senior commercial litigation solicitor with several years' experience handling all forms of commercial disputes. This is a superb opportunity to join a thriving and dynamic firm of solicitors and gain fantastic experience. This role provides a chance to grow and develop as a solicitor and work with a professional and well rounded team. Must be self motivated, ambitious and comfortable working autonomously. Ref: 14712

### Corporate Lawyer - Practice

€65,000 - €95,000

This client is a dynamic firm based in Cork city with a strong reputation for providing high standard legal advice to their well established commercial clients (predominantly in the SME practice). The successful candidate can look forward to practicing in a firm with early responsibility and plenty of opportunities to carve out a significant commercial career. The ideal candidate will have a wealth of legal experience. Tax experience would also be an advantage. Ref: 31024

### Commercial Solicitor - Practice

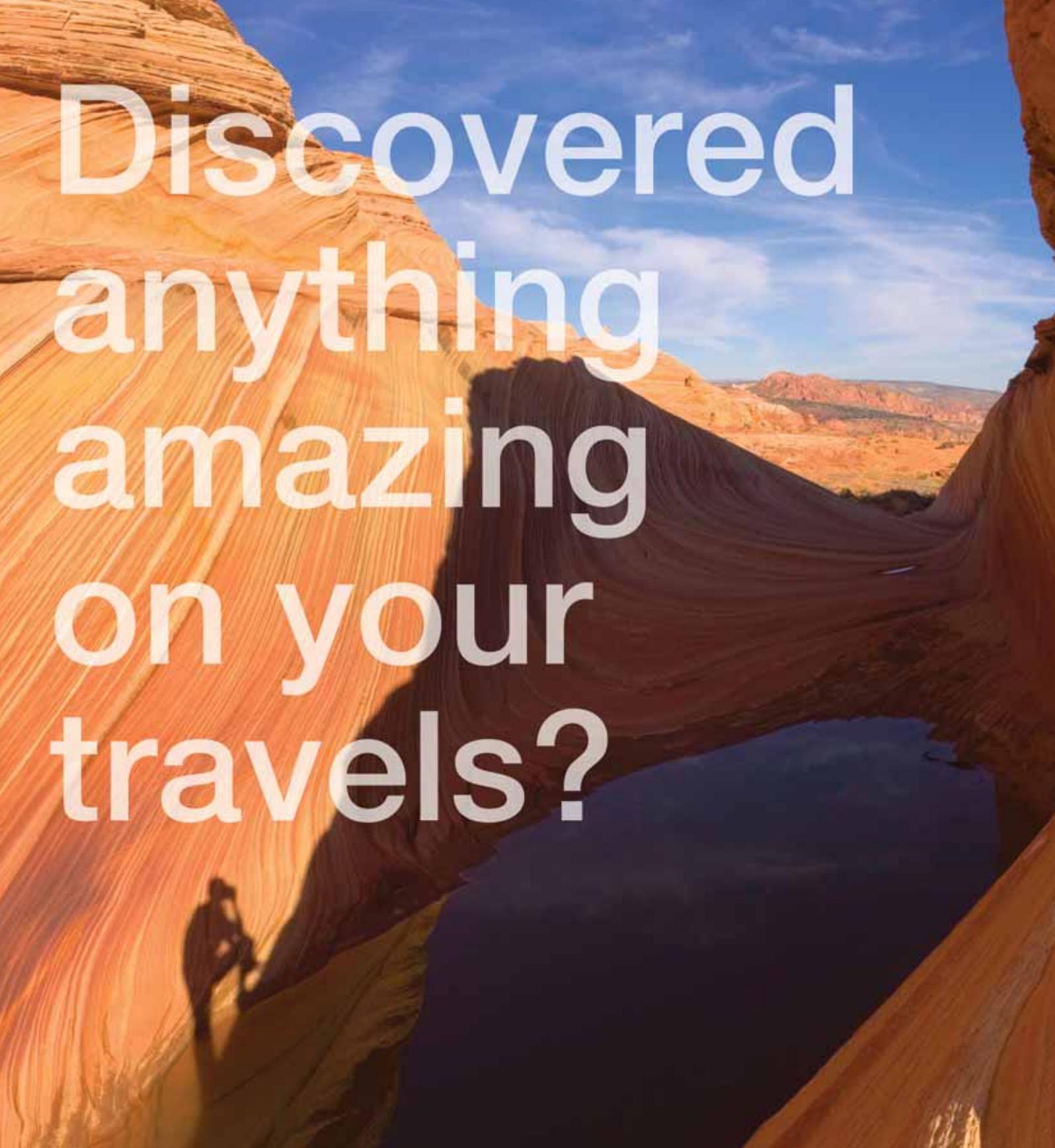
€55,000 - €70,000

Our client is a progressive firm of solicitors in Cork city. They deliver a prompt, efficient & high quality legal service and commercial law is central to their strategy. This practice seeks a solicitor, ideally trained in a commercially focused firm with solid experience to join their expanding team. The successful individual will work on high profile complex cases and provide general commercial advice to large well known clients. Ref: 12971

### General Practice Solicitor - Practice

€55,000 - €65,000

Strong firm with excellent partners and a superb reputation seeks an experienced general practice solicitor for their busy Waterford practice. This firm covers all areas of law including conveyancing, family law, commercial law and litigation. Must have an excellent academic background and have good people skills. Candidates experienced in conveyancing and civil litigation in the district and circuit courts are strongly advised to apply for this opportunity. Ref: 32193



# Discovered anything amazing on your travels?

Isn't it refreshing when you come across something a little different from the norm? Well, our surprisingly uncomplicated environment, balanced approach to life and truly supportive culture is just that. It's just one of the reasons why our firm is going from strength to strength, attracting exciting clients and challenging assignments from around the world. It's also the reason why we're now looking for some of the very brightest legal minds to help us continue on our journey.

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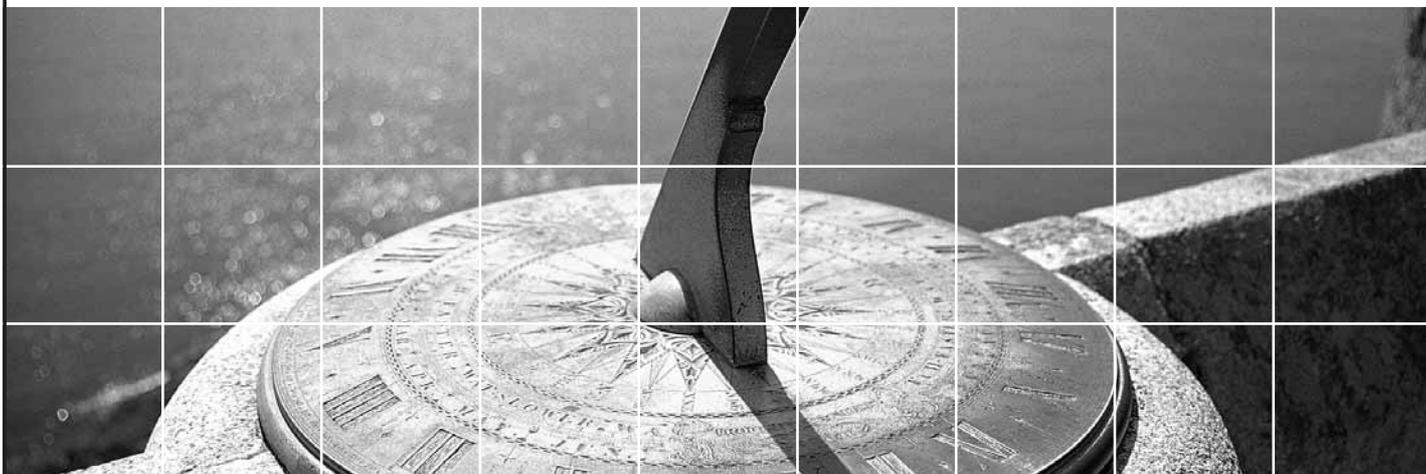
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# outstanding legal opportunities



## In-House

### Head of Legal and Compliance €Excellent + Benefits

Our client, a major global banking operation, provides corporate banking, structured finance, investment banking and other financial services to corporate clients, financial institutions and the bank's own global network. They now seek to appoint a Head of Legal and Compliance for their Irish function. This accomplished individual will report to the Managing Director in Ireland and the European Regional Heads of Legal and Compliance and he/she will be responsible for all legal matters of the Irish business. Ref: JO707370

### Senior Legal Counsel €150k + Bonus + Benefits

Our client is a new and exciting start up aerospace leasing company. Reporting to the CEO, the Senior Legal Counsel will have overall responsibility for all legal matters relating to aircraft leasing and financing, including drafting, reviewing and negotiating lease agreements. The successful candidate will also be responsible for consulting and coordinating with outside counsel, local counsel, tax counsel and other professionals concerning the operation of the business. Ref: JO679440

### Solicitor, Group Retail €90k + Bonus + Benefits

One of the leading financial institutions in Ireland now wishes to recruit a Solicitor who will play a key role within their retail division. The bank consists of 265 branches and has more than 1.3 million customers and approximately 5,100 staff across Ireland. The purpose of the role will be to provide the bank with expert commercial, cost effective legal services in all aspects of its business activities. The successful candidate will have excellent drafting and negotiating skills as well as a strong knowledge of financial products. Ref: JO679442

Interested candidates should forward their Curriculum Vitae to Claire Dunwoody at [claire.dunwoody@robertwalters.com](mailto:claire.dunwoody@robertwalters.com) or call (01) 633 4111.

These are just a selection of legal roles we have at the moment, to view a comprehensive list of current opportunities visit our website [www.robertwalters.ie](http://www.robertwalters.ie) or call our specialist team today on + 353 (0) 1 633 4111.

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## Private Practice

### Commercial Property Solicitor, Dublin €75-85k

This highly respectable 'top five' firm has an opening for a Commercial Property Solicitor. The role will involve advising clients in relation to investment property regarding acquisition and disposal, institutional funding arrangements, joint ventures, partnerships and mortgages. You will also be involved in drafting commercial leases as well as advising on landlord and tenant legislation. You must have previous commercial property experience. This is a tremendous opportunity for a talented Solicitor to become part of an exceptional commercial property department. Ref: 648160

### Commercial Litigation Solicitor, Cork €65-75k

Our client, a major player in the Munster region and located in the heart of Cork City, requires a Commercial Litigation Solicitor to join the litigation department of their expanding city centre practice. You will work closely within a well structured team dealing with a broad range of legal issues including commercial disputes, professional negligence, product liability and defamation/media law. The ideal individual will enjoy working in a fast paced environment and should also be capable of managing their own caseload. Ref: JO606680

### Commercial Property Solicitor, Cork €65-75k

A leading law firm in Cork City requires a Commercial Property Solicitor to join its well renowned commercial property team. This thriving practice will require the successful candidate to work on and advise clients in relation to all forms of commercial property matters including the purchase and sale of commercial property, property development projects as well as dealing with taxation issues arising from such transactions. The ideal candidate should have good experience in the field of Commercial Property. Ref: JO618460

Interested candidates should forward their Curriculum Vitae to Greg Rogers at [greg.rogers@robertwalters.com](mailto:greg.rogers@robertwalters.com) or call (01) 633 4111.

[www.robertwalters.ie](http://www.robertwalters.ie)



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**Dublin**

t 01 619 0400

**Banking** Dublin

Our client is a leading corporate services law firm. The banking division services clients across the board, to include: property and corporate/commercial based lending, general asset and tax based finance. Strong organisational skills, the ability to work as part of a team and a high level of motivation is essential for this big ticket role. Excellent prospects and a chance to develop your career with a real market leader. (ref: 15613/10)

**Energy** Dublin

Specialist Energy Group that has been involved extensively in recent changes within the Irish energy market. Supportive team in commercial surroundings handling a wide and varied range of legal and regulatory issues. Specific energy experience not essential but a transactional background and commercial awareness coupled with excellent academics are essential. Excellent salary and package available commensurate with experience. (ref: 16398/2)

**Aviation** Dublin

Outstanding opportunity to join an existing team handling high quality, high value transactional work. Department possesses unrivalled expertise in Aviation law. The role involves advising on finance, securitisation, leasing and acquisition of aircrafts to clients in Ireland and abroad, for lessors and a range of financial institutions. Candidates with banking experience coupled with excellent academics would also be considered. (ref: 16398/3)

**Corporate** Dublin

Leading commercial player requires senior corporate/M&A lawyer for its thriving practice. This lead role presents a rare opportunity to head/develop an established team. The ideal candidate will have local knowledge, marketing skills, and the desire to lead a team and build a department. Big ticket work handling a variety of entrepreneurs and established PLC's from the technology, finance and property sectors. Partnership prospects. (ref: 18187/3)

**EU Competition** Dublin

Our client is the market leader in Ireland specialising in EU, competition and anti-trust law. They possess an international and established client lists servicing both the private and public sectors. There are two roles available with both opportunities representing a challenge coupled with exceptional support and long term prospects. Package is guaranteed to include an excellent basic salary, bonus and benefits package. (ref: 15950/34)

**Intellectual Property** Dublin

Our client is an established corporate heavyweight (Legal 500) currently looking to recruit an IT/Intellectual Property specialist. You will work closely with the corporate team developing/implementing a strategy for expansion and experience in all of the above would be a distinct advantage. This leading player's client base stretches far and wide and includes: biotech, financial, software and manufacturing multinationals. (ref: 15613/11)

**PFI Projects** Dublin

Team advises a range of public and local authorities, private sector developers, contractors and designers in relation to all aspects of construction and engineering. Current team has been involved in many of the major infrastructural developments in Ireland in recent years. They work closely with the dispute resolution team in respect of construction disputes requiring Arbitration, Conciliation and other dispute resolution mechanisms. (ref: 15709/1)

**Corporate** Dublin

Our client, a corporate specialist has a number of opportunities available for academically strong, dynamic and ambitious lawyers. They handle work in both the both public and private sectors for many household names. Transactions frequently have a substantial international dimension and include: corporate finance, mergers and acquisitions, venture capital/private equity transactions and a wide range of corporate restructurings. (ref: 16398/1)

**Dublin****Corporate** Dublin

A leading Dublin firm requires a Corporate Solicitor to join their expanding commercial team. The successful candidate will be Irish/English qualified and be a proactive self starter able to work efficiently alone or in a team. Candidates must have experience of mergers & acquisitions, share purchase agreements and joint ventures, share purchase and business transfers. Envious list of clients to include government agencies and multi-nationals. (ref: 15616/4)

**Employment** Dublin

Opportunities in Employment Law like this are few and far between. Blue chip clients as well as SME's, OMB's, Public Sector and entrepreneurs. Mainstream employment work both contentious and non-contentious. Advice covers TUPE, redundancy, health and safety, contract drafting and policy advice. This is a terrific opportunity to get in with a leading player carrying out quality as well as cutting edge work. Excellent package and benefits. (ref: 15950/33)

**Intellectual Property** Dublin

Working as part of the Corporate / Commercial team you will be advising on the full range of Intellectual Property law, including contentious and non-contentious matters and the prevention of all hard and soft issues. In particular the department has a significant number of IT / software based clients and the role would have a bent towards Information Technology Law. Excellent salary, bonus and package on offer.. (ref: 15866/18)

**Trusts and Estates** Dublin

Our client provides specialist legal and taxation advice to a broad range of private, institutional and commercial clients on trusts and estates both domestically and internationally. Currently they are looking to recruit a lawyer with a range of skills, possibly AITI qualified, to work alongside their existing legal 500 team. High value prestigious work in commercial surroundings coupled with first class training and support. (ref: 15866/1)

**Commercial Property** Dublin

Unique opportunity for a specialist lawyer looking for a new challenge. Current work being undertaken is amongst the most high profile in Ireland and will continue to be so for years to come. They act for investors, institutional clients, developers and major retailers. They seek an ambitious lawyer with strong links to Dublin and a real commercial/charismatic approach. Long term prospects are second to none, as is quality of work, training and support. (ref: 15866/2)

**Dublin Office**t +353 (0)1 619 0400 f +353 (0)1 631 6009 e [dublin@g2legal.ie](mailto:dublin@g2legal.ie) 12 Merrion Square Dublin 2 Ireland

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Regions and In House

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**Commercial Property** Dublin

Thriving top 10 practice seeks to appoint a lawyer to its buoyant department. Work to include acquisition and disposal of commercial premises and acting for landlords and tenants in relation to commercial leases (negotiating and drafting). Significant client exposure from day one.

(ref: 15613/7)

**Residential Property** Dublin

Conveyancing specialist required for busy law firm in Dublin 4. Working independently you will advise on the sales and purchases of various properties with the possibility of some commercial conveyancing and probate work. Generous salary and benefits.

(ref: 15767/1)

**Commercial Property** Dublin

Mid tier firm with an envious reputation require 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 in an excellent central Dublin location. (ref: 15881/3)

**Commercial Property** Dublin

Central Dublin general practice requires an experienced commercial conveyancing solicitor with experience of working with large scale developers. This is an excellent opportunity to join a well respected team with a high quality reputation. Salary and benefits are commensurate with experience. (ref: 15897/1)

**Commercial Property** Dublin

Advise developers, property professionals, landlords and tenants, lenders and investors and other commercial clients in relation to all types of property projects and deals. Opportunities exist for ambitious lawyers with experience in development and investment work. (ref: 16332/3)

**Commercial Property** Dublin

Niche property and investment practice with 9 fee earners seeking an additional lawyer to advise on property work on behalf of various banks with projects values up to 250 million euros. Exciting prospects within growing firm.

(ref: 15709/1)

**Corporate & Commercial** Cork

Our client, a prestigious practice based in Cork, is currently looking to recruit a Solicitor familiar with company, contract and commercial law. The successful candidate's duties will include: mergers & acquisitions, venture capital and private equity investments, joint ventures, technology transfers and a wide range of commercial agreements. Excellent package and prospects. Genuine links to the area an advantage. (ref: 17867/1)

**Commercial Litigation** Cork

Our client seeks a commercial Solicitor to join their expanding team. The ideal candidate will have experience in district, circuit and commercial court work covering a wide range of commercial litigation issues to include: contract disputes, property disputes, property litigation, professional negligence, commercial debt recovery and insolvency. Excellent salary and prospects. (ref: 17867/3)

**In House** Galway

Our client, a large multi-national corporation is seeking a Solicitor to manage all legal aspects of the company's operations in the region. The successful candidate duties will include: supporting litigation, drafting and negotiating contracts including property leases, supply agreements and sales contracts and advising on regulatory and compliance issues. Excellent working environment. Salary and benefits commensurate with experience. (ref: 17913/2)

**Banking In House** Dublin

Our client is looking for a specialist with banking, corporate and commercial expertise. The role will require business acumen and excellent written/legal communication and drafting skills. With an eye for detail you must possess the ability to organise and prioritise a heavy workload containing cross border transactions particularly in the United Kingdom and America. Derivative, GMRA and ISDA experience desirable. (ref: 15600/2)

**Commercial Property** Cork

Leading property specialist requires assistant Solicitor with appropriate experience to handle a mixture of landlord and tenant, development and secured lending work. Commercial surroundings, an excellent client list, the benefit of a supportive and dynamic team, above market rate remuneration for the successful candidate. Perfect opportunity for an ambitious Solicitor. (ref: 17867/2)

**Defence Litigator** Limerick

Our client, a respected firm in Limerick is seeking a defence litigator. The successful candidate will have considerable experience in both the district and circuit courts defending in a broad range of actions. This is an excellent opportunity to join a friendly and expanding firm. Salary and benefits are commensurate with experience. (ref:15879/1)

**Commercial** Limerick

Our client has built its practice on solid foundations with the commercial team currently handling a broad range of work (M&A, company formations etc). They wish to expand into other areas of commercial law and with this in mind are looking at candidates with experience in IT, IP, Procurement, Public, Administrative, Competition or Pensions law. Successful candidates will have the ability to market their own department. (ref:17428/3)

**Technology (In House)** Dublin

Multi-national Technology Company require Solicitor with extensive experience in commercial contracts such as negotiating/drafting hardware and software agreements, EU competition / international compliance, employment and corporate law. The working environment is fast paced and dynamic and there is a need to manage multiple projects simultaneously. Excellent communication and organisational skills are needed. (ref:17517/2)

International Legal Recruitment

Local knowledge



# OPPORTUNITIES ACROSS THE BOARD

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## Life beyond the law?

Is the law delivering everything you want from your career? Or could you be looking for an alternative? An alternative that will allow you to use your experience and training to the full. An entrepreneurial environment where you'll be given the responsibility and support to deal with the most senior players in the Irish business world.

Established for almost 20 years and with offices in Europe, North America, the Middle East and Asia Pacific region, Laurence Simons International is one of the leading legal recruitment consultancies in the world. We work with a complete range of practicing firms and in-house departments and with many of the most able and ambitious lawyers on four continents. And now we'd like to be working with you.

As part of our ambitious expansion plans, we're now seeking lawyers, looking for a results based environment in order to further develop our operations in Ireland. We'll expect a lot from you, but we tend to attract and retain individuals who expect a lot from us too. We invest heavily in career development, promoting from within wherever possible and offering every opportunity to move around our global network of offices. And our reward system is quite simply one of the best in the sector – our philosophy is that our people should all receive a substantial proportion of the fee income they generate.

If you would like to learn more about working with Laurence Simons International, please contact:

**Portia White**

**Email: [portia@laurencesimons.com](mailto:portia@laurencesimons.com)**

**Tel: +353 (0) 1 477 3063**

It could turn out to be the best career decision you've ever made.

### Commercial Lawyer, Limerick

€ Negotiable

Our client, a mid size practice requires an associate solicitor to join their team. You will have experience in commercial/company law. Exposure to the areas of public procurement, public administrative law, IP, Data Protection and competition law is essential. Excellent opportunity to shine in an expanding practice. Ref: 17295

### Construction Lawyer, Dublin

€ 90k

Expanding practice based in the city centre is seeking to appoint a construction lawyer at associate level. You will have experience in contentious and non-contentious construction work. This is an excellent opportunity to develop your career with a highly autonomous role. Ref: 14428

### In-House Corporate/Commercial Lawyer, Dublin

€ Negotiable

Our client, a leading financial services provider, requires an associate corporate/commercial lawyer to join their growing team. You will have practical experience of company, commercial law within the Irish domestic market. This role involves providing advice on investments, company, contract, commercial, trust or EU law and regulatory matters. Ref: 15241

### In-House Commercial Property lawyer, Dublin

€ Negotiable

Our client requires a commercial property lawyer. You will advise on commercial property matters with regard to contract, procurement, environmental and planning law. Strong contract and negotiation skills essential. Experience in commercial, construction and projects a strong advantage. Highly competitive salary and benefits for the right candidate. Ref: 17091

### Tax Lawyer, Dublin

€ 80k plus

A leading medium-size practice requires an experienced tax lawyer to join their team. You will advise on tax based corporate and commercial property projects. You will have an excellent drafting ability and in particular, experience in transaction and project work. Excellent opportunity to work in a cutting edge environment. Ref: 17265

### Junior Corporate/Financial Services Lawyers, London

€ Excellent terms

We are representing a number of Magic Circle and second tier firms based in London. Our clients are looking for corporate/financial lawyers at all levels and offer the opportunity to work on high profile transactions. Ref: 17354

### Financial Services Lawyer, Dublin Base with International travel

€ 70k plus

Our client is a leading provider of financial services. Their European headquarters in Dublin are looking to recruit a junior banking/corporate lawyer. You will have gained excellent training in a leading firm and now wish to develop your career in-house. Excellent basic and bonus is offered as well as international travel. Ref: 15023

### Litigation Lawyer, Dublin

€ Negotiable

An exciting opportunity for a litigation lawyer at associate level to join a leading mid-size practice. You will become involved in an array of litigation matters at local and European level. Experience in arbitration and mediation is essential. Ref: 16271

### IT/IP Lawyer, Dublin

€ Excellent

A niche practice requires a senior IT/IP solicitor to join its expanding department. You will advise on a broad array of contentious and non-contentious matters. Previous exposure to IT/IP and general commercial matters from a leading firm essential. Ref: 14365

**For further information regarding the jobs listed above, please contact Portia White on +353 (0) 1 477 3063 or email [portia@laurencesimons.com](mailto:portia@laurencesimons.com) quoting the relevant reference number.**

