LAW SOCIETY
Gazette
€3.75 March 2009

LANDS OF OPPORTUNITY?

Job-seeking in other jurisdictions

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INSIDE: DIVORCE SETTLEMENTS • TAX ISSUES IN WILLS • THE COMPANIES ACT AND SELF-DEALING

Law Society of Ireland

Law Society Annual Conference

17th/18th April 2009

SPONSORED BY

Bank of Ireland
Business Banking

SMDF

Jardine Lloyd Thompson Ireland Limited

Conference package (delegates): €275

- CPD programme on SME/small trader insolvency on Friday afternoon (3 CPD hours)
- Gala dinner on Friday evening
- One night's bed and breakfast
- Conference business session on Saturday morning (3 CPD hours)
- Lunch on Saturday

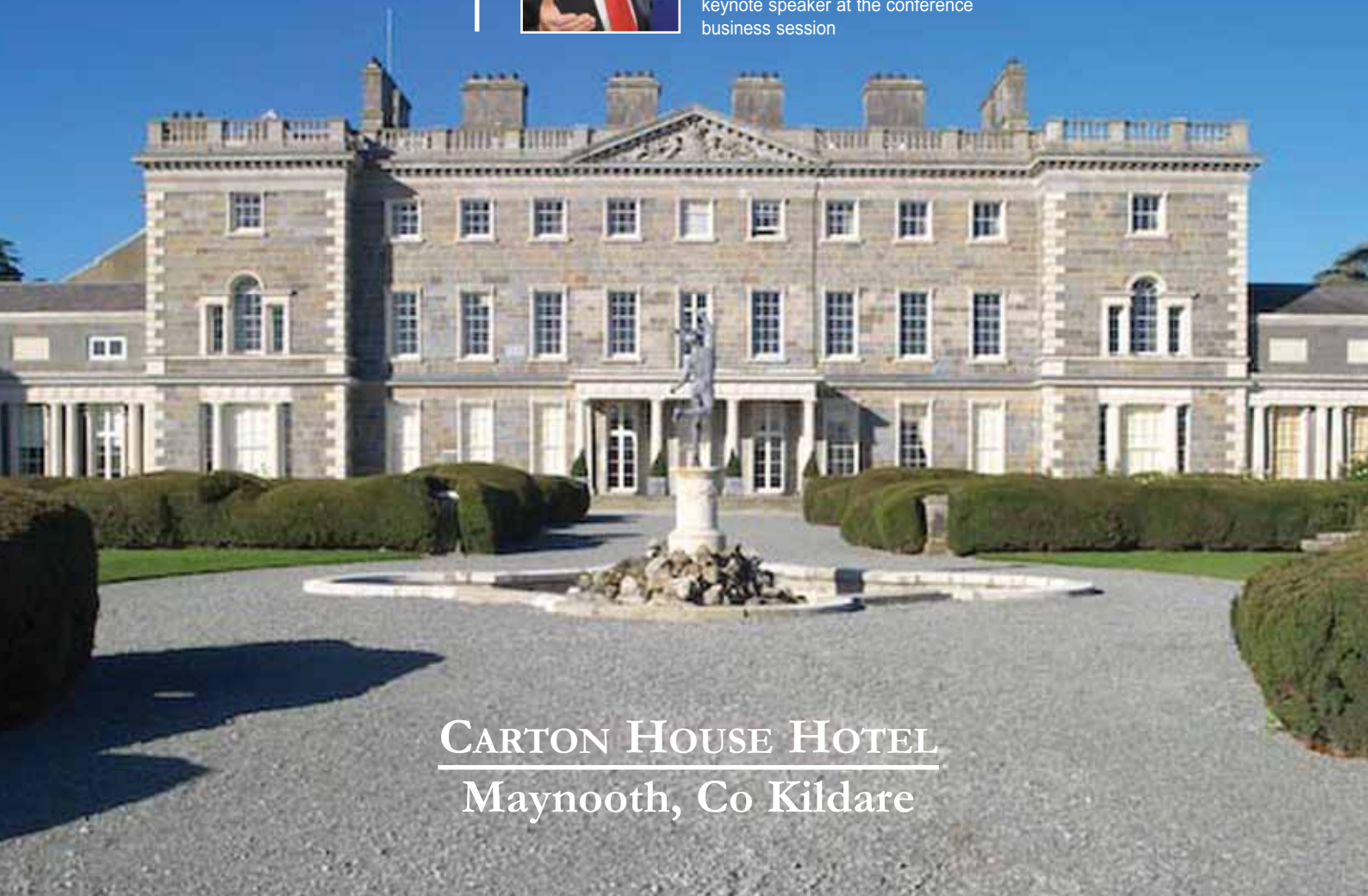
Conference package (accompanying persons): €175

- Gala dinner on Friday evening
- One night's bed and breakfast
- Lunch on Saturday

Please complete the reservation form included with this issue of the *Gazette* or reserve online at: **www.lawsociety.ie**

Queries to the conference secretariat – Rachel O'Hare, tel: +353 1 280 2641 or email: **lawsociety@ovation.ie**

Dermot Ahern TD, Minister for Justice, Equality and Law Reform will be the keynote speaker at the conference business session



Carton House Hotel
Maynooth, Co Kildare

Planning for the future

It was Dwight D Eisenhower who noted that, the older he got, the more wisdom he found in the ancient rule of taking first things first – a process that often reduces the most complex human problems to manageable proportions. The Law Society Council is made up of ordinary members of the profession who fully understand the difficulties facing each and every practice. It will continue to be a constant process of adjustment, and our strategy to assist you has three basic strands.

Strategy

Firstly, our main concern is for those who have actually become unemployed. We had a meeting in February with the representatives of the solicitors who qualified in 2008, and the clear message we received was the need for communication and information. To this end, you will probably have seen the reference in the media to our advertisement for a career development advisor. We hope to fill this position shortly, and it will be the principal contact point for those who are faced with career choices.

Secondly, the Practice Management Task Force continues to plan more seminars and to disseminate information through the *Gazette*. The materials from last year's seminar are freely available, and it is also planned to provide the content of the seminar that was held on 27 February last by vodcast. We have also been in touch with the Irish Bankers' Federation to ensure that they are aware of the adjustments that solicitors are making in terms of their own businesses and to impress upon them the importance of cash flow for our individual practices. While each individual bank reserves the right to make its own decisions, I think it is fair to say that we got a sympathetic response, and each side recognised the important part that we have to play in restoring confidence to our economy.

> *"We have been in touch with the Irish Bankers' Federation … to impress upon them the importance of cash flow for our individual practices"*

Thirdly, we continue, through the CPD unit, to offer opportunities for solicitors to retrain and reskill in areas in which work is still relatively buoyant. We will also provide assistance to local bar associations that wish to organise seminars in their areas.

There are many other initiatives in progress, and details are contained in the *Gazette* and in the e-zines you receive on a regular basis.

Different times – different conference

As you may know, it was intended to hold our annual conference in Bilbao this spring but, at the risk of understatement, events have conspired against us. This has given us an opportunity to reshape the conference to provide a small measure of support for the local economy. I do think it is important that the Law Society holds an annual conference for its members and, therefore, I am delighted to invite you to Carton House in Maynooth, Co Kildare, on Friday 17 and Saturday 18 April. I am acutely aware that the cost of the conference is an important factor and we have reduced the schedule to two working sessions on Friday afternoon and Saturday morning, with a gala dinner on Friday night. On Friday afternoon, our CPD unit will be running a seminar based on the typical advice that might be required in dealing with an SME business in difficulty. On Saturday morning, I am delighted to say that the Minister for Justice Dermot Ahern will address the conference, and you will also have an opportunity to hear several other eminent speakers air their views on how the profession can beat the recession.

I am particularly hopeful that the conference will be attractive to the younger members of the profession. The usual SYS spring conference is not proceeding this year and, therefore, I extend a particular welcome to all young solicitors and encourage them to attend.

Finally, we have made a big effort to try and make the conference as affordable as possible. In this regard, I am very grateful to our main sponsor, Bank of Ireland, and associated sponsors, the SMDF and Jardine Lloyd Thompson. I shall let you have full details of the conference – which is being finalised at the moment – by email in due course, but in the meantime, there is a booking form included with this *Gazette*, or you can book online at www.lawsociety.ie.

I look forward to seeing you in Carton in April.

John D Shaw
President

On the cover

Why did the chicken cross the road? Because the grass is always greener. But in the heel of the hunt, should you feel the need to set sail to the land of milk and honey, pack up this info in your old kit bag

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REGULARS

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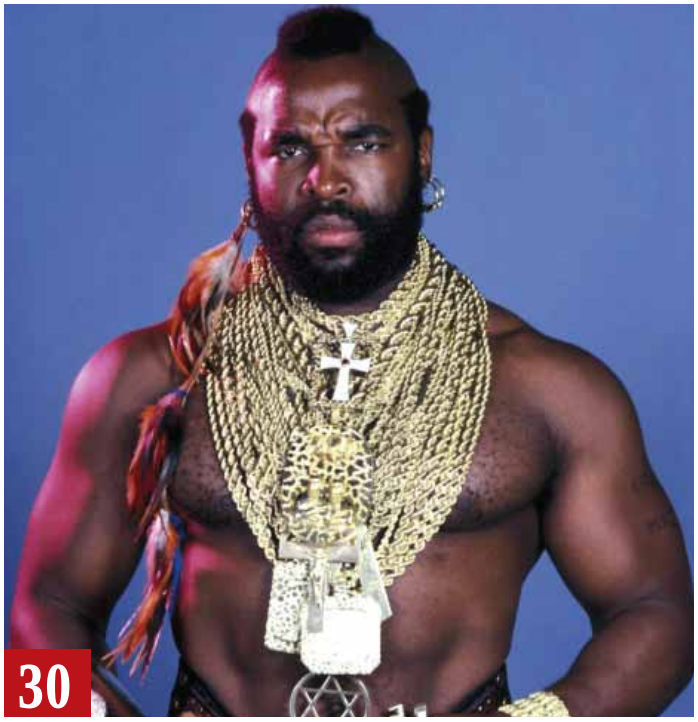

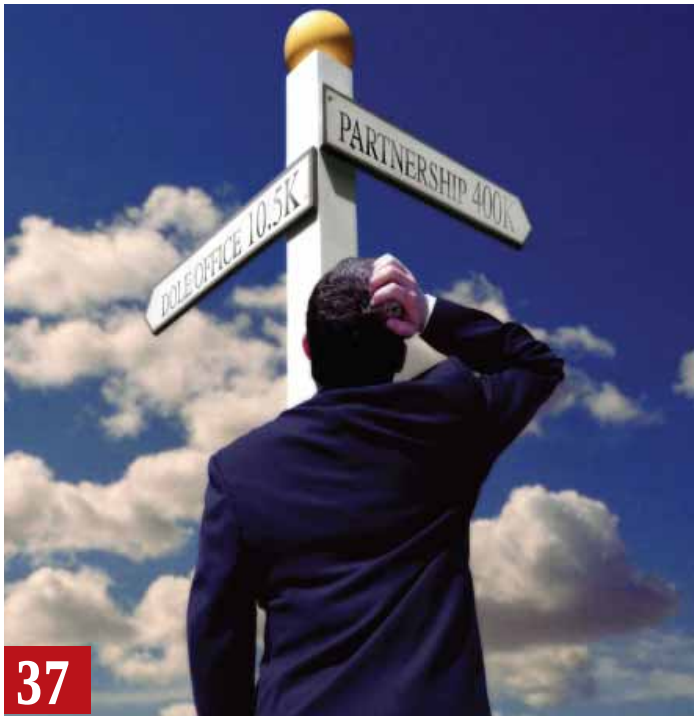

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CORK

SLA president Mortimer Kelleher and up to 250 of his colleagues held their annual dinner in the splendid surrounds of Maryborough House. Guests included Law Society President John Shaw, senior vice-president Gerry Doherty and director general Ken Murphy. The event has its own unique ingredients, and Mortimer's night was no exception. The popular emissary from the Law Society of Northern Ireland, Norville Connolly, raised a laugh when mentioning that, at his society's conference in Berlin, the hosts thought they were doing the right thing by adorning the gala dinner tables in fresh bouquets of green, white and orange!

Mortimer, along with his litigation colleagues, recently met Judges McGuirk, O'Leary and Riordan for a very useful exchange of views and ideas.

Meanwhile, Deirdre Foley continues to put the finishing touches to arrangements for the SLA conference in Lisbon (17-20 September). Much more imminent, however, is the challenge Mortimer has laid down to the Dubs by inviting an SLA cricket team to play a DSBA selection headed by David Pigot in Phoenix CC in late May.

WATERFORD

Waterford Law Society annually sponsors a student award debate in Waterford Institute of Technology. This year's debate on 11 February considered the motion 'Ignorance ought not to be a defence to reckless trading'. Chaired by WLS president, Bernadette M Cahill, the adjudicators were Helen O'Brien (WLS), Walter O'Leary (law lecturer, WIT) and Cephas Power (barrister). The winner, Emily Jane Bedingfield, received her gold medal, certificate and cash prize from Bernadette. The event was organised by Helen O'Brien (WLS), Deirdre Adams and Jennifer Kavanagh (both of WIT).

Bernadette also welcomed newly appointed District Judge David Kennedy to the region and the committee offered hospitality on behalf of solicitor colleagues to Judges Roddy Murphy of the High Court and Rory McCabe of the Circuit Court.

PIC: GARRETT FITZGERALD PHOTOGRAPHY

At Waterford's Annual District Court Practitioners' Dinner on 12 December 2008 were *(l to r)*: Rosa Eivers (Waterford Law Society committee member), Elizabeth Dowling (secretary), Judge David Kennedy, Bernadette Cahill (president) and Jill Walsh (committee member)

MEATH

Helen McGovern has succeeded Paul Brady as president following the recent AGM and is looking forward to the year ahead.

LIMERICK

Newly installed bar association president, Elizabeth Walsh, is planning the return of the bar association ball – to take place on 27 November in the Dunraven in Adare. Elizabeth also hopes to hold a charity golf classic in memory of the late Dermot Morrissey Murphy.

MIDLANDS

Following the recent AGM, Mary Ward is the new supremo in the Midlands. The fact that she will be ably assisted by Anne Marie Kelleher and Brian O'Meara should not be read as proof that Edenderry has taken over the association! Mullingar has Susan Fay involved on the committee.

Meanwhile, Anne Marie has organised a seminar in the Park Hotel on a practice management topic for 7 April and plans are afoot to hold an employment law seminar soon.

LEITRIM

Noel Quinn is now president of the bar association in Leitrim. Noel found the recent meeting with colleagues at the Law Society of considerable interest and thought Brendan Walshe's idea that bar associations might consider running a seminar for the benefit of the Benevolent Association worthy of consideration.

DUBLIN

The Younger Members' Committee of the DSBA has recently rebranded itself as the Young Dublin Solicitors (YDS), with its very own logo. This was an initiative of Eamonn Shannon and Grainne Whelan and the hard-working committee as they make arrangements for the upcoming YDS ball on 23 May in the Mansion House.

The DSBA's Family Law Committee hopes shortly to launch the first mediation course in the country. To be run over a six-day cycle, in four-day and two-day stints, this will be a must-attend course for the specialist family lawyer and will have accreditation status. Run as workshops in 24-person groups, the course will run first as a pilot and is expected to fill effortlessly, but will be repeated at a later date.

The DSBA annual conference will take place in Chicago from 16-20 September. Details of the package can be viewed on www.dsba.ie. We have been able to negotiate considerable savings and will travel by Aer Lingus. In order to keep costs down, the DSBA won't be producing a brochure, so refer to www.dsba.ie for details.

LOUTH

Donal O'Hagan's arm has been twisted to resume the presidency of this proud bar association, where he will continue to be assisted by secretary Conor MacGuill, treasurer John McGahon and PRO Fergus Mullen. G

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

Widespread publicity for Society's new career development advisor job

A total of 78 applications were received in response to the Society's advertisement for the new position of career development advisor. The Society is proceeding to complete this recruitment process as quickly as possible.

It is a long time since any newly-advertised position received as much publicity as this one did in early February. The fact that some hundreds of solicitors are now believed to be unemployed – and that the Society had shown strong initiative to seek to assist them – was the subject of a front page article in *The Irish Times*, was the third item on RTÉ TV news bulletins, and was the focus of interviews and favourable comment on a number of radio stations.

On *The Right Hook* programme on Newstalk 106, presenter George Hook congratulated the Society on the initiative. In the course of the interview, director general Ken Murphy was able to outline why the Society had taken this measure. He said the Society, in close contact with members of the profession at all levels throughout the country, was well aware of the sad and severe impact that the economic recession was having on the profession. The main cause was the almost complete collapse of legal work in one

of the mainstays of income for the profession, namely residential and commercial conveyancing, which "fell off a cliff in the course of 2008 [and] has had pretty devastating consequences for the profession". But he acknowledged that not only property-related legal work had been affected: "The sharp decline in economic activity generally has affected many other forms of legal work also, and unprecedented levels of unemployment among solicitors are a consequence."

Assisting solicitors in job finding

Accordingly, the Society is seeking to retain a career development advisor, which he described as "a professional who would have the skills to assist solicitors in job finding". He continued: "Solicitors are highly intelligent, educated, multi-talented individuals with a lot of technical and people skills. But most of them probably never expected to need and don't have skills in finding jobs and, in particular, finding employment in other walks of life.

"We would prefer to find them employment so that they could serve the community as solicitors," he said. "But we don't think it is realistic to expect that a great many of them will be able to do this in the near future."

Murphy pointed out that the solicitors' profession had doubled in size in a little over a decade. "Of course, the boom years did provide great employment and great opportunities, and the legal profession did very well. We wouldn't deny that for a second. But it is certainly suffering at the moment."

Positive note

Finishing the interview on a positive note, however, the director general said: "I don't want to be entirely gloomy. The legal profession has two strengths that it can draw on at a time like this. First of all, solicitors, unlike some other service providers, do a range of different things – not just one thing – and not all solicitors' work has been affected by the recession in the same way, or to the same extent."

He continued, "Secondly, despite its, I think, undeserved reputation for conservatism, the solicitors' profession throughout its long history has adapted very well to change. We'll adapt to change again here. The solicitors' profession has seen off economic recessions in the past and we'll see this one off as well.

"There is no advantage in wallowing in pessimism. We have to be proactive and fight back," he concluded.

CPD Focus extends membership to public sector

CPD Focus has extended the opportunity to solicitors working in the public and semi-state sectors to join a membership scheme and avail of the 30-40% discount on all CPD Focus training programmes.

Solicitors working in these sectors should complete the application form in full (available online and in the CPD Focus brochure) and return it with payment to CPD Focus, Law Society, Blackhall Place, Dublin 7.

Within ten working days, you will receive a letter of acknowledgment notifying you of your six-digit CPD Focus public-sector membership number.

To book a training event, simply use your membership code in all correspondence with CPD Focus. You will automatically receive 30% off all training events, and 40% where applicable.

All CPD Focus training events qualify for CPD hours under the requirements of the 2009 scheme.

If you have any queries, please email: cpdfocus@lawsociety.ie, tel: 01 881 5727, or visit www.lawsociety.ie/cpdfocus.

PC renewal numbers reveal slowing growth rate in employment

The number of solicitors applying for practising certificates (PCs) by the statutory annual renewal date of 1 February 2009 grew by a total of 153, reflecting a 2% increase over 2008. A total of 7,427 applied for practising certificates by 1 February 2009. The figure on the equivalent date in 2008 was (the confusingly similar figure of) 7,274.

Although some solicitors may be surprised that there was an increase at all in the number of practising certificates taken out and paid for in 2009, given the prevailing economic gloom, the 2% increase in practising certificates is smaller than the 4% increase on the same date in 2008 and the 5% increase on that date in both 2007 and 2006.

The pattern shows a declining rate of increase in annual practising certificate numbers. This is despite there being a record number of 777 new solicitors coming on the roll in the calendar year 2008. The decline is almost certainly due to reduced opportunities for employment for solicitors in the recessionary economy.

Although the new practising certificate figure gives an indication of a level of unemployment in the profession, it does not measure it precisely. Director general Ken Murphy says: "By no means every solicitor who does *not* take out a practising certificate is unemployed. There are numerous reasons why a solicitor may be on the roll but not taking out a practising certificate."

He explains: "They may be employed as a solicitor in the public service and, by statute, not required to have a practising certificate. They may be working in industry or business and choose not to have a practising certificate. They may be on maternity leave, on career break, retired or working either elsewhere in the economy in Ireland or abroad." For example, he said: "It would be misleading to describe Anthony O'Reilly, Miriam O'Callaghan or Brian Cowen as 'unemployed solicitors'."

"The Society is undertaking further research. We are making contact with individuals who have not taken out practising certificates in order to determine their exact status and to identify the solicitors who, to our great regret, actually are unemployed so that we can offer as much assistance to them as we possibly can."

ANALYSIS OF PRACTISING CERTIFICATE NUMBERS
AT 1 FEBRUARY RENEWAL DATE

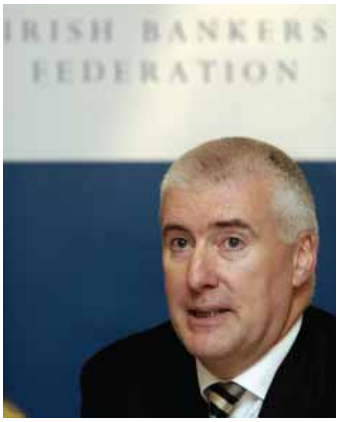
	2009	2008	2007	2006	2005
Increase in PCs	153	277	341	287	
Percentage increase	2%	4%	5%	5%	
TOTAL	**7,427**	**7,274**	**6,997**	**6,656**	**6,369**

Good business for the banks

On 23 February 2009, Law Society President John D Shaw and director general Ken Murphy attended a meeting of the Business Banking Committee at the headquarters of the Irish Bankers' Federation (IBF).

The Society had for some time sought a meeting at which it could present the case to senior representatives of all the major banks on why the extension of credit facilities to solicitors' firms – necessary to maintain cash flow – continues to make good business sense.

It was pointed out that, while solicitors' firms can validly be termed small and medium-size enterprises, the number of solicitors' firms that had ever failed financially is tiny and very much smaller than the number of SMEs that have failed over the years.



Pat Farrell, chief executive of the Irish Bankers' Federation

The profession has always adjusted successfully to changes in the market for legal services and it is doing so again now.

Solicitors are a strictly-regulated profession and, while the Law Society cannot guarantee the viability of any particular firm, the president and director general explained why the business model of solicitors' firms, and indeed that of the profession as a whole, is very likely to be a sustainable one.

Meeting the class of 2008

Officers of the Law Society had the opportunity on 12 February 2009 to meet and hear the views of a representative group of the 777 solicitors who came on the roll in 2008.

The group was chosen because each had been a class representative when they had been on one of the Society's professional practice courses.

In welcoming the group to the Council Chamber, president John D Shaw made it clear that the Society had the utmost sympathy for newly-qualified solicitors who were facing into the employment marketplace in unprecedentedly difficult times. The views expressed by these solicitors at the meeting will now help to inform the Society's policy on how it can be of practical assistance to these valued new colleagues.

PIC: LENSMEN

At the Law Society's recent meeting with newly-qualified solicitors were *(front, l to r)*: Laura Monk, Sinead Lynch, Danielle Conaghan, president John D Shaw, Louise Smith, Sinead Power and Grainne Whelan. *(Back, l to r)*: deputy director general Mary Keane, senior vice-president Gerard Doherty, junior vice-president James McCourt, director general Ken Murphy, Frazer Hanrahan, Patrick Cunningham, Kenneth Fitzgibbon and Ross Phillips

Useful exchange

In the course of almost two hours, a very useful exchange of information and experiences took place. The solicitors emphasised the level of dismay and fear among their peers at the effects of the national and international economic crisis in which they have unexpectedly found themselves on qualification. All knew of colleagues who had been let go by their firms, although it seems that the majority remain in employment. For balance, many were able to report good news in that their firms had retained all who had qualified last year and had even given salary increases within the previous two months.

The 2008 solicitors continue to identify strongly with the profession and see both CPD and their practising certificates as very important. They have welcomed the initiatives being taken by the Law Society to reach out to them and their peers. The creation of a database for communicating electronically with those who wish for it is seen as desirable, as is free membership of the Society for solicitors who are unemployed.

Director general Ken Murphy, summing up at the end, said: "The Society's response to this crisis should be characterised by communication, collegiality and practical assistance in adapting to change."

'Survival skills' in City of Tribes

Practice Management Task Force and CPD FOCUS present: Practice Management Survival Skills

Date: Thursday, 12 March 2009
Time: 2pm to 5.30pm
Venue: Lady Gregory Hotel, Galway
Fee: €125 per person
Skillnet fee: €88 per person
CPD hours: Three group study (management and professional development skills).

The normal price for this seminar is €250, but attendees can avail of a reduced price of €125. (Skillnet members can attend the seminar for €88.) The seminar will focus on the fundamentals of practice management in an economic downturn, human resources obligations and the possibilities of changing practice arrangements (mergers, sharing, overheads, downsizing and specialising).

This event will also fulfil your three hours' management and professional development skills requirement for the 2009 CPD scheme. It will also provide an ideal opportunity for colleagues to voice their concerns and to suggest the role the Society should play on their behalf in managing the current practice landscape.

Topics and speakers

James MacGuill (principal, MacGuill & Co) chair, Practice Management Task Force, will provide an update on the various services currently offered by the Society that will help members during the economic downturn. He will also outline strategies for attracting new business.

Michelle Ní Longáin (partner, BCM Hanby Wallace) vice-chair, Practice Management Task Force, will address emerging employment law issues for practices by providing guidance on options and obligations.

David Rowe (managing director, Outsource), providers of practice management and business advice to Irish law firms, will identify what is happening in the market and how firms can ensure survival and progression.

Booking online

To book online, go to the CPD Focus section of the Law Society's website and select this course.

Telephone booking

We do not take provisional bookings. If you wish to pay by credit card, please contact a member of the CPD Focus team at 01 881 5727.

INSTRUCTING ELDERLY CLIENTS

The third practice note in the series of practice notes to assist solicitors when instructed by elderly clients is published in this issue. This month's topic is the administration of estates.

The client may be a personal representative of an estate, an elderly beneficiary of an estate or a surviving spouse. Therese Clarke, who is a member of the group considering these matters, points out that these roles are not always mutually exclusive. Solicitors should be alert to the fact that independent advice may be necessary in some cases.
(See page 49.)

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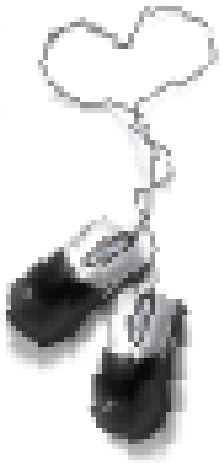

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New Courts Service CEO appointed

The new chief executive officer of the Courts Service is Brendan Ryan. Mr Ryan (50) is a barrister and has a BA and H Dip from University College Cork. Since the establishment of the Courts Service nine years ago, Mr Ryan has been its director of corporate services. In this time, his responsibilities included estates and buildings, information and communications technology, and he acted as secretary for the Judicial Appointments Advisory Board. He has held a variety of positions with the courts over the last 27 years.

Mr Ryan said: "I'm both honoured and delighted by the trust and confidence the board of the Courts Service has placed in me by appointing me to this important position. I look forward to the next seven years working with a hugely talented and committed staff and with the judiciary in improving and developing court services across the country."

Spring forward with diploma programme!

Currently, demand is high for practitioners in litigation. To meet the present need, the Law Society's diploma programme team has brought forward two diploma courses to start in May – the Diploma in Employment Law and the Diploma in Commercial Litigation.

Feedback from practitioners, particularly those outside Dublin, has indicated that they are looking for alternative ways to access Law Society courses. These courses will be delivered through a combination of on-site and online sessions. Online learning will be supplemented by a number of on-site workshops and lectures, enabling attendees to network with colleagues and work in smaller groups.

Credit crunch issues

The profession is also dealing with daily queries on credit-crunch issues, such as bounced cheques, guarantees, debt collection, insolvency and specific performance. On 24 March, a short six-week course entitled 'Critical legal issues in recessionary times' will touch on all these aspects, and more. The course is being offered at a reduced fee of €850 and will satisfy all CPD requirements for the year, including management and professional development hours.

Criminal law is another potential growth area. The diploma programme team, with Caroline O'Connor BL, is offering a new course entitled Certificate in Criminal Litigation and Procedure. This course will suit seasoned practitioners who are looking for a refresher course in District Court and Circuit Court practice in the context of criminal litigation. It will also appeal to qualified practitioners looking to develop their criminal law practice, or practitioners moving from commercial practice to the criminal field.

In April, a District Court certificate course and a Certificate in Judicial Review will be available.

For further information on these and all other diploma courses, please refer to the 'diploma programme' pages on the Law Society's website, email: diplomateam@lawsociety.ie, or tel: 01 672 4802.

40% DISCOUNT FOR SKILLS TRAINING

Members of CPD Focus Skillnet will now receive a 40% discount on all skills training events run by the CPD Focus team in 2009 – and a 30% discount on general CPD Focus training events.

The new training programme covers the many areas that will assist members grow their revenue flows in these difficult times. The range of events include:

- Bankruptcy,
- Career planning,
- Finance for lawyers,
- Debt collection,
- Dismissals,
- Examinership,
- Insolvency series,
- Practice management, and
- Redundancy.

Details of all of the above, applications forms and the full CPD Focus programme are available at www.lawsociety.ie/cpdfocus and in the March issue of the CPD Focus brochure. For further information, email: cpdfocus@lawsociety.ie.

Make a difference with the Calcutta Run

Last year, Calcutta Run athletes pounded Dublin streets to raise a whopping €340k for two designated charities – GOAL's orphanages in Calcutta and the Fr Peter McVerry Trust's projects in Dublin. What was significant about the 2008 fund-raiser was that it pushed the total amount raised over the past ten years to a staggering €2 million.

This year is shaping up to be a difficult year for many, and these charities are going to need your support more than ever. The starting gun will sound at Blackhall Place at 2pm on Saturday 16 May. A target of €200k has been set. All you need to do to make a difference is to organise sponsorship for your 10k run, jog or walk. To help reach the target, each participant is being asked to try to raise a minimum of €150 in sponsorship. Afterwards, join in the fun with a monster barbecue, musical entertainment, activities for the family and lots more.

Now you know the date, strap on your running shoes, grab a few friends and get into training. For further information, visit www.calcuttarun.com.

Functions of the Complaints and

The Complaints and Client Relations Committee considers complaints against solicitors. In the first of two articles, Simon Murphy explains what generally happens when a complaint is made

The Complaints and Client Relations Committee is, along with the Regulation of Practice Committee and the Professional Indemnity Insurance Committee, one of the three regulatory committees of the Law Society.

Each year, the Law Society Council delegates certain of its statutory functions to the committee and, usually on the nomination of the incoming president, appoints the members of the committee.

In simple terms, the main function of the committee is the consideration of complaints. To understand fully the working of the committee, it is important to trace the history of a complaint from the time it is made.

The making of a complaint

A complaint, unless there are exceptional circumstances, must be made in writing and is referred initially to the Complaints and Client Relations Section of the Law Society, which is staffed by experienced solicitors and secretarial staff. All complaints made against solicitors, either by members of the public or by other solicitors, are processed through this section.

Reducing the complaint to writing assists the complainant in identifying the exact nature of the complaint(s) they wish to make and means that the solicitor knows what issues he or she is being asked to address.

Secondly, in the event that the complainant is dissatisfied with the manner in which the Society has handled the complaint, there is a complete record of the investigation, which can be reviewed by the Independent Adjudicator of the Law Society.

Finally, if the matter is ultimately serious enough to warrant a referral to the Disciplinary Tribunal, there is a written record that forms the basis of the Society's application to the tribunal.

If a complaint is made by a third party on behalf of a client, the Society will ask for a letter from the client confirming that the complaint is made on their behalf and authorising the Society to correspond with the third party.

Complaints made by the recipient of undertakings against a solicitor who has given an undertaking will always be entertained.

> ***"The majority of complaints submitted to the Society are dealt with, without the necessity of referring the complaint to the committee"***

The complaints section may initiate an investigation in the absence of a specific complaint, for example, on foot of reports in the media or pursuant to information obtained from other sources, such as judgments, and also information submitted by members of the profession, where it is considered necessary to do so in the interests of the public. One of the committee's functions is to be responsible for the regulation of solicitors' advertising, and complaints about advertising are often initiated in such a manner, for example, when an allegedly offending advertisement is observed in a publication.

Types of complaint

There are three principal categories of complaint:

- Misconduct: examples include dishonesty, conflict of interest, failure to comply with an undertaking(s), breach of statutory provisions or regulations, and generally any conduct tending to bring the profession into disrepute,
- Inadequate professional services: this is defined in the *Solicitors (Amendment Act) 1994* as services that are "inadequate in any material respect and were not of the quality that could reasonably be expected" of a solicitor,
- Excessive fees: the committee can deal with complaints of overcharging, but it is not the equivalent of the

Client Relations Committee

taxing master. It can only intervene if it considers the fees to be 'excessive' and it can only consider the solicitor's professional fees (not counsel's fees or other items of outlay). There is no statutory definition of 'excessive'.

There are statutory time limits attaching to the latter two categories (see below) and complaints can only be made by or on behalf of clients under these headings.

In general, unless there are exceptional circumstances, the committee will not consider a complaint that is made against a solicitor who is acting for a third party, or a complaint that is unrelated to the solicitor's work, such as complaints by a plaintiff against a defendant's solicitor or a complaint from commercial creditors.

What happens when a complaint is made?

Once a complaint is made, it is dealt with initially by an investigating solicitor in the Complaints and Client Relations Section. Once it is apparent that there are grounds for the complaint and that the complaint itself has been clearly identified, there is an exchange of correspondence between the investigating solicitor and the solicitor against whom the complaint is being made.

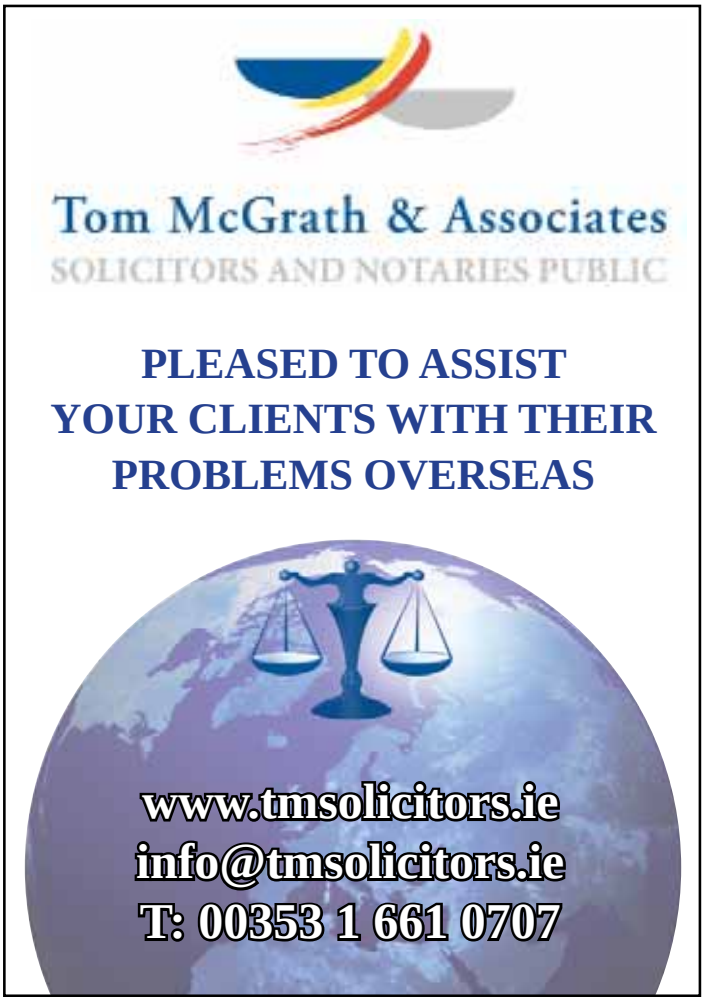
If the solicitor's explanation is satisfactory, or discloses that there are no grounds for complaint, the complaint is rejected and the complainant is advised accordingly. In these circumstances, the complainant is advised of their entitlement to refer the matter to the Independent Adjudicator if they are not happy with the manner in which the Society has handled their complaint.

Otherwise, the investigating solicitor may make a recommendation to the solicitor. Examples of such a recommendation would be to reduce or waive fees, or to apologise to the complainant, or to hand over the file, or to rectify something at his own expense. The solicitor is advised that he is not bound by such a recommendation and that if he is unhappy with the recommendation, the matter will be considered by the committee. If the complainant is dissatisfied, he can refer the matter to the Independent Adjudicator.

The majority of complaints submitted to the Society are dealt with, without the necessity of referring the complaint to the committee.

If the investigating solicitor requires the direction of the committee, or if the matter is not resolved or otherwise concluded by the Complaints Section, or the solicitor fails to respond adequately to the Society's correspondence, the complaint may be referred to the committee. G

Simon Murphy is chairman of the Complaints and Client Relations Committee. Next month: the role of the committee, its powers, and limitations.



ECHR goes head to head

The *ECHR Act 2003* introduced the remedy of a declaration that a statutory provision or rule of law is incompatible with the state's obligations under the convention. Michael Farrell investigates

The *European Convention on Human Rights Act 2003* introduced a novel remedy into Irish law, a declaration under section 5 of the act that a statutory provision or rule of law is incompatible with the state's obligations under the convention. It took some time for the first declaration to be made – in the *Lydia Foy* transgender case in October 2007. Since then, two more declarations have been made, both in relation to section 62 of the *Housing Act 1966* (*Donegan v Dublin City Council* [2008] IEHC 288 and *Dublin City Council v Gallagher* [2008] IEHC 354 – see article in last month's *Gazette*, p14).

The delay was largely due to the fact that the 2003 act is not retrospective and it is only now that cases are coming through where the cause of action arose after the act came into force. There are likely to be more declarations from now on, but what effect will a declaration of incompatibility have in practice?

The provision for making such a declaration is closely modelled on section 4 of Britain's *Human Rights Act 1998*, which came into force in October 2000, so it is worth looking at what has been happening in the neighbouring jurisdiction. So far, 27 declarations have been granted in British courts, two of them in Northern Ireland. Eight of these were subsequently overturned by the Court of Appeal or House of Lords and one is currently under appeal, leaving 18 where the declarations of incompatibility have become final and the British authorities have had to respond to them.

The 27 decisions covered a wide range of issues, from high-profile cases like the detention without trial of alleged foreign terrorist suspects, whom the British government could not deport because they were likely to be tortured in their home countries, to housing issues and gender discrimination in the payment of widows' pensions or allowances.

There were several cases challenging the role of the executive rather than the courts in determining how long life-sentence prisoners should serve in jail, but there was also a case on the right of children conceived after their father's death to have his name on their birth certificates. A declaration in 2003 in the case of a transgendered woman seeking recognition of her marriage to her male partner helped prod the British government into bringing in the *Gender Recognition Act 2004*, although it was fairly inevitable after two adverse decisions against Britain in the European Court of Human Rights in 2002.

Booby prize

The two cases from Northern Ireland were *In re McR's Application for Judicial Review* ([2002] NIQB 58) and *In re P (Adoption; Unmarried couple)* ([2008] UKHL 38). In the first case, the High Court in Belfast held that a provision of the 1861 *Offences Against the Person Act* that criminalised buggery between consenting adults was incompatible with article 8 of the ECHR. The crown did not oppose the application.

ONE TO WATCH: NEW LEGISLATION

***European Communities (European Small Claims Procedure) Regulations 2008*, SI no 533 of 2008**

From 1 January 2009, regulation (EC) no 861/2007 of the European Parliament and of the council establishing a European small claims procedure will come into operation. The development of the European small claims procedure is intended to improve access to justice by simplifying cross-border cases concerning small claims, speeding up litigation and reducing costs. The procedure is available as an optional or alternative route to parties for recovering small claims. In Ireland, the service will be provided through the District Court clerk. In such instances, the clerk will be referred to as the small claims registrar.

In order for the procedure to be available to a claimant, a number of conditions must be met. The claim must:

- Involve a cross-border element (this means that at least one of the parties is domiciled or habitually resident in a member state other than the member state of the court or tribunal),
- Be either civil or commercial in nature (subject to a small number of exceptions), and
- Be valued at under €2,000 excluding interest, expenses and disbursements at the time when the claim is received by the court or tribunal.

In order to commence the claim, the claimant must fill out a standard form A (annex I) and lodge this with the court or tribunal either directly, by post or by other means of communication. Form A should be accompanied by a description of the evidence supporting the claim and any relevant documentation.

Accepting the application

Where the court or tribunal determines on an examination of form A that the claim is outside the scope of the regulations, the court or tribunal shall inform the claimant of this determination. Similarly, if form A is not sufficiently clear or is inadequate or is not filled in properly, the court or tribunal shall give the claimant the opportunity to rectify or complete the claim form or to supply supplementary information. The court or tribunal shall inform the claimant of this by using form B (annex II).

Where the claim is unfounded, inadmissible or where the claimant fails to complete or rectify form A, the application will be dismissed.

human rights watch

with rules of law

In the second case, the House of Lords held that sections of the *Adoption (Northern Ireland) Order 1987*, which prevented an unmarried couple from being considered as adoptive parents, was incompatible with articles 8 and 14 of the convention. The Northern Ireland courts had refused the application.

When the *Human Rights Act* was passed in Britain, many lawyers were sceptical about the provision for declarations of incompatibility because, like section 5 of the Irish act, a declaration would not "affect the validity, continuing operation or enforcement" of the statutory provision that was being challenged. And there was no legal requirement for the government to do anything to remedy the incompatibility. Some dubbed a declaration a 'booby prize' for the applicant who obtained it.

Lydia Foy: at the centre of the first declaration of incompatibility

The Court of Human Rights in Strasbourg was not overly impressed either and, in an admissibility decision in 2002, it said that a declaration of incompatibility did not constitute an effective remedy for Strasbourg purposes because it did not create an obligation to amend the law (*Hobbs v United Kingdom*, application no 63684/00, 18 June 2002).

Taking it seriously

In fact, however, the British government has taken the declaration provision quite seriously. Of the 18 declarations that have become final, the law had already been changed in three cases by the time judgment was given – and it has since been changed in another 12 cases. In one case involving the right to vote for sentenced prisoners, the government has launched a public consultation, and in the remaining two cases, it is considering how best to amend the law. In a couple of cases, it introduced interim measures while legislation was being prepared.

Based on this record, the Strasbourg Court has modified its view somewhat. In the case of *Burden v UK* in April 2008

Determination of the claim

It is intended that the European small claims procedure will be conducted primarily in writing. However, there is provision in the regulations for an oral hearing where the court or tribunal considers that an oral hearing is necessary or where one of the parties requests an oral hearing.

On receiving form A, the court or tribunal will fill in part 1 of form C (annex III) and will send a copy of form A and form C to the defendant within 14 days. The defendant must respond within 30 days of service of the claim form and should answer the claim by filling in part 2 of form C and returning it to the court or tribunal. Within 14 days of receipt of form C from the defendant, the court or tribunal should dispatch a copy to the claimant.

The defendant may argue that the value of the claim exceeds the limit of the small claims procedure. In such cases, the court or tribunal will have to decide within 30 days whether the claim is within the scope of the regulations. There is also provision in the regulations for the defendant to counterclaim. A counterclaim should be submitted on form A.

Language of the proceedings

The forms and accompanying documentation should be submitted in the language of the court or tribunal. Where this does not occur, the court or tribunal can order that documentation be translated.

Determination

The court or tribunal shall make a determination within 30 days of receiving all the relevant documentation. The court or tribunal may determine to:

- Give a judgment and serve it on the parties,
- Demand further details within a specified period not exceeding 30 days,
- Take evidence in accordance with the regulations, or
- Summon the parties to an oral hearing within 30 days. Where an oral hearing takes place, the court or tribunal shall give judgment within 30 days of the oral hearing.

Benefits of the regulation

The real benefits of the European small claims procedure lie in its simplicity. The regulation introduces standard forms that are the same in every jurisdiction and establishes time limits that will ensure the speedy resolution of small claims.

Any judgment given shall be recognised and enforced in another member state without the need for a declaration of enforceability, notwithstanding any possible appeal. G

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

(application no 13378/05, 29 April 2008), the court maintained that a declaration was not an effective remedy but "note[d] with satisfaction that in all the cases where declarations of incompatibility have to date become final, steps have been taken to amend the offending legislative provisions". It added that, in the future, "evidence of a long-standing and established practice of ministers giving effect to … declarations of incompatibility might be sufficient to persuade the court of the effectiveness of the procedure".

Declarations of incompatibility are always going to be a second-best outcome for the applicant. They will not by themselves change the law and they will not give any legal entitlement to compensation. In this jurisdiction, there is only a provision at section 5(4) of the 2003 act that the government may make a discretionary *ex gratia* payment for injury, loss or damage suffered because of the breach of the convention right involved.

But when the applicant really wants a change in the law and where there is no other remedy available – as in the three cases where declarations have already been made by the Irish courts – section 5 of the 2003 act offers a chance of redress. It presents an opportunity to test the provision complained of against the standards of the *European Convention on Human Rights*, without the expense and the intolerable delays involved in going to the Strasbourg court.

The effectiveness of this new remedy will depend on the attitude of the government to its own human rights legislation. The only obligation in the 2003 act is for the taoiseach to lay a copy of the order of the court before the Oireachtas. S/he is not even required to outline the government's proposals for how to remedy the incompatibility that has been identified.

The British government has been chivvied into taking action by a very proactive, all-party parliamentary Joint Committee on Human Rights. Unfortunately, there is no equivalent here, but if the government fails to act upon a declaration of incompatibility within a reasonable time, it will be open to the applicant to go to Strasbourg, since the declaration does not constitute an effective remedy. And the Strasbourg court is likely to take a very dim view if the Irish authorities ignore a declaration by their own courts that they are in breach of the convention.

Hopefully, that will not be necessary and the Irish government will prove itself at least as willing as its British counterpart to quickly remedy an incompatibility identified by the courts. It would be more encouraging, however, if the government showed some sign of preparing legislation to deal with the evident incompatibilities exposed by the *Foy*, *Donegan* and *Gallagher* cases without waiting for the outcome of the individual appeals. G

Michael Farrell is the senior solicitor with Free Legal Advice Centres, which acted for the applicant in the Lydia Foy *case.*

Remember the humble donkeys in your Will and we'll remember you!

With appallingly overgrown feet and an untreated leg injury caused by a piece of wire that had become ingrown, this lovely donkey, Paddy OD, will need our expert care and attention for the rest of his life.

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letters

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

Interest clauses in facility letters

From: Bernie Coleman, O'Rourke Reid, Mount Street Crescent, Dublin 2

I refer to interest clauses in facility letters and to a number of facility letters recently issued to clients of this office by one of the larger banks operating in this jurisdiction.

The interest clause of these facility letters reads as follows: "The market rate being a rate of interest equal to the aggregate of:

i) 1.75% per annum, and
ii) The three month Euribor rate displayed at or about 11am on the second-last day of each calendar quarter, on which the three-month Euribor rate is available on the Reuters Euribor screen designated EURIBOR01 or on the equivalent Telerate service page or such other page as may replace these pages on these services (as converted to a 365-day rate and rounded upwards to the nearest one-eighth of one per cent), and
iii) *The rate of interest per annum determined by the bank, in its absolute discretion, to compensate it for the costs of complying with any reserve asset and/or special deposit or liquidity or funding requirements (or other requirements having the same or similar purpose) whether direct or indirect and whether of any Regulatory Authority (whether or not such requirements have the force of law) or otherwise and any such other costs (direct or indirect) as the bank may incur in raising funds in the market.*"

My interpretation of subsection (iii) is that the bank in question can, at any time, impose an additional rate of interest on the facility, at their discretion, without the agreement of the borrower. This may have grave repercussions for borrowers, as they could end up paying a substantially higher rate of interest than ever anticipated, and which they may not be in a position to pay.

I would be interested in hearing if any other solicitors have come across this or similar clauses. Has this issue been brought to the attention of the Law Society and what is the Law Society's stance on this matter?

I would be obliged if you could bring this to your readers' attention.

Stuart Mangan Appeal raises €10k!

From: Éamonn Sayers, Irish Rugby Football Union, Ballsbridge, Dublin 4

I would like to thank the *Gazette* for its assistance in promoting the Stuart Mangan Cup over the last few weeks.

The inaugural Stuart Mangan Cup was a great success on Friday night (20 February). In addition to raising over €10k for the Stuart Mangan Appeal, there was great *craic* and some superb rugby to boot.

Blackhall Barbarians won the Stuart Mangan Cup against Smurfit Rugby, while there were wins for the Law Society of Ireland and (UCC) Stuart Mangan Select XV in the Stuart Mangan Shield and Bowl, beating King's Inns and the Royal College of Surgeons respectively.

The real winners, however, were those who attended, making it a great night for everyone.

There are more events ongoing as part of the Stuart Mangan Appeal – check out www.stuartmangan.org.

Libel conflict heralds US interference

A recent US bill aimed at preventing the enforceability of Irish and British libel judgments can only serve to deter the distribution of US publications in Europe, says Paul Tweed

At 6.38pm on Saturday 27 September 2008, slap-bang in the middle of what was probably the most critically important economic debate in recent times, a bill was ushered through the US Congress almost unnoticed. It was surprising, not only that Congress and those proposing the bill should have allowed any other legislation to distract from crucial issues of world-wide importance, but also that the bill should have been passed without recourse to the usual committee stage, never mind the normal considered debate.

That bill was as a result of a sustained lobbying campaign initiated primarily on behalf of the author Rachel Ehrenfeld, aimed at preventing the enforcement of British and Irish libel judgements in the United States.

During the course of the past three decades, I have represented many well-known US movie and music stars who have been deterred from taking legal action in their home country as a result of the stringent protection offered to the press by the First Amendment of the US Constitution. As a result of the rapid expansion of the internet and the worldwide distribution of US publications, these personalities have had no alternative but to seek the protection of the Irish and British courts in attempting to vindicate their reputation against the wilder excesses of the tabloid press in particular.

"Why have the Americans deemed it necessary to go to such bizarre lengths to take a stand against an issue that has been taken totally out of proportion to the actual threat?"

'Libel tourism'

Although this practice has often been referred to as 'libel tourism' or 'forum shopping' by the press, keen to protect their own interests, the reality is that these personalities are only availing themselves of the protection of the law in those jurisdictions where they can, and have, satisfied the appropriate and necessary legal requirements. In other words, a potential plaintiff, in order to get a libel action off the ground, has to be in a position to establish that he has a known reputation in Ireland, that the offending material was published in this country, and that his reputation has been damaged as a result.

Although most of these claims are resolved at an early stage to the mutual satisfaction of both parties, and the courts are rarely troubled, the drama created by Rachel Ehrenfeld and the momentum of the resultant lobbying campaign would tend to give the totally false impression that these claims are numerous and that the Irish and British courts have lost control of logic and reason. However, nothing could be further from the truth. I, for one, have never once had to seek enforcement of a libel judgment for any plaintiff – US or otherwise – in the

'THE BOOK THE SAUDIS DON'T WANT YOU TO READ': THE BACKGROUND

The New York State legislation is entitled the *Libel Terrorism Protection Act* and the House of Representatives' bill is referred to simply as HR6146 and was introduced by representative Steve Cohen and co-sponsored by a number of members of the House Judiciary Committee, including its chairman, John Conyers.

Rachel Ehrenfeld was originally sued by Saudi businessman Bin Mahfouz in the High Court in London in relation to allegations linking him to Arab terrorism in her book *Funding Evil*. Although the book had very limited internet distribution on this side of the Atlantic, an American news site published extracts from the book, including the offending allegations, which was picked up by more than 3,000 subscribers in Britain and Ireland.

However, rather than defending her allegations in a court of law, Dr Ehrenfeld decided against being represented in the London proceedings and instead sought the assistance of the New York state and federal courts in blocking the enforcement of the stg£60,000 judgment against her in the US. Neither of the US courts was prepared to grant her application and she then turned to a lobbying campaign that resulted in the New York State legislature and House of Representatives passing the bills.

At the time of going to press, the legislation was expected to appear before the US Senate at the end of February 2009.

Interestingly, Dr Ehrenfeld cited a reluctance to expose herself to a substantial legal cost bill as a primary reason for not defending the London proceedings, and yet she (according to internet reports), was prepared to spend over $300,000 in unsuccessfully taking legal action to block enforcement in the United States! As you will also be aware, costs normally follow the event in the British and Irish jurisdictions and therefore, if her allegations had in fact been well founded, then her legal costs should have been recoverable.

viewpoint

in other countries' laws

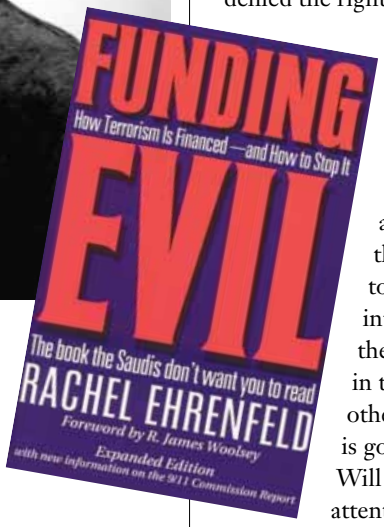
American courts. Furthermore, if I did have to take such a step, I would be more than happy to let the US courts decide whether such a judgment was enforceable, in the same way that I would have expected the US legislators to respect the jurisdiction and decisions of our courts. Instead, we have been faced with what is becoming an increasingly vitriolic campaign aimed at undermining the credibility of the very basis of the common law that actually laid the foundations of American law in the first place.

I believe that, rather than protecting freedom of speech, the actions of the US legislators can only serve to deter the distribution of US publications in Europe. Bear in mind that the local distributor of such a publication is often jointly and severally liable for the offending publication and, if exposed in such a manner, will quite understandably put pressure on the publisher to resolve the problem against the threat of a refusal to distribute any further editions of the relevant publication.

Bizarre lengths

Why then, you might ask, have the Americans deemed it necessary to go to such bizarre lengths to take a stand against an issue that, at best, has been taken totally out of proportion to the actual threat? To the best of my knowledge, the only case that has been mentioned throughout the process is that of Rachel Ehrenfeld, who, for her own reasons, decided not to defend the original proceedings in the High Court in London, and who also, significantly, was unsuccessful in persuading both her own state and federal courts to intervene on her behalf before she turned to seek the protection of the legislators.

Rachel Ehrenfeld: decided not to defend the London proceedings



The losers here are Ms Ehrenfeld's fellow countrymen, who may now be discouraged from bringing a case before the Irish courts. It should also be borne in mind that failure to take action in relation to a blatant libel must surely carry the risk of readers on this side of the Atlantic taking the view that the allegation must be true, if the well-known, and presumably wealthy, American decides against defamation proceedings to clear his name. The Americans may now become fair game, so to speak.

And, of course, this raises another question. What is the difference between the entitlement of an American to sue for damages in the Irish courts if he suffers personal injuries as a result of being injured by the negligent driving of a motorist while crossing O'Connell Street on the one hand, and on the other, being denied the right to sue for injury to his reputation within the jurisdiction of the state?

We have to ask ourselves the question as to where this interference by the US legislators in the laws of other countries is going to end? Will they turn their attention next to selective commercial judgments that might offend certain interests within the US, or will they cherry-pick other aspects of Irish and European law that does not meet with one of their citizen's approval? G

Paul Tweed is senior partner of Johnson's Solicitors, Belfast, Dublin and London.

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LANDS OF OPPORT

With the slowdown in legal recruitment and some solicitors losing their jobs, many may consider the apparently greener pastures of legal work in other English-speaking jurisdictions. In the first part of a two-part article, Deborah Flood explores the realities

After four years of a college degree, a year or more studying for the FE1 exams and three years of an apprenticeship, securing a full-time position as a practising solicitor used to be a given. However, judging from the number of members of the legal profession on the live register at the end of January, that illusion has been well and truly shattered. The media have coined this as 'the professional recession', affecting many white-collar professions that were untouched in recessions gone by.

Not all areas of law have been affected by the recession, with some areas actually reporting an increase in business due to the bad economy. Debt collection has seen an explosion of work recently, with many big firms expanding their existing departments and smaller firms now incorporating this area of law into their general practice. As reported in the October 2008 *Gazette*, new High Court cases increased by 26% and Circuit Court civil bills increased by 15% in 2007, with a further increase expected for 2008. Legal recruitment agencies are seeing a continual demand for solicitors with experience in these areas.

Criminal and family law has also seen a steady rise in work over the past two years, with many criminal law firms thriving – with some employing new solicitors to keep up with the work. Unfortunately, the number of positions opened to newly qualified solicitors (NQS) in the public sector has dwindled over the past few years. Neither the Chief State Solicitor nor the Office of the DPP is currently recruiting. Overall, there have been only five vacancies advertised on publicjobs.ie over the past three years suitable for NQS applications.

The private sector is not faring any better, with vacancies advertised on the Law Society's website down 50% in the last six months compared with the same period in 2007. The Society's jobs section is also seeing a huge increase of solicitors registering as locums and is receiving an unprecedented amount of applications for every job advertised. With no vacancies in the public sector and redundancies in the private sector, many unemployed solicitors are inevitably thinking of upping sticks to greener pastures. English-speaking countries such as US and Canada appear to be the obvious choice for many. But what is the reality of the employment situation in these countries?

United States of opportunities?

Law firms in the US have not gone unscathed in the current economic climate. *The New York Times* reported in December that many large law firms have made a percentage of their associates redundant, an unheard of phenomenon before now. In previous recessions, law firms would actually profit from protracted litigation caused by the bad economy. This time, many large companies are fearful of costly and risky

MAIN POINTS

- Emigrating to greener economic pastures
- Legal job market in the US
- Canadian requirements

UNITY?

litigation and are now beginning to rely on their cost-effective in-house lawyers instead. The days when a 25-year-old lawyer with little experience could make a six-figure salary in the States are long gone. Pay and recruitment freezes can be seen across the board in many law firms. According to the National Association for Law Placement, 38% of law graduates make $55,000 (€43,400) or less. When many American law graduates have student loans of over $100,000, the situation is bleak. John Gray, a law graduate from the University of Southern California, recently secured a lucrative contract with high-flying law firm Fulbright and Jaworski, but he appreciates that many of his fellow graduates were not so lucky.

The grass is always greener

Michael Roche-Kelly, managing partner for Laurence Simons in the Mid-West US, says that it is becoming more difficult to secure employment, even for the American law graduate with good marks. He points out that most lawyers in the US tend to be quite specialised, unlike Ireland, where most qualify in general practice.

By comparison with Asia and Dubai, there is little demand for corporate, litigation or real-estate lawyers. However, demand for lawyers with a background in patent law and the life sciences remains high. Nevertheless, these grim facts don't appear to be dampening the spirits of the many Irish solicitors and law graduates sitting the New York and California bar exams. Independent College and Friary Law in Ireland have both seen a considerable increase in the demand for these courses, and it shows no signs of slowing down.

"The days when a 25-year-old lawyer with little experience could make a six-figure salary in the States are long gone. Pay and recruitment freezes can be seen across the board in many law firms"

Each state in the US has different requirements for admission to sit the bar exam. In California, Irish solicitors do not have to complete any additional law study before they sit the exam, while in Hawaii, an applicant must have actively practised for the previous five years in their country of qualification. To decide whether a candidate is applicable to sit the New York bar exam, an assessment of your academic credentials is required. However, if your primary degree is not in law, you may be required to complete a programme of study at an approved law school in the US or undergo further legal experience. For more information, see www.nybarexam.org.

It is a well-known fact that some bar exams in America have a higher pass rate than others. It is worth your while undertaking some research before you commit yourself to sitting the bar exam in a particular state.

A number of Irish law graduates' and solicitors' stories make for hopeful reading. Niall O'Neill from Belfast relocated to New York in 2002. He initially worked for an Irish lawyer who specialised in business immigration law and now works as an immigration liaison officer with Ukvisas, the government agency that handles British visa and immigration work in North America, the Caribbean and much of Latin America. Fortunately, Niall gets the opportunity to travel with his job and he has recently returned from a trip to Peru. Although not strictly practising law, his work is heavily legally orientated.

Paul Murphy from Cork has been working as an associate lawyer on the west coast of America for the past two years. He is based in Los Angeles and has no intention of returning home. "It is expected of you to work long hours and some weekends, but overall, the job is well-paid and any time off I get, I go to the beach." He advises that the key to making a successful transition is to be realistic about the opportunities available and try to gain as much knowledge about the law community in your chosen city or state before you go.

Once you're past the age of qualifying for a J1 visa, securing a visa to work in the US can be a complicated and intimidating process. USIT currently have a programme called 'Professional Career Training USA', which provides a visa on the condition that you secure a full-time trainee work placement that is directly related to your current career field. Applicants must hold a degree or five years' experience in the area they are seeking employment. Visas are available for up to 18 months and the fees start at €699. A petition-based visa is one of the other options available for those looking to make the leap across the pond. However, this requires sponsorship by a prospective employer, who is subsequently required to show that the applicant has a recognised professional qualification that is needed. More information on the different types of visa available can be found on www.dublin.usembassy.gov/immigration.html.

Canadian bacon

The Canadian economy is experiencing a slowdown, but not nearly as dramatic as in the US. Law firms are still eager to hire legal professionals with specialised experience, but this is cold comfort for an NQS with little post-qualification experience. Marlene Barchuck, recruitment manager in Calgary, claims she has a difficult time placing foreign qualified lawyers due to many firms' bias in favour of locally experienced candidates. She also finds that there is already an abundance of generic lawyers qualified in general practice, but the current demand is for specialised lawyers in the areas of litigation,

Neville's parchment didn't cut much ice in Canada. Should've done nursing ...

bankruptcy, and mergers and acquisitions.

There are a number of hurdles an applicant must cross before they are eligible for a work visa in Canada. Although not insurmountable, the process can be arduous and time-consuming. In order to be eligible for a temporary work permit on one of Canada's primary economic immigration programmes, a lawyer is required to have a job offer. In addition, the Canadian employer is required to apply for a 'labour market opinion' of the job they are offering. This opinion assesses what input the foreign worker will have on Canada's labour market. There are certain skilled jobs, such as mining, engineering and nursing, which do not require a labour market opinion but, unfortunately, lawyers are not included among these exceptions. There is an exemption to the requirement, however, if an applicant is undertaking a course of study in Canada. The application process can also be made easier if you have family members in Canada who can sponsor you, or your partner or spouse has a job that is on the list of 'federal skilled jobs'. There are also provincial programmes in each state that applicants can apply to for a temporary work visa. The Canadian immigration website has a useful eligibility test that determines whether an applicant is suitable for a visa and for what type. See: www.cic.ca for more details.

USIT also has a one-year visa programme to Canada that is open to anyone under the age of 35. It allows participants to live, travel and work anywhere in Canada for up to 12 months. The programme opened in December, and the number of places available was 1,200. However, these places filled almost immediately and there is a waiting list of 300 people for cancellations. The programme will reopen in December 2009 and the cost starts at €489. More information can be found by emailing canada@usit.ie.

Similar to Australia, your legal qualifications and professional experience as a solicitor are individually assessed to determine whether you fulfil the criteria for accreditation. The National Committee of Accreditation in Ontario provides a uniform standard on a national basis so, unlike America or Australia, once your qualifications are recognised by that state, a foreign lawyer can practice in any common-law province in Canada. More information on the assessment criteria can be found on www.flsc.ca/en/foreignlawyers/guidelines.asp, or alternatively, contact ncaott@uottawa.ca.

The second part of this article will examine the Australian, Chinese and Middle-Eastern contexts. G

Deborah Flood has a journalism degree from DIT and began her traineeship with Partners at Law in 2006. She began a secondment last summer, working for federal judges in Los Angeles.

Go your OWN WAY

Ever-greater numbers of applications are being made to reopen past divorce settlements that, given the dramatic downturn in the economy, can no longer be realised. Róisín O'Shea looks at how Cork's Circuit Court has been dealing with these thorny issues

It seems reasonable to anticipate that ever-greater numbers of applications will be made in 2009 to reopen past settlements or orders in divorce cases, which, given the dramatic down-turn in the economy, can no longer be realised. How the courts will deal with the vexed question of how far they can go in revisiting these prior court orders, in light of changed circumstances, remains to be seen.

There is, without doubt, a dramatic sea change in market conditions. In a recent conference paper, solicitor Ann Fitzgerald said: "It's no longer about the size of the pot but, in some cases, it's no pot."

In the majority of applications in the Circuit Court, the primary asset is the family home. According to Morgan Kelly, professor of economics in UCD, house prices may fall by 80% from peak to trough in real terms (*The Irish Times*, 13 January 2009). This would take the market back to at least 1993 pricing. While it may sound overly pessimistic, I remember the giddy sensation of benefiting from the dramatic onset of the housing bubble, buying a new furnished three-bed semi-detached show-house in Dublin for IR£41,000 in 1995, and selling three years later for £98,000. A national fever took hold in the early '90s, infecting consumer, builder and banker alike. When the fever eventually broke, reality came crashing in.

Gerard Durcan SC recently observed at a family law conference that "it is likely that a significant number of previous agreements and orders which were made during the boom years of the Celtic Tiger may have to be reviewed or revisited having regard to the credit crunch".

Having observed 170 family law cases in Cork Circuit Cork (Michaelmas 2008), I can confirm that the credit crunch is already having a dramatic impact. In case after case, it's becoming clear that making 'proper provision' is clouded by uncertainty as property values plummet and unemployment rises. Parties are returning to reopen past settlements or orders, or are seeking to divide dwindling resources – and it is the judiciary rather than the state that is in the front line in dealing with the harsh financial realities of post-property-boom Ireland.

This old house

In the cases before Judge Sean O'Donnabháin, a common theme arises – the impact of the falling property market. Agreements previously entered into cannot now be realised, as the value of property has plummeted subsequent to the orders being made and parties continue to have unrealistic expectations in relation to the market value of their house/property. "This is what will become a classic case. Up until now, everyone had it too easy," Judge O'Donnabháin was prompted to say in a case where an applicant ex-wife sought to vary the initial consent to sell farmlands. The lands went on the market but, after some time, only one offer was received on a portion of them. The applicant's counsel raised the issue of a post-divorce matrimonial bill to seek a variation, so that the portion – the subject of the offer – could be sold and the ex-wife's financial settlement be satisfied. The position of counsel for the respondent was that the consent had been signed and was final. "The present consensus is that full and final settlement means nothing," said Justice O'Donnabháin. "There is a sea change here. You're going to have to take it on board. Are we finished with the world of finality?"

MAIN POINTS

- Reopening past settlements or orders
- Devaluation of primary assets
- Proper provision
- Variations on maintenance orders

In the majority of cases observed, particularly in relation to divorce proceedings, the wife with any dependent children resided in the family home at the time of the application, the husband living in rented accommodation. Whether they wished to sell the family home by consent, or by the application of one party, the court hit the same problematic issues. Firstly, valuations could not be relied on in a falling market – yet the parties still had unrealistic expectations of a quick sale at a good price, as summed up by Judge O'Donnabháin: "Putting a house on the market now seems to be hopeless ... Unfortunately, I've been telling the barristers here we were only making auctioneers more profitable, and no one would listen to me." The judge did propose a novel approach, one that is not likely to be embraced wholeheartedly by auctioneers, but could bring a necessary dose of reality to valuations. "Could we invent a scheme where, if the valuer gives a price, and it doesn't get that, then the valuer pays the difference?"

I will survive

The second issue arising relates to 'proper provision', as provided in section 20 of the *Family Law (Divorce) Act 1996*. The court, on divorce, must be satisfied that proper provision, having regard to all the circumstances, is made for the future needs of both spouses and any dependent children. "Given the current state of the depression, we may not be selling homes even in two years," said Judge O'Donnabháin, in a case where he wrestled with making proper provision for both spouses in a divorce case. The court consistently took the view that putting a house on the market in the current economic climate was not a realistic option, preferring to delay any sale, where possible, until dependent children were older, leaving liberty to apply at that stage.

"If the market comes back up, then maybe it can go on the market. Realistically, this house won't be sold ... and may not be of any benefit until one of you dies," O'Donnabháin J responded to an applicant husband who objected to the continuing right of sole occupation by the wife. "The house is only worth €300,000. It's not enough for the two of you to buy a place each in this market," he concluded.

An applicant wife, in one case, asked the court to transfer the family home and lands into her sole name on divorce. The three children were no longer dependents and the property was virtually mortgage free. The position of the respondent husband was that he was 64 years of age, had been working in the building trade but was now getting little work, was paying maintenance and financing a mortgage, while living in a small second property. He wanted the lands adjoining the family home sold and divided 50/50, as 'proper provision' for his future needs – lands that,

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LOOK IT UP

Cases:

- *PJ v JJ* [1993] 1 IR 150

Legislation:

- *Family Law (Divorce) Act 1996*, section 20
- *Family Law (Maintenance of Spouses and Children) Act 1976*

Literature:

- Durcan, G, 'Divorce and judicial separation: recent developments in the superior courts', Round Hall Family Law Conference, 6 December 2008
- Fitzgerald, A, 'Crouching tiger, hidden dragon – unlocking the assets', Round Hall Family Law Conference, 6 December 2008
- Slattery, L,'Warning that house prices may fall by 80%', *The Irish Times*, 13 January 2009

he says, the wife had greatly undervalued. Such was the disparity in valuations from the 'experts' that the judge suggested putting the land on the market, the best offer securing. The judge directed the auctioneer who testified on behalf of the respondent to mark out two sites and place them on the market.

Let's call the whole thing off

Case after case entered the courtroom where fathers were now suffering reduced financial circumstances and sought downward variations on maintenance orders.

Some asked the court to strike out the order completely, as they maintained they were existing at, or below, subsistence levels themselves. A maintenance debtor, under section 6(1) of the *Family Law (Maintenance of Spouses and Children) Act 1976*, can apply for the discharge of a maintenance order one year after the order has been made. The basis of this application can be new evidence coming to light or changed circumstances (section 6(1)(b)).

Where a respondent pleaded changed circumstances and sought a downward variation regarding maintenance for his children, Judge O'Donnabháin questioned the repayment of debt ahead of the duty to provide maintenance: "I cannot see why you are paying Bank of Ireland ahead of paying for your children. Banks have a long history of waiting."

When it transpired that the respondent was in arrears with the existing maintenance order, the judge responded: "Your client has got to realise that coming in here paying nothing is not sustainable, it is not acceptable. I'm striking out the application. This man needs a serious dose of reality."

Now, more than ever, it is vital that practitioners, when drafting a separation agreement, ensure that it contains a clause providing for downward variation of maintenance. The absence of such a clause in the agreement means that the paying spouse will continue to be bound by his/her contractual obligation even if he/she no longer has the ability to pay (*PJ v JJ*).

In one case, the judge agreed to vary a maintenance payment for a child downwards from €150 per week to €60 per week, as the man was now unemployed. A taxi driver sought a downward variation on maintenance and was surprised when the judge, based on the respondent's current income, varied the maintenance order upwards.

The court ruled *status quo* in the case where an applicant father, whose pay had been cut by 10%, sought to decrease his monthly payments of €600 for his child. The only certainty in these uncertain times is that this is but the beginning of what could prove to be an avalanche of hardship applications.

Someone else's trouble now

Applications to reopen past settlements could bring about a highly ironic situation. A spouse who is now bust may well view it as a good thing that his/her assets were transferred to his/her spouse rather than taken by financial institutions, allowing this spouse to seek to retrieve some of those assets at a later date by way of proper provision on divorce (Gerard Durcan SC). In general, practitioners will have to advise their clients to lower their expectations and conduct a reality check in formulating a settlement proposal. Selling the family home may not be an option for some years where there are dependent children. An interim suggestion could be 50/50 ownership of the family home, with a change in title to reflect this.

> ***"The harsh reality for practitioners themselves may be that getting paid becomes ever more difficult as the resources of the parties dwindle"***

The harsh reality for practitioners themselves may be that getting paid becomes ever more difficult as the resources of the parties dwindle. As Judge O'Donnabháin put it: "Is it going to come down to dividing up negative equity and debt?"

Many academics believe that the adversarial route should not be the first step in separation or divorce proceedings – less confrontational avenues, such as mediation, ought to be explored, if possible. The stark reality in 2009 for many couples who no longer wish to live together is that they will no longer be able to afford to move apart. G

Róisín O'Shea is a graduate of UCC and WIT and is currently undertaking an integrated Master's/PhD in judicial separation and divorce. The Minister for Justice has granted permission for her to attend in camera *family law proceedings in the Circuit Court.*

WHEELING

Section 29 of the *Companies Act 1990* is designed to restrain unacceptable self-dealing between a director and his company. Easy to overlook, it should always be on the cards when a company is acquiring or disposing of an asset. William Prentice shuffles the pack

Section 29 of the *Companies Act 1990* is one of a series of measures contained in the act that are designed to restrain unacceptable self-dealing between a director and his company. The main focus of section 29 is shareholder, rather than creditor, protection: any transaction that would otherwise offend section 29 can be blessed by an approving shareholders' resolution. This is in contrast to section 31 of the act, which restrains the making of loans and the giving of security and similar transactions involving directors and their connected parties, and which seems more focused on creditor protection.

Section 29 is one of those sections that could be easy to overlook, but it should always be on the radar screen when a company is acquiring or disposing of an asset. The consequences of breaching it can be serious: transactions in breach may be voidable, and the directors and their connected parties involved can be liable to account for any gain they receive and be required to reimburse the company for any loss it incurs.

The easiest approach to section 29 is to look at the basic prohibition it creates and then consider the exceptions to the prohibition.

The prohibition

Section 29 prohibits a company from acquiring a non-cash asset of the requisite value from a director of the company or of its holding company, or a person connected with such a director.

It also prohibits a director of the company or a director of its holding company, or a person connected with such a director of the company, from acquiring a non-cash asset of the requisite value from the company, unless, in each case, the acquisition is first approved by an ordinary resolution of:

- The shareholders of the company, and
- (If the director or the connected person is a director of

&DEALING

MAIN POINTS

- **Section 29 of the *Companies Act 1990***
- **Property transactions involving companies and their directors**
- **Prohibition on acquiring a non-cash asset**
- **Exceptions to prohibition**

the company's holding company or is a person connected with a director of the holding company), the shareholders of the company's holding company.

It is necessary to get to grips with certain key terms used by the section.

'Acquire' is widely defined. It would include, for example, a gift, a grant of a lease and a surrender of a leasehold interest.

A 'non-cash asset' means pretty much what it suggests: it is any asset other than cash. Cash in this context includes foreign currency cash.

An asset can never be of the 'requisite value' if it is worth less than €1,270; will always be of the 'requisite value' if it is worth more than €63,487; and will only be of the 'requisite value' where its worth is between those figures if it represents more than 10% of the value of the company's net assets. Perhaps these were sensible figures in 1990, but with the passage of time, they now look very low.

A 'director' of a company includes both a shadow director and a *de facto* director. A shadow director is a person who has not formally been appointed a director of a company but in accordance with whose directions or instructions the directors of that company are accustomed to act. A *de facto* director is someone who acts as, and is treated as if he is, a director of a company, although he has not been formally appointed as a director. The two concepts are similar. To distinguish them, think of a shadow director as someone who does not want to be regarded as a director, whereas a *de facto* director is someone who does want to be regarded as a director.

Either way, despite not having been formally appointed, they both are treated as being directors. In some recent cases, it has been held that, although only an *individual* may be appointed as a director of an Irish company, a *company* may be a shadow director of an Irish company. This is likely to throw up some interesting situations and seems to potentially widen the scope of section 29.

A person is 'connected' with a director of a company if the person (not being himself a director of the company) is a:

- Spouse, parent, brother, sister or child of that director, or
- A person acting as a trustee of a trust, the principal beneficiaries of which are that director, his spouse or any of his children, or any body corporate that he controls, or
- A person who is in partnership with that director within in the meaning of the *Partnership Act 1890*, or
- A body corporate controlled by that director.

It is important to appreciate that not only individuals, but also bodies corporate, may be 'connected persons', and it is worth looking more closely at that category. A director controls a body corporate if he either on his own or together with any other director(s) of the company, or any person connected with him, or any person connected with any other director(s) of the company, is interested in 50% or more of the equity share capital of the body corporate, or entitled to exercise, or control the exercise (either directly himself or through another body corporate that he controls) of 50% or more of the voting power at general meetings of that body corporate.

The 1990 act deliberately uses the expression 'body corporate' here. This is wider than the expression 'company' and would, for example, include a company incorporated outside Ireland. Thus a sale by an Irish company of a non-cash asset

SECTION 29 IN OPERATION

In these examples, it is assumed that the asset in question is of the requisite value:

Example 1

Company A sells a property to one of its directors.

This is in breach of section 29 unless it is first approved by an ordinary resolution of company A, or it is subsequently ratified within a reasonable period by such a resolution.

Example 2

Subsidiary company S leases a property to the sister of one of the directors of its holding company H.

This is in breach of section 29 unless it is first approved by ordinary resolutions of subsidiary company S and holding company H, or it is subsequently ratified within a reasonable period by such resolutions.

If subsidiary company S is a wholly-owned subsidiary of holding company H, no resolution of the shareholders of subsidiary company S is required.

If the holding company H is incorporated outside Ireland, no resolution of the shareholders of H is required.

Example 3

- *Company A is in a members' voluntary winding up.*
- *The liquidator sells a property (belonging to the company) to one of the directors.*

This is in breach of section 29 unless it is first approved by an ordinary resolution of company A, or it is subsequently ratified within a reasonable period by such a resolution.

Note: if the winding up were a creditors' voluntary winding up or a court winding up, no resolution would be required.

Example 4

- *Company A sells a property to company B.*
- *A director of company A 'controls' company B.*

This is in breach of section 29 unless it is first approved by an ordinary resolution of company A, or it is subsequently ratified within a reasonable period by such a resolution.

If companies A and B are wholly-owned members of the same group, no resolution is required.

of the requisite value to a company incorporated outside Ireland that is controlled by a director of the Irish company would be prohibited by section 29, unless one of the exceptions applies.

In determining whether a director has an interest in shares, the rules set out in section 54 of the 1990 act apply. A consideration of those rules is beyond the scope of this article but, for example, a director does not have to be the legal and registered owner of the relevant shares – a beneficial ownership is sufficient to establish an interest in them.

The exceptions

As mentioned above, section 29 contains a number of exceptions to the prohibition it creates.

Prior approval exception – this is the principal exception. The prohibition in section 29 does not apply where the transaction in question is approved by an ordinary resolution of the shareholders of the company in question and (if the director or connected person in question is a director of its holding company or a person connected with a director of the holding company) by an ordinary resolution of shareholders of the holding company. The ordinary resolution may be passed at a general meeting or by written resolution.

Subsequent ratification exception – in addition to permitting prior approval, section 29 also allows transactions to be subsequently ratified, within a reasonable period, by an ordinary resolution of the company's shareholders and, if applicable, by the shareholders of its holding company. In this respect, the section is forgiving. However, it may be a limited exception. Where it applies, it means that the transaction is no longer voidable, but it is not clear that it also relieves the parties concerned from their obligation to account for any gain and make good any loss suffered by the company. To my mind, the section should be interpreted to so relieve the parties.

> ***"The main focus of section 29 is shareholder, rather than creditor protection: any transaction that would otherwise offend section 29 can be blessed by an approving shareholders' resolution"***

The 1990 act gives no guidance as to what is a reasonable period. It will depend on the circumstances. I think that, in appropriate circumstances, quite a long period could be reasonable. If the section is to protect shareholders, does it really matter how long afterwards they decide to ratify a transaction?

De minimus *exception* – as mentioned above, the prohibition in section 29 applies only if the assets are of the requisite value.

Group exception – a company can be a person connected with a director. Accordingly, the acquisition by a company of a non-cash asset of the requisite value from a company controlled by a director of the buying company will infringe section 29. However, if the buyer and the seller are wholly-owned members of the same group, the prohibition does not apply. Thus, section 29 will not apply where:

- A holding company acquires an asset from one of

its wholly-owned subsidiaries, or
- A wholly-owned subsidiary acquires an asset from its holding company, or
- One wholly-owned subsidiary of a holding company acquires an asset from another wholly-owned subsidiary of the same holding company.

Exception for wholly-owned subsidiaries – this involves interpreting the "inscrutable" provisions of subsection 6 of section 29. This provides, it would appear, that a company that is a wholly-owned subsidiary is not required by section 29 to pass a resolution. This would appear to be logical – if the company is wholly-owned by its shareholder, the shareholder already has sufficient control over the situation and doesn't need the extra protection of section 29. This is a distinct exception from the group exception. For example, if a wholly-owned subsidiary sells a property to one of its directors, the group exception does not apply, as it is not a transaction between two wholly-owned members of a group. Nonetheless, a resolution of the selling company is not required because it is a wholly-owned subsidiary. If the buying director is also a director of the holding company, a resolution of the holding company will be required.

Exception for transactions in the course of a winding up – if the transaction is effected in the course of winding up the company (other than a members' voluntary winding up), the section is not breached. Thus, a liquidator in a creditors' or compulsory liquidation can sell the company's assets to a director or connected person without the need for a shareholders' resolution, but the liquidator in a members' voluntary liquidation or a receiver cannot.

Exception for acquisitions by a member in his character as a member – if a person acquires a non-cash asset in his character as a member, section 29 is not breached. Accordingly, if a company makes a distribution *in specie* (that is, in kind and not in cash) to its shareholders, shareholders' consent is not required under the section. A distribution *in specie* (in contrast to a sale) by a liquidator of a company in members' voluntary liquidation falls within this exception and, accordingly, does not require shareholders' consent under section 29.

Foreign company exception – not really an exception at all, but just to point out that the prohibition in section 29 only applies to Irish incorporated companies. Foreign companies are not totally irrelevant. As mentioned above, a foreign company may be a connected party of a director of an Irish company. G

William Prentice is a partner in the banking and financial services group of Matheson Ormsby Prentice.

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Trouble with a

Tax matters can invite trouble when solicitors assist clients preparing a will. Barry Kennelly invites you to a close reading of the tricky tax issues that can arise

Clients expect that tax issues will be addressed when a will is prepared. A solicitor may be in difficulty if a beneficiary has a tax liability that could have been avoided. If a solicitor is not advising on tax, this should be expressly stated in the letter of retainer and the client should be advised to obtain tax advice.

While this article is not intended to be a comprehensive summary of all relevant tax issues that could arise, it is hoped that it will provide an indication of some common ones.

Capital acquisitions tax

In any succession planning, capital acquisitions tax (CAT) must be considered. At the very least, clients expect that a practitioner drafting a will knows the relevant group thresholds and can advise on the CAT liability for beneficiaries.

There may be obvious CAT issues to be addressed. For example, can agricultural relief, business property relief or dwellinghouse relief be utilised? Is a 'section 60' policy required? Can government securities be given to non-Irish domiciled beneficiaries? Can inheritances be made to grandchildren or children-in-law to utilise group thresholds?

Should a lifetime transfer be considered? An early transfer of assets to the next generation can be beneficial if the capital appreciation in those assets exceeds the growth in the relevant tax-free threshold. There is also the possibility that the date from which all gifts must be aggregated for the purposes of the CAT thresholds will be revised forward, so that assets gifted now will not be aggregated with those transferred under the client's will. The potential CAT advantages of transferring assets earlier rather than later must be weighed up against the fact that a transfer of assets during the testator's lifetime may give rise to capital gains tax (CGT) and stamp duty.

A client may also welcome the advice that, jointly with his or her spouse (if applicable), they can give €6,000 a year to any beneficiary without affecting the relevant CAT threshold.

Appropriation

Under section 55 of the *Succession Act*, an executor has a statutory power to appropriate any part of the estate of a deceased person in its actual condition or state of investment at the time of appropriation in or towards the satisfaction of a beneficiary's share in the estate.

Of course, the will can provide wider powers of appropriation to executors. Where an express power of appropriation is included, it is also usual to exclude the requirements on executors to give the notices and obtain the consents that are contained in statute.

If an express power is included in the will, whereby the executors can appropriate assets without notices and consents, the transfer will not be a conveyance on sale for stamp-duty purposes. On the other hand, if the executor is acting in reliance on the statutory power of appropriation, it can be treated as a conveyance on sale and subject to *ad valorem* stamp duty.

CGT must also be considered. If an appropriation is made under the statutory power, Revenue insists that an agreement is in place between the legatee and the executor, that the legatee should be deemed to have acquired the asset as the executor acquired it, and that any future chargeable gain or allowable loss will therefore be deemed to accrue to the legatee. Without such an agreement, the executor would potentially be subject to CGT in the course of administration of the estate. If an express power of appropriation is included in the will, the asset is deemed to be acquired at market value at the date of death by the legatee.

Practitioners should therefore consider the inclusion of an express power of appropriation in wills as a standard provision.

Discretionary trust tax

A common Irish will transfers one spouse's estate to the other spouse. If one spouse predeceases the other, the assets are held on a discretionary trust if there are minor children, until they reach a certain age, at which point the capital is transferred to the children.

The trustees appoint the capital, income or both of the trust to the beneficiaries in such proportions as the trustees in their absolute discretion think fit. A letter of wishes may be prepared by the testator to the trustees providing guidelines. However, this is not legally binding on the trustees.

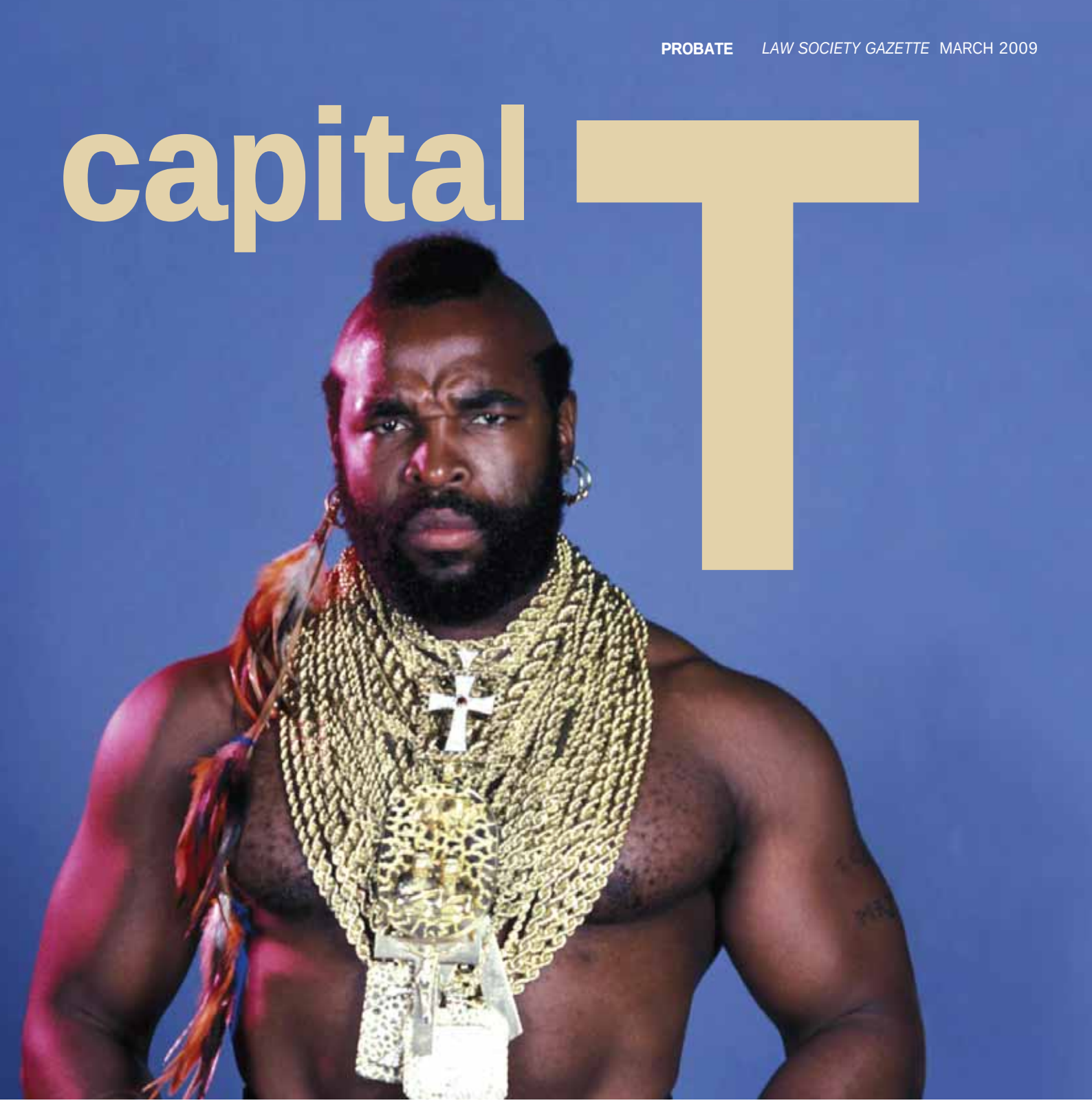
An initial levy of 6% arises on the latest of the following dates:

- The property becomes subject to a discretionary trust,

MAIN POINTS

- Tax issues for solicitors preparing wills
- CAT, CGT and stamp-duty liability for beneficiaries
- Discretionary trust tax
- Multi-jurisdictional aspects

capital T



Mr T: He pities the fool. No, he really does – he cares a lot

- The settlor has died,
- Where there are principal objects (spouse, children of the testator, or children of a deceased child of the testator), the date that there ceases to be a principal object under the age of 21.

An annual levy of 1% on each subsequent 31 December, other than the first subsequent 31 December, also applies. It appears that where the residue of an estate is to be held on discretionary trust, the levies will not arise until the residue is ascertained and assets passed to trustees.

Certain exemptions apply. For example, where Revenue is satisfied that the trust has been created exclusively for the benefit of an individual who is, because of age or improvidence or physical, mental or legal incapacity, incapable of managing their own affairs, the levies will not arise.

The surcharge is also reduced from 6% to 3% if all of the trust assets are distributed within five years of becoming subject to the trust. If any principal objects are under 21 at the date the property is subject to the trust, the date commences when no principal object is under 21.

Tax definition of discretionary trust

The definition of a discretionary trust for CAT purposes is broader than its legal meaning. It includes

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MANAGING YOUR CAREER IN CHALLENGING TIMES

Date: Tuesday 31 March 2009
Time: 5pm to 8pm
Venue: Law Society, Blackhall Place
Fee: €120 per person
Skillnet fee: €84 per person

Discounted fee*: €50 per person*
Skillnet discounted fee*: €35 per person*
(*only if you have been admitted in the last five years)
CPD hours: 3. Group study (management and professional development)

- Is your career on the right track?
- What are the myths and realities of the current market and forecast?
- How can you best position yourself for now and the future?
- What can you do to focus and take control of your career?

Today more than ever a challenging market environment, demanding clients and increased competition mean you need to be clear about your own career path.

This seminar will enable you to harness your professional and technical strengths into an overall career plan. It will sharpen your awareness of how best to manage your career as it currently exists. It will also enable you to make informed decisions to best position yourself for future career opportunities.

At the end of the seminar attendees will:

- Have an overview of the actual realities of the current market
- Understand the consequent options, challenges and opportunities
- Develop a sense of one's own style and preferences in terms of active career decisions and situations
- If out of a job or facing career transition: be in an improved position to take stock of their situation, to explore options; and to best position yourself for the future
- If employed or considering change: achieve clarity of expectation in terms of activities and results
- Have a roadmap and tips to support effective self management in situations of uncertainty and challenge
- Be motivated to believe in themselves and to face into the challenge of difficult times – with optimism

Whether you are a newly-qualified solicitor or simply wish to reappraise your situation, this seminar is for you.

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MULTI-JURISDICTIONAL ASPECTS

Many solicitors have clients who have assets outside Ireland and/or are domiciled outside Ireland.

The legal meaning of 'domicile' is imprecise. Broadly speaking, it means the country that an individual considers to be his natural, permanent home. Unlike other concepts in Irish tax rules, such as residence, it is not referable to an exact period of time spent in a jurisdiction. In the majority of cases, a client's domicile is clear. However, this is not always the case, and the detailed rules would need to be considered.

Under Irish law, the rules in relation to the disposition of a person's movable property are governed by the law of the country where the testator was domiciled at the date of death (*lex domicilii*). The rules that apply in relation to the disposition of real property are governed by the law of the country where the property is situated (*lex situs*).

A common example is an Irish domiciled client who holds property in, say, Spain. Under Irish rules, Spanish law would determine how the property will be transmitted. Concepts such as trusts and the vesting of assets in a deceased's personal representative may cause difficulties, as Spain is a civil law jurisdiction. Thus, an Irish will that purports to deal with Spanish property may not be effective under Spanish law and/or could create unnecessary tax liabilities in Spain.

Where there is a multi-jurisdictional aspect to a client's estate, he or she should be advised in writing to obtain local tax and legal advice and to execute a will in the relevant foreign jurisdiction. It should be noted that an Irish will would normally be acceptable for British probate, but British tax advice should be considered. It is important to review the foreign will to ensure that it only deals with assets where their transmission is governed by that jurisdiction's laws and does not revoke any Irish or other wills. Care should also be taken to ensure that any subsequent wills do not revoke that foreign will. Practitioners should ensure that the Irish will does not purport to cover the foreign property where it is covered by a foreign will.

a trust where property is held to accumulate the income or part of the income of the property.

It can also extend to a trust where no person is beneficially entitled for 'an interest in possession' in the property. This phrase is not defined in legislation and its meaning is the subject of much case law and commentary. It is understood to mean a present right to the present enjoyment of the property. For example, if income is accumulated, the beneficiaries may not have an interest in possession.

It is important to note that it is different from the phrase 'beneficially entitled in possession', which is used where there is a charge to 'mainstream' CAT. Solicitors should be aware that a beneficiary could have an interest in the capital of a trust and a liability to mainstream CAT, but the trust could still be a discretionary trust – with the consequent issues set out above – if the beneficiary does not have an interest in possession in the assets of the trust. Great care is needed.

Risk management

Formerly, the age of the youngest principal object that triggered the levies was 25. This was changed to 21 in the *Finance Act 1992*. Therefore, it would be prudent to check older wills that may have been drafted so that the capital remains in the trust until the youngest principal object is just under 25. If necessary, such wills may need to be changed to ensure discretionary trust levies do not arise.

It is important to check the terms of any precedent trusts that do not appear to be discretionary in nature in order to ensure that there is no provision that could bring them into the wider definition of a discretionary trust for CAT purposes.

This article sets out some common tax issues that arise in the context of preparing wills. CAT issues should always be addressed. It is suggested that an express power of appropriation should be considered as a standard provision in all wills. Great care should be taken in relation to discretionary trusts and a review of earlier wills should also be undertaken because of the change in the age of principal objects that triggers the discretionary trust levies. Finally, where there is a multi-jurisdictional aspect to an estate, foreign tax and legal advice should be obtained.

If a solicitor is not advising on tax matters, it is very important that this is stated in writing in the retainer and the client is advised to obtain professional tax advice. If the client declines, a written disclaimer may be necessary. G

Barry Kennelly is a senior consultant with Astons Wealth Management Ltd.

LOOK IT UP

Legislation:

- *Capital Acquisitions Tax Consolidation Act 2003*
- *Succession Act 1965*

Cases:

- *Cancer Research Campaign v Ernest Brown & Co* (1997) 1 Lloyd's Report 525
- *Revenue Commissioners v Christie and Others (in the matter of Irvine Deceased)* 2005 W172R
- *Pearson v IRC* [1980] STC [318]
- *Proes v Revenue Commissioners* V ITR 481

Literature:

- Appleby and O'Hanlon, *The Taxation of Chargeable Gains* (Irish Taxation Institute, 2008) (20th edition)
- Bohan and McCarthy, *Capital Acquisitions Tax* (Butterworths, 2004) (2nd edition)
- Keogan, Mee and Wylie, *The Law and Taxation of Trusts* (Tottel Publishing, 2007)
- Power and Scully, *The Law and Practice of Irish Stamp Duty* (Irish Taxation Institute, 2007) (3rd edition)
- Ward and Judge, *Irish Income Tax* (Tottel Publishing, 2007)

A costly

Launched in a blaze of publicity, the *Civil Liability and Courts Act 2004* was intended, among other things, to improve the operation of personal injuries litigation. In its fifth year of operation, Stuart Gilhooly looks at the mediation provisions and wonders whether they have achieved their goals

Mediation is the new litigation. Do you reckon? No, nor do I. For what now seems an eternity, everyone with an opinion has been espousing the joys of mediation and how it is going to change the world. By all accounts, it seems to operate very well in other jurisdictions and is even becoming more prevalent in the Commercial Court here – but it still hasn't really entered our mindset as a regular and realistic alternative to litigation.

It was presumably with the international obsession with mediation in mind that Michael McDowell introduced sections 15 and 16 of the *Civil Liability and Courts Act 2004*.

Essentially, it provides for either party in a personal injuries matter to ask the court to direct that a mediation conference be held. This would be chaired by a solicitor or barrister of five years' standing or an accredited mediator from selected panels. The parties would be obliged to attend, but clearly not obliged to settle. Failure to participate after a direction would leave the non-participating party open to a costs sanction.

The minister, bless him, was convinced that all he had to do was make mediation available in personal injuries litigation and the parties would jump at it. The mistake he made was that he failed to consult with those who had experience in personal injuries litigation as to whether it was worthwhile. Most would have told him that it wouldn't work in the vast majority of cases.

Carry on regardless

Generally, if a party wants to settle a personal injuries case, they will seek a settlement meeting. If the other party doesn't wish to settle, it won't be successful. Mediation is most useful in multi-issue disputes. In those circumstances, a skilled mediator can direct the parties towards trade-offs of various issues and, even if no settlement is reached, narrow the dispute between them.

In the vast majority of personal injury cases, the issues are the value of the case and sometimes the liabilities of the parties, and while these can frequently lead to hugely different views, even in very small cases, it can be very hard to shift the views of a plaintiff and defendant until the full gamut of discovery, engineering reports and up-to-date medical reports have been completed. At this point, the case would usually be ready for trial and a mediation conference would be fruitless.

The main reason for this, of course, is the issue of cost. A mediation can be very expensive and – unless there are a lot of issues, a potentially large value and a very good chance of success at the mediation – there seems no sense in either party (particularly a defendant who is most likely to have to pick up the tab) engaging in a process that is simply going to add to the costs of the procedure.

The proof of this in the pudding. To date, as far as I'm aware, just one case has been the subject of a mediation conference.

This, however, does not mean that there are not some cases that are appropriate for a mediation conference – perhaps it is time for us to think slightly outside the box on this subject. While the introduction of PIAB has led some of the general public to believe that personal injuries litigation is simple, nothing could be further from truth. Even a small case has many complexities that leave the plaintiff and defendant vulnerable on many fronts, from issues of liability to section 51A of the *PIAB Act 2007*, section

MAIN POINTS

- ***Civil Liability and Courts Act 2004***
- **Mediation provisions**
- **Multi-issue disputes**

affair?

Many clients regard the apology or explanation as more important than the money

Civil Liability and Courts Act 2004 (sections 15 and 16)

Mediation conference

15(1) Upon the request of any party to a personal injuries action, the court may –

(a) at any time before the trial of such action, and

(b) if it considers that the holding of a meeting pursuant to a direction under this subsection would assist in reaching a settlement in the action,

direct that the parties to the action meet to discuss and attempt to settle the action, and a meeting held pursuant to a direction under this subsection is in this Act referred to as a "mediation conference".

(2) Where the court gives a direction under subsection (1), each party to the personal injuries action concerned shall comply with that direction.

(3) A mediation conference shall take place –

(a) at a time and place agreed by the parties to the personal injuries action concerned, or

(b) where the parties do not agree a time and place, at a time and place specified by the court.

(4) There shall be a chairperson of a mediation conference who shall –

(a) be a person appointed by agreement of all the parties to the personal injuries action concerned, or

(b) where no such agreement is reached –

(i) be a person appointed by the court, and

(ii) (I) be a practising barrister or practising solicitor of not less than 5 years standing, or

(II) a person nominated by a body prescribed, for the purpose of this section, by order of the Minister.

(5) The notes of the chairperson of a mediation conference and all communications during a mediation conference or any records or other evidence thereof shall be confidential and shall not be used in evidence in any proceedings whether civil or criminal.

(6) The costs incurred in the holding and conducting of a mediation conference shall be paid by such party to the personal injuries action concerned as the court hearing the action shall direct.

Report of chairperson of mediation conference

16(1) A person appointed under section 15(4) to be the chairperson of a mediation conference shall prepare and submit to the court hearing the personal injuries action concerned a report, which shall set out –

(a) where the mediation conference did not take place, a statement of the reasons as to why it did not take place, or

(b) where the mediation conference did take place –

(i) a statement as to whether or not a settlement has been reached in the personal injuries action concerned, and

(ii) where a settlement has been entered into, a statement of the terms of the settlement signed by the parties thereto.

(2) A copy of a report prepared under subsection (1) shall be given to each party to the personal injuries action at the same time as it is submitted to the court under that subsection.

(3) At the conclusion of a personal injuries action, the court may –

(a) after hearing submissions by or on behalf of the parties to the action, and

(b) if satisfied that a party to the action failed to comply with a direction under section 15(1),

make an order directing that party to pay the costs of the action, or such part of the costs of the action as the court directs, incurred after the giving of the direction under section 15(1).

26 of the 2004 act, and the vagaries of individual judges.

However, most can be solved by discovery, engineers, up-to-date medicals and settlement meetings. Some personal injuries litigation does fall into the category of multi-issue and may well benefit from mediation conferencing, particularly medical negligence claims – and not just the really big ones. In many cases, and particularly the smaller medical negligence claims, a claim would never have been brought if the medical provider had provided an apology or explanation at the outset.

Even during the course of the litigation, many claimants regard the apology or explanation as more important than the money. Surely in these cases, a mediation conference at a relatively early stage would be of benefit to both parties. Medical negligence claims are notoriously expensive to fund for the plaintiff and, if the plaintiff is successful, the defendant is usually faced with a large bill.

Similarly, there is a limited but not insignificant number of catastrophic injury cases that come before the courts in any given year. While most of these can be concluded by settlement meeting, it can take a long time to get there, and one wonders whether a mediation conference at an early stage could make an arrangement for say, an interim payment while the medical and liability issues are being sorted out.

Finally, there is a use there for the plaintiff in a case where liability has been heavily disputed and the defendant is showing no interest in settlement. Although mediation is unlikely to be successful in those circumstances, it can be useful for exchange of information, and perhaps a defendant who was hitherto determined to fight to the end might learn something that would weaken their stance and persuade a different approach.

While I'm not a cheerleader for mediation in most personal injury cases, I do believe it has its place and practitioners should be aware of its uses in the appropriate situations.

On a wider note, mediation can be hugely successful in those intractable commercial, employment or property disputes that we all have on our desks. Open your mind and you might just close a file. G

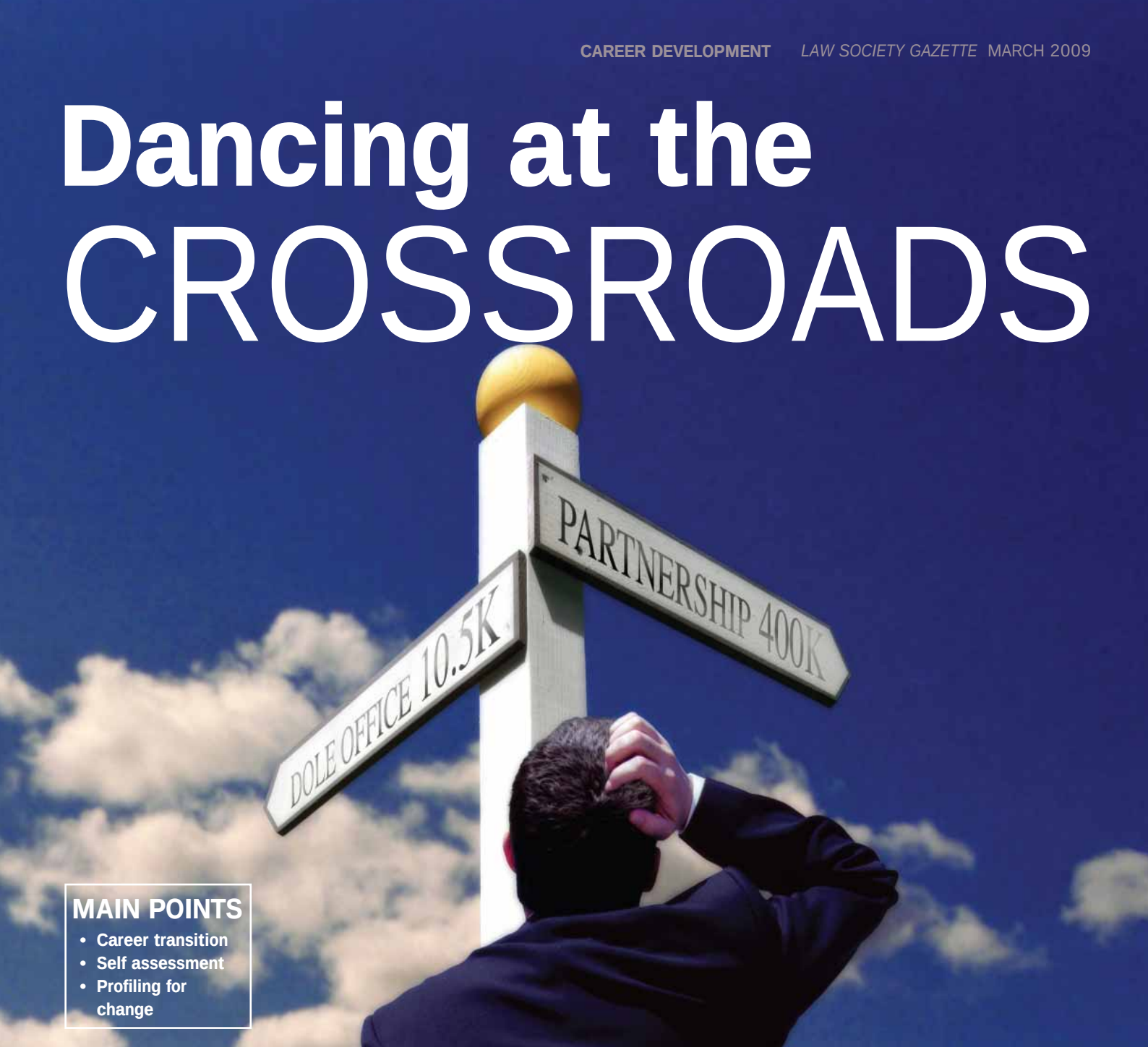
Stuart Gilhooly is the chairman of the Law Society's Litigation Committee and an accredited mediator.

LOOK IT UP

Legislation:

- *Civil Liability and Courts Act 2004*, sections 15, 16 and 26
- *PIAB Act 2007*, section 51A

Dancing at the CROSSROADS



MAIN POINTS

- Career transition
- Self assessment
- Profiling for change

You may be a newly-qualified solicitor and your training contract is not being renewed, or an experienced legal professional at a career crossroads, unsure of what the future holds. Declan Farrell and Aoife Coonagh boot up the career satnav to get your coordinates

'Current economic climate'. 'Credit crunch'. 'Recession'. Three phrases that are becoming a part of our everyday language. The legal profession, like the rest, is affected by the global economic situation in one way or another. You may be a newly qualified solicitor and your training contract is not being renewed; or maybe you're a qualified, experienced legal professional who is working away, but unsure of what the future holds. Or perhaps your department was halved, due to the decline in business.

Either way, you are probably now looking at your career in a different light. Whether you are actively typing up your CV, considering 'where next?' in your career path, or are at a career crossroads, you need to take control and plan and manage your way through your career change.

Now is the time to take a step back and reflect on your career to date. To move and change careers with confidence, you need to be very clear on your personal strengths and know where to focus your efforts to make the most of them.

When in career transition, it's easy to get caught

up in job titles. You are a qualified solicitor. You are tied to this career only, right? Wrong! We have trained countless interview boards over the years, and when I ask interviewers what they are looking for in the ideal candidate, invariably I get the same answer. Competence. Skill. Someone who can do the job, and do it well.

Now is the time to get thinking about your skill-set. What are the things you do well? What skills and experience do you have? These skills are usually a mix of business, technical and people skills. If you need assistance with this, take a look at any number of job specifications in the paper or online. Very quickly, you should get an idea of the kinds of skills employers look for in addition to specialist or technical skills. Communication skills, the ability to work in a team or under pressure, and good interpersonal skills are among the more usual skills employers look for.

Go back over your career and identify the specific business, technical and people skills that you have developed in your various roles. Ideally, these should be strengths. You will need to carefully work out how you will apply and transfer these skills in the roles you are considering. For instance, if you are considering a move from private practice to an in-house role, you will need to be very clear how the skills you developed will be of benefit in an in-house role – and specifically to the organisation in question. If you are applying for a promotion, you'll need to be aware of any 'step-up' required.

Profile your ideal job

When is the last time you gave serious consideration to your career? Maybe it was at your last performance review, when negotiating a salary increase, or when you last went for a job interview. But even then, how much thought did you really put into what you most like doing? What gives you the most job satisfaction?

There are three things to consider when applying for a job. Why am I applying for this job? Who will I be working with? What will I actually be doing? Now, more than ever, it's time for you to get really serious about the stuff that you do – but for those of you facing a transition, the stuff you really want to do. It's time to reflect.

Take some time to think about your ideal job. What does it look like? Think about the specific aspects of your previous roles that challenged you and gave you job satisfaction. Identify specific times and when you were really performing and feeling great about it. Pinpoint the occasions and roles that challenged you, when you felt good or enjoyed what you were doing, and delivered positive results. Revisit your personal achievements to date. Ask yourself what skills or strengths you used to achieve those results, and list them out.

Review job descriptions online or in the jobs section of the paper and identify specific components of jobs that you think or know would appeal to you. You will find increased job satisfaction the more you can find these in a job role. Once you have identified these, ask yourself which of them are 'must haves' – ones that you will not compromise on – and which of these would be nice to have.

Now, to find the job. By looking beyond a job title into the nuts and bolts of what you want to do, you'll find a broader range of jobs to pick from. Look at your ideal job. Where are the opportunities to do these things in a similar field? What are your options in the legal world?

Examine similar roles available and consider different roles in the same field – having qualified as a solicitor does not necessarily confine you to doing it for the rest of your working days. Apply the same thinking to related or different fields altogether. You may find that, over the course of your training and your experience gained to date, you have developed a set of skills that would apply in a different field altogether, say, finance. Be prepared to diversify for now – you may find that your ideal job lies in doing some voluntary work, a job share or working on a part-time basis.

"Now, to find the job. By looking beyond a job title into the nuts and bolts of what you want to do, you'll find a broader range of jobs to pick from. Look at your ideal job. Where are the opportunities to do these things in a similar field? What are your options in the legal world?"

Reality check

Looking at some of the roles you have identified as being ideal, consider the following questions: Why does this job appeal to me? Are there any risks in taking it on, for example, financial implications? Do I really want this job?

I had a very productive discussion with a client who came to me to prepare for a job interview for a senior management position. His skills and experience were a very good match for the role. We were in the middle of assessing his interview when he blurted out: "To be honest, I'm not even sure that I want this role." I asked him to elaborate. As he saw it, there were two versions of the job. One was what we'll call the 'job-description version'. The other was a more realistic version of what he would be doing day-to-day, which he knew from already working for the company. The more he thought about it, the more it seemed that, by taking the job, if successful, there would be a high potential for him to be unhappy in the role.

So take your time with this and really think about your options. Accept that further training or skills development may be required.

Career transition CV

There are any number of resources available to you in terms of layout and length. There is no one correct layout. At times of change, though, you need to be very clear on what it is you are selling. Applying for a more senior legal position, you will rightly emphasise your relevant legal experience and be at pains to point out how you match the potential employer's needs on that front. However, if you are making a move into a similar role in a different field, you will need to emphasise what you have that will enable you to do the job. It's time to go back to your transferable skills. You need to emphasise these throughout your CV. One effective way is to include a 'skills profile' in your CV that highlights your strengths and matches the requirements of the new role. As you outline the jobs that you have held to date, ensure you emphasise the skills you developed and the insights you gained that you can bring with you to the new role.

Fielding transition questions

Questions such as "Why are you leaving your current role?" or "Why did you leave your last job?" can be nerve-wracking for most candidates, but particularly so for interviewees who were let go. The key to managing these questions successfully is to answer them honestly and confidently. Work out what you need to say, and get comfortable saying it.

We've worked with a number of trainees whose contracts were not being renewed upon qualification – this was the question they dreaded most. For them – and possibly you – the most important thing to remember is that they were not singled out. They were one of a larger group of trainees being let go. They needed to develop the confidence to say this, and then to move on and outline the excellent experience they gained with the firm and could bring to a number of other roles.

Remember, when an interviewer asks you why, with a background in law, you are applying for a non-legal role, it is an opportunity for you to highlight the specific skills you can bring to their organisation and emphasise why you want the role.

Develop a network

Sometimes there is a sense that job vacancies are filled before they are posted on job sites or advertised in the papers. This may be more applicable than ever nowadays. If you have been working for any length of time, the chances are that you will have developed a network of contacts that may prove useful to you.

Figure out who you know and who may be able to help you. These may not be people who can directly offer you a job, but may be well placed to offer you advice on how to manage your current situation, be that redundancy, uncertainty, or stagnation. Keep a list of who you have spoken to and what you have discussed. Follow up on any contacts they pass on to you. Set yourself a goal to make one networking call a week to get the ball rolling. Be patient. This may take a little longer than you are used to, but stick at it. Remember, this is not just a short-term solution, but also a way of building your network of contacts for the longer term.

The working lightbulb

There is a story that tells of Thomas Edison being asked how it felt to have failed so many times at creating a working lightbulb. He countered that he hadn't failed at any of his attempts, but rather had successfully discovered many ways it would not work. While such positive thinking might be tough to stick to for those of us who feel our careers are off kilter, remember that by recognising that this is the case and by taking control of it, we can begin to get it back on the right track. G

Declan Farrell is career consultant and Aoife Coonagh is head of career development in Carr Communications.

Let them eat cake: PPCI ball

Venice came to Kilmainham when PPCI students donned identity-concealing Venetian and feathered face masks at their annual ball on 12 February 2009.

The masquerade theme proved a major hit, *writes Marie Louise Heavey (Matheson Ormsby Prentice)*, with the Blackhall Ball being oversubscribed this year. The joint venue for the colourful affair was the Hilton Hotel Kilmainham and the Royal Hospital Kilmainham. A sparkling champagne reception in the Hilton hotel gave way to the colourful spectacle of a samba dancer, accompanied by drummers and flame-throwing artists, who led revellers from the Hilton to the beautiful atmospheric 17th century setting of the Royal Hospital.

Following the banquet, guests were entertained by the band Superfly, and the party continued back at the Hilton until the small hours.

ALL PICS: LENSMEN

Glamour was much in evidence at the Masquerade Ball in Kilmainham *(l to r)*: Kim Tully, Siobhan Murray, Mona White, Caroline Kerr, Katherine Coleman and Seona Ní Mhurchú

Enjoying the ball were *(l to r)*: John David Mulcahy, Alex Kelly, Sarah Cloonan, Niall Best, Adam Murphy and Dan Morrissey

Adding a splash of colour were *(l to r)*: Jenny Fenton, Eleanor Lindsay and Anna Lynch

Getting into the spirit at the PPCI ball were *(l to r)*: Susan Forristal, Paul Prenty, Luke Gleeson, William Nevin, Pauline Bonner and Barry McAlister

has 17th century style

A touch of elegance *(l to r)*: Ruth Linnane, Elaine McDaid and Tina O'Reilly

A Samba dancer and drummers brought Brazilian warmth to a cool winter's night

Zoro, the Caped Crusader, Robin and the Lone Ranger attended the Masquerade Ball, in the guises of *(l to r)*: Connor Tracey, Killian McSharry, Nigel Correll and Dan Kelly

At the PPCI Masquerade Ball were happy trio *(l to r)*: Elaine Kerr, Caoimhe Mullins and Aisling Whelan

Raising their glasses in the Hilton Kilmainham were *(l to r)* Kiara Daly, Aishling Muldowney, Derval Boland and Laura Graham

This fire-eater generated some heat at the Masquerade Ball!

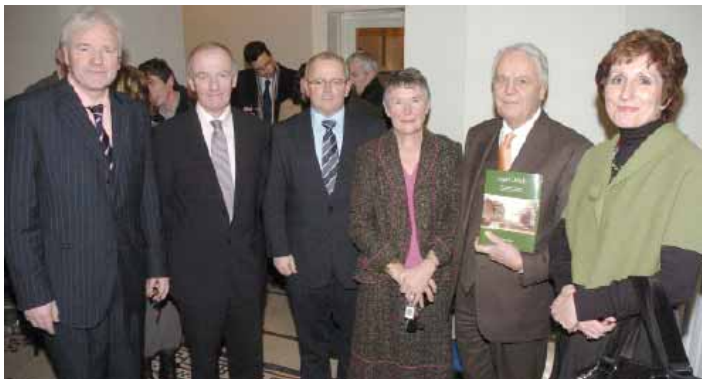
One of the main organisers, Marie Louise Heavey, and Ruth Forman, celebrate a successful night

Proud as peacocks were *(l to r)*: Niamh Cullen and Eimer Ryan

PIC: LENSMEN

Standing together

Bar association presidents, secretaries and PROs attended a meeting at Blackhall Place on 16 February 2008, which involved briefing and listening to their views on a variety of issues of importance to the profession



An Offaly grand launch

Attending the recent launch of *Legal Offaly: the County Courthouse at Tullamore and the Legal Profession in Offaly from 1820s to the Present Day* in Tullamore courthouse were *(l to r)*: author Michael Byrne (Hoey and Denning Solicitors), PJ Fitzpatrick (then CEO of the Courts Service), Pat Gallagher (Offaly county manager), Mrs Mary O'Gorman (widow of the late Patrick O'Gorman, Offaly county registrar, 1971-2001), Judge Anthony Kennedy (Circuit Court, Midland Circuit) and Verona Lambe (Offaly county registrar)

Sport gets fit

At the recent 'Sport and Law: Making Sport Fit for Purpose' conference, hosted by the Law Society's CPD Focus and Just Sport Ireland, were *(back, l to r)*: Aidan Healy (Beauchamps), John Hogan (Leman), Ian Lynam (Charles Russell, London), Larry Fenelon (Leman), Mike Scott (Charles Russell, London) and Sarah O'Connor (Federation of Irish Sports/Just Sport Ireland); *(front, l to r)*: Sarah O'Shea (legal director, FAI), Sarah Keane (CEO, Swim Ireland) and John D Shaw (Law Society president), who opened the conference

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Law Ball goes to Vienna Woods

The Law Ball, the final social event of the 2008 PPCI calendar in Cork, was held on 5 February in the Vienna Woods Hotel, Glanmire. The organising committee's hard work paid dividends. Music by The BizNiz got everyone out dancing. The students' awards ceremony produced some surprises, all in the spirit of fun. A big thanks to the many sponsors. Pictured *(back, l to r)*: Eimear Griffin, Nessa Foley, Ann Kilbane, Sharon Kearns, Nicola Walsh, Helene O'Donovan, Susan Doyle, Alana Nolan, Niamh Quinn, Louise Butler, Fionnuala Flanagan, Ina Harrington, Annette Sheehan, Bridie Lally, Aisling Casey, Niamh O'Connor, Aimee Keane, Eimear McNamara, Christina Heffernan, Georgina O'Halloran, Karen Mulcahy, Maura Holly, Elizabeth Long, Sarah Nagle, Maeve Moroney, Alison Lynch, Kerrie O'Shea and Mary Neville. *(Middle, l to r)*: Mark O'Brien, Michael Buckley, Patrick Crowley, Richard McNamara, Neil Coffey, Gareth Morgan, Luke O'Donovan, Brendan O'Connell, Joe D'Arcy, Rob Jacob, Andrew McGovern, Brendan O'Sullivan, Gerard Buckley, Ray McGrath, Richard Halley, Con Aherne, Adrian Mannion, Paul Kearney and Ruairi Concannon. *(Front, l to r)*: Louise Connolly, Sinead Forde, Nichola Foley, Deirdre Murphy, Marie Clare Stack, Aoife Crowley, Mary Chawke, Niamh Clifford, Orla Cronin, Becca Foley, Nicole Derham, Kate O'Brien, Catherine Murphy, Linda Flannery, Siobhan Foley, Aisling Glynn, Patricia Murphy, Karen Watret and Catherine Ellen O'Keeffe. *(Missing)*: John Jermyn, Tim Doyle, Caroline Fogarty, Con McDonnell, Louise Ni Ealaithe, Tim O'Connor, Gillian O'Flaherty, Monica Roche and Karen Tobin

Against the tide

PIC: JASON CLARKE PHOTOGRAPHY

At the official announcement of the William J Brennan & Co partnership with Hugh McGroddy were *(front, l to r)*: Mary Flynn, William Brennan, Minister for Justice Dermot Ahern, Hugh McGroddy and Janet Lanigan. *(Back, l to r)*: Aonghus Wright, Anita Sothern, Rebekah Lyon, Justin Nevin, Patricia Scanlon and Michael O'Hanrahan

William J Brennan & Co is expanding through partnership with Hugh McGroddy, formerly a partner and head of the property department at the Dublin office of Maples and Calder. Hugh joins William Brennan as joint managing partner.

Hugh has extensive legal experience and has brought some key lawyers and staff who decided to make the move with him, including Owen Binchy (former senior partner at Binchys Solicitors), Michael O'Hanrahan, Anita Sothern, Mary Flynn and Rebekah Lyons.

William J Brennan & Co already practices in Ashbourne, Co Meath, and in Dublin 8. Staff assisting in the merger included Tanya Egan, Aonghus Wright, Janet Lanigan, Justin Nevin and Patricia Scanlon. The enlarged firm will now operate out of its Upper Merrion Street and Ashbourne offices.

PIC: JASON CLARKE PHOTOGRAPHY

Mr Speaker!

At the conferral of parchments to newly-qualified solicitors at Blackhall Place on 11 December 2008 were *(l to r)*: Director General of the Law Society Ken Murphy, president John D Shaw and guest speaker Charles Flanagan TD, Fine Gael spokesperson on justice, equality and law reform. Mr Flanagan qualified as a solicitor in 1982

Southside Solicitors at Royal St George

At the 24th Annual Southside Solicitors' Dinner held at the Royal St George Yacht Club in Dun Laoghaire recently were *(l to r)*: Eoghan O'Mahony, Jacinta Enright and Andy Vallely

Judge Derek A McVeigh
1946 – 2008

On 5 November 2008, all in the legal profession and beyond were shocked and saddened to learn of the untimely death of our dear friend and former colleague, District Judge Derek McVeigh, who passed away peacefully after a short illness, borne with dignity to the end.

A native of Letterkenny, Co Donegal, Derek was a past pupil of St Eunan's College, Letterkenny, and of UCD. He qualified as a solicitor in 1970. Shortly after qualifying, he joined Fair & Murtagh, Solicitors, and very quickly earned the respect of all those who came in contact with him. As a solicitor and later as a senior partner in the firm, Derek's deep passion for fairness and justice always shone through. He was unsurpassed in his efforts, as a litigator, to protect the interests of his clients. He was kind, principled, loyal and always interested.

Above all else, Derek was a family man, and with Frances and their four sons, he enjoyed a very happy home in Glasson, Athlone. He was very proud of his family and their achievements as much as they were of his.

He had a deep love of sport, in particular golf, Gaelic football and rugby. As an accomplished golfer, he was a member of both Athlone and Glasson Golf Clubs and the founding member of the Midland Bar Golf Society. He was actively involved with Buccaneers RFC and a keen supporter of Athlone Town FC. He also gave much of his time to other people and the community through various activities in Glasson and Tubberclair. He was a past chairman of the Athlone and District Round Table.

Derek was appointed a judge of the District Court in March 2005. He immersed himself in this new task with great energy and interest. Very soon it became clear that he really enjoyed the challenge. He was diligent and keen to keep abreast of statutes and decisions. He was a very wise, patient and practical judge. He listened carefully and showed kindness and compassion at all times. His death is a great loss to the District Court.

Derek's illness was diagnosed in 2007, but he did not let this interfere with his work or his enjoyment for life. His last time to preside as a judge was on Thursday 30 October 2008 at Ballinasloe District Court. He bore his illness bravely and with great humour, with the tremendous support of his family, neighbours and friends.

He will be sadly missed by Frances, his sons, Joseph, Conor, Paul and Stephen, his sister Stephanie, daughter-in-law Deirdre, and his many friends and colleagues.

To all those who knew him, Derek was a gentleman, a genuine colleague and a true friend.

Ní bheidh a leithéid ann arís.

F&M

student spotlight

Annual African adventure again...

This year's team members are trainees from law firms all over the country, Law Society staff and a Cork solicitor, including *(back, l to r)*: Brendan O'Sullivan, Richard McNamara, Louise Connolly, Emer O'Callaghan, Ross Jackson, Ruth Linnane, Michelle Foster. *(Front, l to r)*: Kate Mannion, Gráinne Webb, Patrick Ward, Sarah Nagle, Nicola Walsh, Maura McNamara, Zoë Richardson, Breffni Curran. *(Missing)*: Caitriona Moran, Jane Moffatt, Ray McGrath and Ronan Cremin

It's that time of year again, *writes Brendan O'Sullivan (GJ Moloney Solicitors)*, when a team of adventurous and daring trainee solicitors prepare to leave behind their air-conditioned offices, water coolers and frappacinos to travel deep into Sub-Saharan Africa to help those less fortunate. Following on the success of the previous two years, this year's team are heading for two weeks in July to a small rural village near Lusaka in Zambia. There, they will work with Habitat for Humanity, building houses side by side with the people of the village. Habitat for Humanity Ireland is an established non-denominational Christian-based global charity, which believes in a minimum standard of living for everyone.

Owing to the increasing HIV/AIDS epidemic and general poverty in the region, living conditions are extremely poor. Zambia has a population of 11 million people, 60% of whom live in grass-thatched mud and wattle homes that require endless maintenance. The poor quality of these structures invites the elements, serious health risks and rodents into these heavily-populated homes.

Under the supervision of local tradesmen, the team will be put to work building a number of permanent new houses. By all reports, this is no easy work, especially given that the temperature is likely to be in the region of 30 degrees Celsius.

'Sweat equity'

The families receiving the houses pay what is known as 'sweat equity', in that they work hundreds of hours building their neighbours' houses before working on their own. This local involvement also helps to create a sense of self-achievement and kinship in the community. In keeping with the ethos of using regionally-appropriate technology, the houses are built chiefly using concrete bricks and corrugated iron roofing. While simple, the houses are secure and have separate living, cooking and sleeping areas.

Headed up by Jane Moffatt of the Law School in Cork, Caitriona Moran at the Law School in Dublin and Cork solicitor Emer O'Callaghan, this year's team has set a target fund of €60,000 and therefore will need all the support it can get. The team met recently in Cork to prepare for the trip, including plans for fundraising initiatives in the coming months, and it would ask you all to support this very worthwhile cause in whatever way you can. Contributions can also be made to members of the team, all of whom are starting out in their careers in the legal profession. G

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Meet at the Four Courts
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books
Butterworths Company Law Handbook, 22nd edition

Keith Walmsley (consultant editor). LexisNexis Butterworths (2008), Halsbury House, 35 Chancery Lane, London WC2A 1EL, England. ISBN: 9781405728270. Price: stg£65.

Preachers have their scripture, cricketers their *Wisden*, and company lawyers with a requirement to know their British company law will have this book. First published in 1978 with 462 pages, the *Company Law Handbook* has grown exponentially to close to 4,000 pages with the volume and complexity of company and financial services law in Britain and Northern Ireland.

Companies legislation there has recently seen the enactment and staggered commencement of the *Companies Act 2006*, which has (largely, but not completely) consolidated companies legislation, other than that relating to company insolvency (which is contained in the *Insolvency Act 1986*) or to the public issue or listing of shares (which is contained in the *Financial Services and Markets Act (FSMA) 2000*).

The handbook is divided into six parts.

Part I contains pre-2006 companies legislation: the *Companies Acts 1985 and 1989* and associated statutes such as the *Company Directors Disqualification Act 1985*.

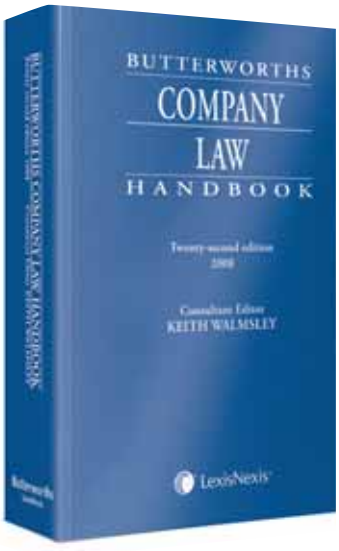
Part II contains the *Companies Act 2006* and associated materials, a list of statutory instruments made under the act and, most importantly, a table of origins and for the 2006 act and a table of destinations for the 1985 and 1989 acts.

Part III contains non-*Companies Acts* statutes dealing with company law, including the *FSMA 2000*, the *Partnership Act 1890* and parts of the *Insolvency Act 1890* relating to company insolvency.

Part IV contains statutory instruments made under the *FSMA* and other statutes.

Part V contains a selection of European Community legislation, mainly in the area of financial services and securities law.

The appendices contain a useful selection of company law texts – the 1948 and 1985 table A, commencement dates for the various provisions of the 2006 act, and a table setting out the transposition in law of the EC directives reproduced



in the book.

The difficulty encountered by the editors of a book such as this is what to include and what not to include, especially at a time when the law is in transit from one statute to another. Generally the choice is pragmatic and sensible: for example, many of the EC directives included in the book are those that are transposed by rules made by a competent authority (for example, the Financial Services Authority) rather than by the acts or SIs included. The table of transposition then refers the reader to the relevant rules.

The notes to the various provisions do not include reference to case law, but instead concentrate on the legislative history, where relevant: amendments to a provision of an enactment are indicated by a house style that has been adopted by many publishers – three dots for a repeal, prospective repeals in italics, and new text added in square brackets. In each case, a note to the affected provision identifies the affecting provision, and the date from which the effect has taken or will take place.

Now published on an annual basis as a single volume, the *Company Law Handbook* is a must-have for those needing access to the most recent companies legislation in Britain and Northern Ireland. G

Paul Egan is a partner in Mason Hayes & Curran and a member of the Company Law Review Group.

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Legal Offaly

The County Courthouse at Tullamore and the Legal Profession in County Offaly from the 1820s to the Present Day

Michael Byrne. Esker Press (2008) for the Offaly Historical and Archaeological Society, Tullamore, Co Offaly. ISBN 978-0-9548720-1-4. Price €30.

Patrick Kavanagh, parish poet and national 'poet laureate', observed that the parish was the universe. The history of Ireland has emerged and will continue to emerge from the parish. The county in Ireland is one of the most treasured units of governance, composed of parishes and baronies. It is proper that a person should have pride in his or her county of origin. Such a pride encompasses a sense of 'belonging', which often is a noble sentiment.

So we greet a county law history written by Michael Byrne, a solicitor and partner of the firm Hoey and Denning, Tullamore, Co Offaly, and secretary of the Offaly Historical and Archaeological Society.

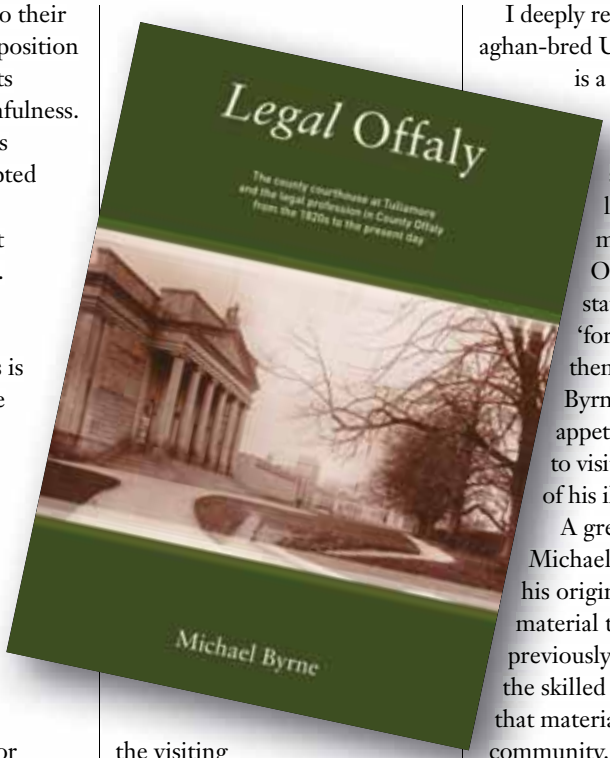
Taoiseach Brian Cowen, a solicitor by profession, notes in a foreword the timeliness of the book, coming as it does after a period of sustained expansion in the Irish economy and in the legal profession. The taoiseach notes that the interplay between law, judges, barristers, solicitors and clients, while always fascinating at national level, has greatest impact at the local level. This is an apt illustration of the Kavanaghesque doctrine of the parish as the universe. A history built on the parish or county illuminates the history of the nation. James Joyce's *Ulysses* (celebrated over the world) records the events of a single Dublin day. *Ulysses* is local and universal at the same time, and so is *Legal Offaly*.

John Shaw, president of the Law Society, notes in his preface that the book comes after a decade of major expansion of legal personnel and change, not just in the way lawyers do their business, but in the composition of the profession itself, its gender profile and youthfulness.

The author informs us that the book was prompted by the refurbishment of the county courthouse at Tullamore in April 2007. Now the courthouse is a venue for original High Court proceedings. This is another link between the county and the nation.

Noting that the memoirs of Offaly judges and lawyers are almost nonexistent (and the same is true nationally), the author observes that a solicitor or barrister, having spent many years at his or her vocation, could pass away unnoticed by his or her hard-pressed colleagues. Your reviewer adds that not even the *Gazette* now mentions one's passing! Terence de Vere White, solicitor in McCann FitzGerald and subsequently literary editor of *The Irish Times*, in the words of his Stephen Foster, a solicitor in the novel *Mr Stephen*, surmises that the life of the average solicitor would be forgotten in five years: "A hotel porter in a large hotel had more fame in life and as long in memory." Many memories and persons will survive because of the literary work of Michael Byrne.

There are eight chapters in the book. There is a chapter on the architectural history of Tullamore Courthouse (a story full of intrigue and replete with excitement that only the law can provide). The chapters on



the visiting and regular judges of the assize, home circuits and midland barristers allow the author to introduce many fascinating characters who have achieved prominence on the national scene. There is a detailed account of the quarter sessions, county courts, petty sessions and the District Court. Of great significance is the biographical sketch of some 300 Offaly solicitors over the period 1824 to 2007, many with photographs. There are also many pen pictures of various other legal luminaries. There is a very helpful index.

A unique and totally fascinating feature of the book is the author's collection of photographs of lawyers, accused persons and buildings, which make the book such a pleasure to read. You can almost 'read' the mind of a person when you see his or her photograph.

I deeply regret that, as a Monaghan-bred Ulsterman, Offaly is a 'foreign' country for me. Sadly, most of Ireland south of Dublin is largely unknown to me. I am sure many Offaly lawyers could state Monaghan is a 'foreign' country to them! But Michael Byrne has whetted the appetite of your reviewer to visit the rich pastures of his illustrious county.

A great strength of Michael Byrne's book is his original research into material that has been previously unexplored and the skilled presentation of that material to the wider community. The book is an entertaining, eminently readable, eloquent insight into a county that reflects legal life in the wider Ireland. One consolation that Michel Byrne will hopefully enjoy, taking account of the many hours of research and writing, is that he has brought life to many lawyers who have gone before us. There is a degree of immortality about the printed word. I think of the words of Crabbe in *The Library*:

With awe, around these silent walks I tread,
These are the lasting mansions of the dead,
"The dead!" methinks a thousand tongues reply,
"These are the tombs of such as cannot die!"

You will enjoy *Legal Offaly*. I did, as a Monaghan-bred Ulsterman. G

Dr Eamonn G Hall, solicitor, is the principal of EG Hall & Co.

council report

Law Society Council meeting, 23 January 2009

O'Brien v PIAB

Stuart Gilhooly noted that the Supreme Court had held for the plaintiff in relation to PIAB's insistence on dealing only with clients, rather than their legal representatives. The Supreme Court had found that PIAB could not refuse to deal with solicitors acting for clients, but had also found that PIAB could send copies of all correspondence with a client's solicitor to a client. Mr Gilhooly noted that Ms Justice Susan Denham, in an *obiter* statement, had indicated that she regarded the right to legal representation as a constitutional right. Mr Gilhooly noted that an article would be published in the next issue of the *Gazette*.

Report of the Spent Convictions Group

The chairman of the Society's Human Rights Committee, Colin Daly, presented the *Report of the Spent Convictions Group* to the Council for approval. He outlined the background to the report, the other bodies that had been involved in the project, and the organisations and individuals from whom submissions had been received. He noted that a private member's bill was being considered by the Dáil. It was hoped that the report could be used to inform the debate on that bill and consequent issues.

Mr Daly noted that the topic raised issues about the rehabilitation of offenders, the reduction of recidivism and the reduction of overall crime rates. It was the view of the Spent Convictions Group that the absence of a spent convictions scheme meant that ex-offenders suffered an injustice long after the offence had been committed and the penalty served. He emphasised that the group was concerned that any scheme would involve a balance of concerns about public safety and the rights of ex-offenders. Mr Daly outlined the rehabilitative aspect of a spent convictions scheme, which would provide an incentive to ex-offenders to cease offending, thereby reducing recidivism and providing an economic advantage by reintroducing ex-offenders into the workplace and moving them away from the social welfare system. Research canvassed by the group suggested that offenders primarily came from the most marginal or disadvantaged sectors of society.

He noted that a review conducted by the British Home Office of 21 jurisdictions internationally indicated that Ireland was one of only two jurisdictions that had no spent convictions scheme in place – the other being Slovenia. He noted that there were many variations between schemes, in terms of scope, rehabilitation periods, and so on.

Mr Daly noted that the *Report of the Spent Convictions Group* proposed a scheme that would be open to all offenders, regardless of offence or sentence imposed, and with adequate safeguards in relation to public safety, by introducing (a) an applications-based system, (b) a central authority, and (c) a requirement on the ex-offender to demonstrate that he/she had been rehabilitated and had earned the right to have his/her conviction spent.

Mr Daly outlined the proposed conviction-free periods, which depended on the length of sentence. In addition, it was suggested that the discrimination grounds in the *Employment Equality Act* should be extended to prohibit discrimination on the grounds of a previous criminal conviction.

Following a question and answer session, the Council indicated its general approval for the *Report of the Spent Convictions Group* and wished the group well in its continuing endeavours.

Proposal to appoint a careers advisor

The director general outlined a proposal that the Society would create a new position of careers advisor to assist job-seeking solicitors. He noted that one of the deeply distressing consequences of the economic recession had been the emergence of a situation in which many hundreds of solicitors were unemployed. Some were many years qualified and others were newly arrived on the roll. The number was more likely to increase than reduce in the foreseeable future. A great many of these were shocked, bewildered and deeply distressed to find themselves in this predicament, and the pain in the profession was very real, substantial and growing.

The Council agreed that the Society had a duty to do whatever it could to be of support and practical assistance to these colleagues, who remained every bit as much part of the profession as those who were in practice. While accepting that the Society could not manufacture or find jobs for anyone, it was agreed that the Society could help to equip colleagues with the information and skills to find employment for themselves.

The Council unanimously approved a proposal to recruit a careers advisor, who would assist unemployed solicitors with career assessment and direction, career and life-coaching to provide the skills for realistic self-assessment, CV preparation, interview advice and ongoing support, financial planning, psychological support to help with morale issues, information about requirements for legal qualification in other jurisdictions, hard information (by contrast with rumour) about the state of the legal services marketplace, and advice on how to capitalise on the transferable skills of a solicitor in order to find employment in other walks of life.

Submission on alternative dispute resolution

The Council noted, with approval, a submission to the Law Reform Commission on alternative dispute resolution, which had been prepared by the Arbitration and Mediation Committee in consultation with the Family Law Committee. G

practice notes

ADMINISTRATION OF ESTATES – GUIDELINES FOR SOLICITORS

These guidelines[1] are intended to assist solicitors when acting for elderly clients who may be either:

- A personal representative of an estate,
- An elderly beneficiary of an estate, or
- A surviving spouse,

1. Introduction

When someone dies, their property must be distributed in accordance with the *Succession Act 1965*, whether they died testate or intestate, and in accordance with the provisions of their will if they died testate. A number of other legislative and common law provisions are also relevant as to how assets should be distributed, charged or transferred, and the *Superior Court Rules* set out who is entitled to make application for probate or letters of administration (either intestate or with will annexed). However, when the client is elderly, a solicitor must be alert to the different considerations that may apply when advising such a client.

2. Capacity

One of the first issues that a solicitor must have regard to is the capacity of an elderly client to carry out functions and/or make decisions in relation to the administration of an estate. If the person entitled to extract a grant to an estate of a deceased person lacks the capacity to do so, the *Rules of the Superior Court* specify who is then entitled to extract the grant.[2]

The fact that a person is elderly does not imply that such a person does not have capacity.[3] Similarly, physical infirmity does not imply lack of capacity. There is a presumption at law that a person has capacity. However, age and frailty may be indications that capacity may be at issue. A solicitor should be satisfied that the person they are advising has the ability to understand the nature and effect of the advice and the decisions to be made in relation to different aspects in the administration of an estate. Solicitors should also remember that, even though medical evidence may be sought, the test of capacity is a legal one and not a medical one.[4] Legal capacity should be assessed in relation to each particular decision at the time the decision needs to be made.[5]

Obligations that must be carried out in the course of the administration of an estate of a deceased person should not be underestimated. Decisions may include having regard to the interests of beneficiaries, some of whom may be minors, vulnerable, or elderly and frail, but may also relate to the value of assets that must be protected for the benefit of beneficiaries. It is important to appreciate that a person may have capacity in one regard but may not have capacity in a different context, depending on the complexities of the decisions to be made. For example, different levels of capacity are required depending on whether the elderly client is a personal representative, a surviving spouse or a beneficiary.

3. Categories

3.1. Elderly client as a personal representative

i) Should the elderly client be advised to act as personal representative?

Clearly the client must have capacity to give instructions, but the size and complexity of the estate may have a bearing on whether the client has capacity to understand the issues and what has to be done. Considerations that a solicitor should take into account when assessing a client's capacity to make decisions and when advising as to whether the client should act in the administration of an estate will vary depending on the particular circumstances and may include the following:

- Client is appointed sole executrix and sole beneficiary under the terms of a will or is the person entitled to apply for letters of administration to the estate and is entitled to the entire estate,
- Client is appointed as one of two or more executors and is the principal beneficiary of the estate or is one of a number of persons entitled to apply for letters of administration,
- Client is appointed as one of two or more executors or is one of a number of persons entitled to apply for letters of administration but has little or no entitlement to or interest in the estate,
- The assets in the estate are substantial (which may include business assets and/or assets in other jurisdictions) or there may be complexities over title to real property,
- There is an indication that the administration of the estate may be contentious.

In the first case outlined, there is no reason why an elderly client (even though physically frail) should not act in the administration of the estate. If there is a chance that the matter may be contentious, then it may be in the interest of a frail and elderly client for a solicitor to advise them not to act. It may also be the case that the elderly client, although the person entitled to extract a grant to the estate, may have a claim against the estate (see below under 'surviving spouse'). It may be prudent in such circumstances to advise the client to pursue their interest against the estate and not act as personal representative. An issue may sometimes arise as to the capacity in which a solicitor is instructed. Is it on behalf of a beneficiary of an estate or is it on behalf of an executor/administrator? Independent legal advice may be appropriate.

ii) Options

Solicitors should advise the elderly client of the options available to him or her, which are:

- If the deceased died intestate leaving a surviving spouse, that spouse is the person entitled to apply for a grant of administration, or the application can be made for the grant jointly by the spouse with a child of the deceased nominated by said spouse.
- If the client applies for a grant of probate or letters of administration, he/she will be responsible either alone or with others (depending on appointment or entitlement to extract relevant grant) to make all decisions in relation to the administration of the estate, including the transfer of assets to beneficiaries.
- If the client is one of several named executors, the client has the option of reserving

the right to extract the grant of probate. In such circumstance, all rights in relation to the administration of the estate are conferred on the proving executors.[6] However, if the client decides to act as one of the executors/administrators, then the client must participate fully in all aspects of the administration and is equally responsible with others to finalise the administration.
- If the client is one of a class entitled to apply for letters of administration, he/she can decide to consent to the other members of the class acting in the administration.
- The client also has the option of formally renouncing the right to extract a grant to an estate. A person who renounces cannot subsequently apply for a grant without an application to court.[7]
- Finally, if the client is suffering from 'severe continuing physical disability', he/she can apply to appoint an attorney to extract a grant on his/her behalf.[8]

When advising an elderly client as to whether he/she should accept the role of personal representative, it may be prudent for a solicitor to follow up verbal advice by written advice to give the client time to consider what is involved with regard to the particular estate. Such advice should outline the legal requirements for the formal application for the relevant grant, to include (depending to the complexity of the estate but not limited to) the schedule of assets, returns to the Revenue Commissioners, the sale of assets in the course of administration, the transfer of assets to those entitled, the various taxation implications, which may include not only capital acquisitions tax but other taxes such as discretionary trust tax, capital gains tax, income tax, stamp duty and VAT, and the time limit for the administration of the estate.

3.2. Elderly client as surviving spouse

If the deceased did not provide for the surviving spouse to obtain an entitlement to a 'legal right share' in the estate, then the surviving spouse requires independent legal advice.[9]

i) Legal right share

The *Succession Act* provides that a surviving spouse has an entitlement to a share of the estate whether the deceased spouse dies testate or intestate.[10] A solicitor should initially establish that the surviving spouse is a spouse for the purposes of Irish law.[11]

If the deceased died intestate, then the surviving spouse should be advised as to the share of the estate he/she is entitled to, depending on whether or not there are any issue (to include marital and non-marital children).

If the deceased died testate, but has left less than half of the estate to the surviving spouse if there are no children, or less than one third of the estate if there are children, then a solicitor has to make further inquiries before advising the surviving spouse about entitlements under the *Succession Act*. The solicitor must establish:
- Was there any valid renunciation of the legal right of the spouse either before or after the marriage?[12] If there was a renunciation, then the surviving spouse may have no further entitlement to a share in the estate.
- Was the dwellinghouse, in which the deceased and the surviving spouse resided at the date of death, in joint names as joint tenants (in which case the dwellinghouse will pass by survivorship and is not as asset in the estate), or is the house an asset in the deceased's estate?[13] If the house is an asset in the estate, then the surviving spouse should be advised as to the possible appropriation of the dwellinghouse in satisfaction of any share to which he/she is entitled.
- Was any disposition made by the deceased within three years before the death of the deceased spouse?[14] If such a disposition was made, a solicitor must make further enquiries as to its purpose. If the purpose was to defeat or substantially diminish the share of the surviving spouse, then a solicitor must advise of the right to make an application to court for a review of such disposition.
- Are there any grounds upon which a spouse may be excluded from entitlement to any share in the estate?[15]

ii) Vesting of legal right share

Where no provision has been made in the will for the surviving spouse, the solicitor should advise that there is an automatic entitlement to the appropriate legal right share and it is not necessary to take any step for the legal share to vest.[16]

Where the will makes provision for the surviving spouse, which is deemed to have been intended by the deceased to be in satisfaction of the share (and not in addition to it) as a legal right of the spouse, then a solicitor must advise the client of their right to:
- Elect to take either the bequest in the will, or
- The share to which they are entitled to as of legal right, or
- Decide not to make any election,

and a notice must be served on the surviving spouse (see below).

A solicitor should also advise the client of their right to disclaim any interest in the estate.[17] However, if an elderly client indicates that they will elect to take either less than their legal right share or to renounce any interest in the estate, it is important that the advising solicitor establishes that the client fully understands the implications of such decisions. It may be necessary to have a discussion with the client to establish that there is provision for future needs and to establish that undue pressure is not being exercised by any other party that may stand to gain from such non-election or disclaimer.

iii) Notices and time limits

Personal representatives have a statutory duty to notify a spouse of the right of election and also to notify the spouse of the right of appropriation of the dwellinghouse and household chattels, if relevant. A solicitor should advise the client of the notification but should also advise the client that he/she can elect prior to receiving any such notice. As soon as instructions are received from an elderly surviving spouse, the solicitor acting for such spouse should notify the solicitor acting in the administration of the estate to ensure that the surviving spouse's interest is dealt with expeditiously.[18]

The right of the spouse to elect to take the legal right share does not expire until six months after the spouse has received notification or one year from the date of taking out representation, whichever is the later. The limitation period for the purposes of s45 of the *Statute of Limitations*, as amended by s126 of the *Succession Act*, begins to run when an election has been made or when the time within which an election may be made has elapsed.[19]

iv) Issues for solicitors acting in the course of the administration of an estate with regard to a surviving spouse

Best practice dictates that any statutory notice to a surviving spouse is sent by registered post (a copy of the certificate of postage should be retained). It should also be suggested that, on receipt of such notice, legal advice be obtained. It would be prudent to advise that the estate should not be distributed prior

to receiving a response from the surviving spouse.

When a solicitor acting in the administration of an estate receives a waiver or renunciation without confirmation that independent legal advice has been obtained or where notices have been served and no response is forthcoming, and it cannot be established that the surviving spouse has in fact received them, then best practice also dictates that further enquiries are necessary before any action is taken to finalise the administration of the estate. In such circumstances, the personal representative should be advised that it is necessary to ensure that the elderly surviving spouse be independently advised.

v) Surviving spouse does not have capacity to elect

If the surviving spouse lacks capacity to elect to take the legal right share and is a ward of court,[20] the committee can exercise the right of election by leave of the court that appointed the committee or, if there is no committee, then an application must be made to either the High or Circuit Court.[21]

3.3. Elderly client as beneficiary

i) Capacity

A solicitor acting for an elderly client who is a beneficiary of an estate should first ensure that the client has the capacity to give instructions and to understand the benefit they are entitled to receive from the relevant estate. In addition to the client having capacity to give instructions with regard to potential benefit they are due to receive, the client must also have capacity to give a valid discharge to the personal representatives of the estate when the benefit is received. If the 'client' lacks capacity, then a wardship application to the court may be necessary. Alternatively, if the beneficiary has appointed an attorney with general authority, the attorney can give a receipt for any benefit received.

Any purported waiver/disclaimer of any interest in an estate should be considered in similar terms as outlined above when dealing with a surviving spouse.

ii) Prior gifts

Elderly people are particularly vulnerable to abuse and to 'encouragement' by family members to transfer assets prior to death without regard to, for example, a surviving dependent elderly sibling. It may be necessary for a solicitor acting in the interest of their client (who may be the surviving dependent sibling) to make enquiries if any disposition was made within a short period prior to the death of an elderly person that might raise the possibility of undue influence.

iii) Advices

Receiving an inheritance from an estate of a deceased may have an impact on an elderly client's state benefits, and this should be fully explained to the client. The inheritance may also give rise to a charge to capital acquisitions tax. The client may require referral to obtain taxation and investment advice.

iv) Vesting of assets

While it is a matter for the personal representative of an estate to ensure that assets vest in those entitled to them, a solicitor acting for an elderly beneficiary should ensure that all assets are transferred to the client promptly or that any rights or interest that an elderly beneficiary inherits are registered against the property concerned.[22]

4. Conclusion

It is important to re-emphasise the fact that a person being elderly does not imply such a person does not have capacity. However, a solicitor in advising an elderly client in any aspect of the administration of an estate should ensure that the client has the benefit of full information and is not put under any undue pressure or influence with regard to any decisions that require to be made.

Footnotes

1 More detailed and general guidelines regarding the administration of estates can be found in the Law Society publication *Wills, Probate and Estates*.
2 Rule 79, orders 5 and 6, *Superior Court Rules*.
3 *Blackall v Blackall (In Re Helena Blackall Deceased)*, unreported SC judgment, 1 April 1998.
4 *Re Glynn* [1990] 2IR 326.
5 This is what is known as the functional approach to the assessment of capacity.
6 Section 20, *Succession Act 1965*.
7 Order 79, rule 38, *Superior Court Rules*.
8 Order 79, rule 23, *Superior Court Rules*.
9 It will also be necessary to advise in relation to any claim for the purposes of the *Family Law (Divorce) Act 1996*.
10 Sections 67 and 111 of the *Succession Act 1965*.
11 If the deceased obtained a divorce in a jurisdiction outside Ireland, will such a divorce be recognised for Irish law purposes?
12 Section 113, *Succession Act 1965*.
13 If held as tenants in common, then the deceased's share in the house would be an asset in the estate.
14 Section 121, *Succession Act 1965*.
15 Section 120, *Succession Act 1965*.
16 *Re Cummins*; *O'Dwyer v Keegan* [1997] 2 ILRM.
17 There may be taxation implications if a benefit is disclaimed.
18 An election cannot be made by the personal representatives of a surviving spouse; *Reilly v McEntee* [1984] ILRM.
19 *JH v WJH* (20 December 1979, unreported, HC).
20 See scheme of *Mental Capacity Bill*, published September 2008.
21 Section 115(5), *Succession Act 1965*.
22 These could include full or lesser interest in property ranging from a right to reside, a right of residence, support and maintenance, an exclusive right to reside or a life interest in property.

Subcommittee on Financial Aspects of Elder Abuse, Guidelines and Ethics Committee

NEW CONVEYANCING INITIATIVES – eDISCHARGE AND QED FORM

On 30 March, the Property Registration Authority (PRA) will begin the introduction of a new system for the cancellation of the entry of a registered charge by electronic means. This new system, called the 'eDischarge' system, will provide for the cancellation of a charge on a folio when an application, in the form set out in SI 326 of 2008, is made directly by the lender. The eDischarge system has been a collaborative initiative between the PRA, Law Society and Irish Mortgage Council (IMC), and it is anticipated that this new system will eliminate many of the inefficiencies and delays in the release of registered charges.

Initially three lenders, Permanent TSB, AIB and KBC Bank, will participate in a live pilot from 30 March and, two weeks later on 14 April, other lenders will join the system.

As part of this initiative and in order to gain maximum benefit from the introduction of the eDischarge system, the Law Society and IMC examined the procedures for solicitors requesting title deeds, redemption figures and discharge of a charge. A new streamlined procedure for all residential property, both registered and unregistered, is to be introduced by these lenders in tandem with the launch of the eDischarge system. This procedure is based on a standard form called QeD ('Quick electronic Discharge') for residential property.

Application of QeD form

The QeD form will operate in respect of all residential property, both registered and unregistered. This form will replace the standard form of wording previously recommended by the Law Society for solicitors requesting mortgage redemption figures (November 1999 *Gazette*). The form is intended to remove inefficiencies in communications between solicitors and lenders by adopting a standardised approach and by providing clarification on the appropriate channels for such communications.

Communication channels

All participating lenders have agreed to publish the relevant addresses for receipt of the QeD form on the IMC website at www.ibf.ie/qed.asp. For some lenders, this will be a central channel – however, for other lenders, there may be different channels depending on the nature of the request. This information will be updated as and when required.

Requests for title deeds, redemption figures and discharge of a charge sent to the appropriate channel will result in the quickest response. Lenders have requested that solicitors discourage the mortgagor(s) from separately seeking a redemption figure, as multiple requests delay the process. It is acknowledged that solicitors will of course have to seek redemption figures on receipt of the initial instruction to sell/remortgage and also for closing of the sale/remortgage.

QeD form

The QeD form (right) will also be hosted on the IMC website at www.ibf.ie/qed.asp and practitioners will be able to download and complete the form at their desktop. A list of frequently asked questions will be available to assist practitioners in completing the form.

Time limits

Lenders have acknowledged to the Law Society that the timelines in the QeD form are upper limits and they will endeavour to process requests well within those timelines; however, this is dependent on the form being correctly completed and sent to the appropriate channel for that lender. These timelines correspond with those agreed as part of the new certificate of title documentation to be launched shortly. The timelines are ten working days for redemption figures and ten working days for title deeds in the lender's possession (or ten working days of them coming into the lender's possession).

Redemption figure

Practitioners are reminded that interest continues to run on the secured debt pending clearance of funds and this should be taken into account when calculating the amount of redemption monies to be lodged with the lender. The QeD form requires the lender to quote figure(s) for all sums secured by all mortgage(s)/charge(s) against the property in its favour including:

- The amount of daily interest accruing and accrued,
- Breakage costs (if applicable),
- All legal and/or other expenses, costs or charges associated with the furnishing of the title deeds,
- All legal and/or other expenses, costs or charges associated with the release/discharge of the security/ies, and
- All and any other applicable costs and charges.

This is called the 'redemption figure' and, on receipt of this amount, the lender must authorise an eDischarge or execute a (paper) release or vacate, as appropriate. If, after completion, the figure is found to be inadequate, the lender cannot withhold the eDischarge, release or vacate.

Application of the eDischarge system

The eDischarge system will operate in respect of registered land (both residential and commercial). It will not apply where a certificate of charge has been lost, mislaid or destroyed. Certificates of charge, however, cease to have effect from 1 January 2010. The system will also not apply to partial discharges of registered charges. In these instances, the financial institution will continue to seal a (paper) deed of release or vacate (as appropriate) and after sale and redemption of the charge will forward this deed to the solicitor, as is currently the practice.

Where, however, the charge is:

- In respect of registered land, and
- There is no certificate of charge or the certificate of charge has been forwarded to the lender, and
- The redemption is a full discharge of the charge, and
- The lender is participating in the eDischarge system,

then the lender will not seal a (paper) release or vacate. Instead, on receipt of the redemption figure and a request from the solicitor for discharge, the lender shall, within 21 days, lodge an application by electronic means directly with the PRA for full discharge of its charge. On foot of this application, the PRA shall, within three days, cancel the entry of the registered charge on the folio and issue notice of completion by email. A copy of this notice will issue simultaneously to the solicitor nominated by the lender when lodging the eDischarge application.

Email communication

The PRA will be contacting solicitors over the coming weeks to ensure that firms nominate an appropriate email address for communication of these notices. The Law Society has provided the PRA with a list of all solicitor practices and associated email addresses. The PRA will email all practices requesting that they supply a nominated email address for the service of notices. Practices will only need to respond if they wish to nominate a different address than the one supplied by

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QeD (Quick electronic Discharge) for Residential Property

(Law Society and Irish Mortgage Council Approved QeD Form March 2009 Edition)

Name and Address of Financial Institution _____ (Note 1)

Solicitor's Reference: _____ Date:- _____

OWNER(S) OF PROPERTY: _____ ("my Client")

ADDRESS OF PROPERTY: _____ ("the Property")

Loan(s) Reference(s): _____ (Note 2)

REQUEST FOR REDEMPTION FIGURE AND/OR TO TAKE UP TITLE DEEDS

I CONFIRM THAT

- ☐ I hold the irrevocable written authority of my Client and of the account holder(s) (Note 3)
- ☐ My Client intends to sell/re-mortgage the Property (delete as applicable) (Note 4)
- ☐ The Property is **not** being sold/re-mortgaged – Title Deeds required for inspection only
- ☐ Please confirm **all** liabilities secured by your Mortgage/Charge (Note 5)
- ☐ Please send me all **Title Deeds** that you hold in relation to the Property.

PAYMENT OF REDEMPTION FIGURE AND REQUEST FOR DISCHARGE

- ☐ I enclose payment of the Redemption Figure in the amount of **€** _____ (Note 6)
- ☐ Electronic Payment of the Redemption Figure was made on _____ to a/c no _____ (Note 6)
- ☐ I enclose plain copy/ies of Folio(s) _____ County _____ relating to the Property (Note 7)
- ☐ I enclose the Certificate(s) of Charge dated _____ (Note 8)
- ☐ I enclose the original deed(s) of Mortgage over the Property dated _____ (Note 9)
- ☐ Your charge(s) is/are registered under instrument number(s) _____
- ☐ Your charge(s) is/are lodged for registration under Dealing Number(s) _____

I REQUEST DISCHARGE OF YOUR MORTGAGE(S)/CHARGE(S) AFFECTING THE PROPERTY

Principal/Partner Signs _____ (Note 10)

Insert Name of Firm _____

Insert Address of Firm _____

NOTES

Note 1. Some Financial Institutions centrally process requests for Redemption Figures, Title Deeds and eDischarges, **and others do not**. In order to ensure that all requests are processed within agreed turnaround times, the solicitor must direct the QeD Form to the address of the Financial Institution appropriate to the particular request. This could require the solicitor to complete separate QeD forms to different addresses at the same time. The relevant addresses of the Financial Institutions are shown on www.ibf.ie/qed.asp and also on www.lawsociety.ie.

Note 2. The solicitor should establish as far as possible from the Client the full list of accounts secured by the Property being sold/re-mortgaged and quote these on the reference. This will ensure a comprehensive and correct response from the Financial Institution within the agreed turnaround time of ten working days for the Redemption Figure and ten working days for title deeds in the Financial Institutions possession (or ten working days of them coming into the Financial Institution's possession).

Note 3. The solicitor must hold an irrevocable written authority from **ALL THE OWNERS** of the Property and from **ALL THE ACCOUNT HOLDERS** for the secured accounts:-

- To request the Title deeds and/or the Redemption Figure from the Financial Institution; and
- To pay the Redemption Figure from the sale/re-mortgage proceeds to the Financial Institution.

Note 4. Since February 2006, the standard legal Mortgage in use by AIB secures Allied Irish Banks, plc ("AIB") and AIB Mortgage Bank ("AIBMB") as tenants in common. If the Title Deeds are required for re-mortgage with AIB or with AIBMB, and there is a charge already registered on the Property in favour of one or both of these Banks, the solicitor should telephone AIB Central Securities (01 6415554) **before** having any new legal Mortgage prepared or executed.

Note 5. When replying, the Financial Institution must quote figure(s) for **ALL** sums secured by all Mortgage(s)/Charge(s) against the Property in its favour (**"the Redemption Figure"**), including:

- The amount of daily interest accruing and accrued,
- Breakage costs (if applicable),
- All legal and/or other expenses, costs or charges associated with the furnishing of the Title Deeds,
- All legal and/or other expenses, costs or charges associated with the release/discharge of the security/ies,
- All and any other applicable costs and charges

Note 6. On receipt of the Redemption Figure, the Financial Institution shall (within 21 days) authorise an eDischarge for full discharge of its charge(s) over registered land **directly to the Property Registration Authority** (PRA). The PRA will notify registration of the eDischarge by email directly to the solicitor. For partial discharges of all charges, and for all unregistered lands, the Financial Institution shall execute a partial discharge, release or vacate, as appropriate, and send it directly to the solicitor (Note 9). If paying by cheque, the solicitor must allow sufficient extra days interest for clearance of the funds. In the event of any overpayment, the Financial Institution will refund the overpayment within 10 days.

Note 7. By enclosing a copy of the folio, the solicitor must be satisfied that it relates to the Property the subject of the Redemption Figure request. The instrument number of the registered charge must be quoted or, where the charge has not yet been registered, the solicitor must confirm the Dealing Number of the application for registration of the charge.

Note 8. Where a Certificate of Charge has issued, the original must be delivered to/held by the Financial Institution as the Financial Institution must confirm to the PRA that it has destroyed the Certificate of Charge. An eDischarge will not apply where a Certificate of Charge has been lost, mislaid or destroyed, or where a partial discharge of charge applies.

Note 9. Where some or all of the title to the Property stands on unregistered lands, the original Deed of Mortgage (where it is held by the solicitor) must be enclosed. The Financial Institution will execute a deed of release or vacate (as appropriate) on receipt of the Redemption Figure and will return the Mortgage and executed Release (or Vacate) to the solicitor.

Note 10. This QeD form must be signed by the Principal or a Partner in the Firm and posted or faxed or emailed to the Financial Institution at their address as detailed on the IBF and Law Society websites. Where the Redemption Figure is being paid by cheque, or the Certificate of Charge or original Deed of Mortgage is being submitted, the solicitor must submit a paper version of the QeD form only.

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the Law Society. Where there is no associated email address, or the address is no longer valid, the PRA will issue the request by post. Practices that do not supply a valid email address will not receive automatic notification of completion of eDischarge applications. In nominating an email address, firms might like to bear in mind that many government bodies, including the PRA, have a mandate from government to increasingly use email to communicate with its customers. It goes without saying that any nominated email address must be checked regularly for communication and, if a standard firm email address is being used, emails will need to be disseminated to the appropriate people within the firm. To assist with this, the file reference supplied to the lender by the solicitor will be included in the notice of completion.

Undertaking on closing

Given that a (paper) release or vacate will no longer issue where the eDischarge system is being used, practitioners will need to provide a different form of undertaking on closing. The following form of wording is suggested as appropriate to be furnished by the vendor's solicitor to the purchaser's solicitor on closing of a sale where the eDischarge system will apply:

"We hereby undertake to redeem the mortgage in favour of _____ bank and to furnish a copy folio showing the cancellation of the mortgage as a burden at entry number ___ at part 3 of Folio ___ County _____ within one week of receiving notice of completion from the PRA."

Participating lenders

A fully up-to-date list of participating lenders will always be available at www.ediscarges.ie/lenders.aspx. Practices will also be notified of any changes to the list by email to their nominated mailbox.

Queries in relation to the eDischarge system or the QeD form should be directed to Ms Gabriel Brennan, Law Society e-conveyancing project manager, at g.brennan@lawsociety.ie.

eConveyancing Task Force and Conveyancing Committee

REGISTRATION OF OPTIONS

Solicitors who are members of the Solicitors' Mutual Defence Fund will have received a newsletter from the fund in which the need to register options was canvassed.

The solicitors who acted for the fund in the case referred to in the newsletter have kindly set out the facts in the case to the Conveyancing Committee. It involved a complicated series of transactions commencing with an option to sell a plot of land, followed by a sale of the lands by the original vendor, the sale being subject to the option agreement. The lands were sold on by that first purchaser and were sold again, without any reference to the option, to a final purchaser. While that last transaction was fraudulent, the final purchaser was not aware of the option and would not have discovered its existence in the course of a careful investigation of title. He was, therefore, a purchaser for value without notice and could not be successfully sued by the holder of the option. If the person holding the option agreement had registered it, then that option would have been discovered and the ultimate purchaser would have been on notice of the option and the original holder of the option would have been protected.

The committee has considered the matter and, while the facts in the particular case were unusual, even apart from the fraudulent element, it believes that it should advise solicitors acting for persons who have taken an option to purchase land to consider whether they should register the option in the Registry of Deeds or as an inhibition in the Land Registry. The committee believes that there is a strong case for effecting such registration where, for example, the option period is lengthy. A similar argument would apply where there is a contract for the sale of lands with a long closing date or where the closing is postponed by agreement for a lengthy period or is being significantly delayed by the vendor.

Conveyancing Committee

CRIMINAL LEGAL AID SCHEME: NON-PAYMENT OF FEE INCREASES PROVIDED FOR UNDER *TOWARDS 2016* AGREEMENT

The Department of Justice, Equality and Law Reform has advised the Society that:

- The minister has made an order (SI 15/2009) revoking the *Criminal Legal Aid Regulations*, which provided for a 2.5% increase (from 1 September 2008) in fees payable to solicitors in the District Court, appeals to the Circuit Court, prison visits and bail applications. Similarly, the increase will not be paid in respect of fees payable under the *Ad Hoc Garda Station Legal Advice Scheme*.
- The DPP has not applied the 2.5% increase to fees payable to prosecution counsel (from 1 September 2008), which was provided for under the *Towards 2016* agreement. As the fees payable to defence counsel and solicitors are based on the parity arrangement with prosecution counsels' fees, the 2.5% increase will therefore not be applied to the fees of defence counsel or solicitors either.
- The payment of an additional refresher fee in respect of cases that continue after 5pm will no longer be made to prosecution counsel and consequently will not be paid to defence counsel and solicitors.

Criminal Law Committee

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PRECEDENT COMPLETION NOTICES

The Conveyancing Committee has been asked to produce precedent completion notices for use by vendors or purchasers who need to invoke the terms of the Law Society's standard conditions of sale. The two precedents are set out below: for the sake of clarity, separate precedents are provided for a vendor and a purchaser. These precedents will also be placed in the members' area of the Law Society's website on the 'Precedents for Practice' page and also on the Conveyancing Committee's 'Precedent Documentation' page.

Conveyancing Committee

A. VENDOR'S COMPLETION NOTICE FOR SERVICE ON THE PURCHASER

COMPLETION NOTICE

Contract dated _____ between the Vendor(s) and the Purchaser(s) in respect of the Property ("the Contract")
Vendor(s) and our client(s):
Purchaser(s) and your client(s):
Closing date:
Property: *[quote from particulars in the contract]*

Take notice that, as the closing date in the Contract has passed without completion having taken place, we refer you to General Condition 40 of the Contract.

Take note that the Vendor(s) is/are able, ready and willing to complete the sale of the above property to the Purchaser(s) or is/are not so able, ready and willing by reason of the default or misconduct of the Purchaser(s).

The Vendor(s) require(s) the Purchaser(s) forthwith to complete the sale and to pay the balance of the Purchase Price amounting to **€** _____ (with interest thereon calculated or otherwise determined in accordance with the Contract) within twenty eight days after the date of service hereof (as defined in Condition 49 of the Contract and excluding the date of service) and in this respect time is hereby made of the essence of the Contract.

If the Purchaser(s) does/do not comply with this notice before the expiration of the last day of the said period then General Condition 40(d) of the Contract shall immediately apply. The Purchaser(s) will be deemed to have failed to comply with the Contract and the conditions therein in a material respect and the Vendor(s) will enforce against the Purchaser(s), without further notice, such rights and remedies as may be available to him/them at law or in equity or (without prejudice to such rights and remedies) may invoke and impose the provisions of General Condition 41 of the Contract.

Dated the _____ day of _____ 20 _____

Signed _____
Solicitor(s) for the Vendor(s)
Of _____
To: Purchaser(s) Solicitor(s)
Of _____

Note: There is no provision in general condition 49 of the contract for service by DX or email.

B. PURCHASER'S COMPLETION NOTICE FOR SERVICE ON THE VENDOR

COMPLETION NOTICE

Contract dated _____ between the Vendor(s) and the Purchaser(s) in respect of the Property ("the Contract")
Purchaser(s) and our client(s):
Vendor(s) and your client(s):
Closing date:
Property: *[quote from particulars in the contract]*

Take notice that, as the closing date in the Contract has passed without completion having taken place, we refer you to General Condition 40 of the Contract.

Take note that the Purchaser(s) is/are able, ready and willing to complete the purchase of the above property from the Vendor(s) or is/are not so able, ready and willing by reason of the default or misconduct of the Vendor(s).

The Purchaser(s) require(s) the Vendor(s) forthwith to complete the sale within twenty-eight days after the date of service hereof (as defined in Condition 49 of the Contract and excluding the date of service) and in this respect time is hereby made of the essence of the Contract.

If the Vendor(s) does/do not comply with this notice before the expiration of the last day of the said period then General Condition 40(e) of the Contract shall immediately apply. The Vendor(s) will be deemed to have failed to comply with the Contract and the conditions therein in a material respect and the Purchaser(s) will enforce against the Vendor(s), without further notice, such rights and remedies as may be available to him/them at law or in equity.

Dated the _____ day of _____ 20 _____

Signed _____
Solicitor(s) for the Purchaser(s)
Of _____
To: Vendor(s) Solicitor(s)
Of _____

Note: There is no provision in general condition 49 of the contract for service by DX or email.

CONSULT A COLLEAGUE
The Consult a Colleague helpline is available to assist every member of the profession with any problem, whether personal or professional

01 284 8484
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BRIEFING

legislation update

Acts passed in 2008

Commencement date information is up to date to 13/2/2009. Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' areas) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. The full text of recent acts is on www.oireachtas.ie.

Appropriation Act 2008
Number: 23/2008
Date enacted: 18/12/2008
Commencement date: 18/12/2008

Chemicals Act 2008
Number: 13/2008
Date enacted: 9/7/2008
Commencement date: 15/7/2008 for all sections of the act (per SI 273/2008)

Civil Law (Miscellaneous Provisions) Act 2008
Number: 14/2008
Date enacted: 14/7/2008
Commencement date: 20/7/2008 for all provisions of the act other than the following provisions, which have different commencement dates: 1/8/2008 for part 2 (ss5-32, 'Courts and court officers') of the act, other than ss18, 20, 21 and 22, which came into operation on 1/10/2008; 1/10/2008 also for s3(1) of, and part 1 of the schedule to, the act insofar as they relate to the repeal, to the extent specified in column 3 of that schedule, of the provisions of the *Courts of Justice Act 1947*, the *Courts of Justice Act 1953*, the *Courts (Supplemental Provisions) Act 1961*, the *Courts Service Act 1998* and the *Courts and Court Officers Act 2002*; 1/1/2009 for ss34 and 39 and for part 6 (ss54-64, 'Juries') (per SI 274/2008)

Cluster Munitions and Anti-Personnel Mines Act 2008
Number: 20/2008
Date enacted: 2/12/2008
Commencement date: Commencement order(s) to be made (per s1(2) of the act)

Control of Exports Act 2008
Number: 1/2008
Date enacted: 27/2/2008
Commencement date: 5/5/2008 for all sections of the act (per SI 126/2008)

Credit Institutions (Financial Support) Act 2008
Number: 18/2008
Date enacted: 2/10/2008
Commencement date: 2/10/2008. 'Relevant date' is defined in the act as 30/9/2008, the date from which, for a two-year period, the Minister for Finance may provide financial support to credit institutions

Criminal Justice (Mutual Assistance) Act 2008
Number: 7/2008
Date enacted: 28/4/2008
Commencement date: Commencement order(s) to be made (per s1(2) of the act): 1/9/2008 for all sections other than part 3 (ss22-30, 'Interception of telecommunications messages') (per SI 338/2008)

Criminal Law (Human Trafficking) Act 2008
Number: 8/2008
Date enacted: 7/5/2008
Commencement date: 7/6/2008 (one month after the passing of the act (per section 15(2) of the act))

Dublin Transport Authority Act 2008
Number: 15/2008
Date enacted: 16/7/2008
Commencement date: Commencement order(s) to be made for all sections other than part 2 (ss8-43, 'Dublin Transport Authority') and part 6 (ss102-110, 'Dissolution of DTO and transfer of employees of DTO and RPA'). Establishment-day order to be made (per s8) to establish the Dublin Transport Authority and a dissolution-day order to be made (per s102) to dissolve the Dublin Transportation Office; 1/8/2008 for part 1 (ss1-7, 'Preliminary and general'), part 7 (ss111-115, 'Matters relating to CIE and RPA) other than ss114 and 115(2), part 8 (s116 'Railway works, etc on St Stephen's Green') and part 9 (s117, 'Transport officers') (per SI 291/2008)

Electricity Regulation (Amendment) (EirGrid) Act 2008
Number: 11/2008
Date enacted: 8/7/2008
Commencement date: 8/7/2008

Finance Act 2008
Number: 3/2008
Date enacted: 13/3/2008
Commencement date: 1/1/2008 for part 1, except where otherwise expressly provided in part 1 (per s144(8) of the act); 13/3/2008 for other parts of the act, except where otherwise expressly provided or where provisions of the act will come into force on the making of commencement orders – see act for details; 17/4/2008 for s30(1) (per SI 104/2008); 1/5/2008 for s54(1)(a)(i) (per SI 105/2008); 9/10/2008 for s46 (per SI 397/2008); 17/12/2008 for s32 (other than s32(1)(b)) (per SI 560/2008)

Finance (No 2) Act 2008
Number: 25/2008
Date enacted: 24/12/2008
Commencement date: 24/12/2008 except where otherwise expressly provided or where commencement order(s) are to be made; 1/1/2009 for part 1 (ss1-45, 'Levies, income tax, corporation tax and capital gains tax') except where otherwise expressly provided in part 1 (per s102(8) of the act). See act for details

Health Act 2008
Number: 21/2008
Date enacted: 12/12/2008
Commencement date: 1/1/2009 (per s1(2) of the act)

Intoxicating Liquor Act 2008
Number: 17/2008
Date enacted: 21/7/2008
Commencement date: Commencement order(s) to be made (per s1(5) of the act): 30/7/2008 for all sections of the act other than s9 and s14 insofar as it relates to the insertion of s7C into the *Intoxicating Liquor Act 1988* (per SI 286/2008)

Legal Practitioners (Irish Language) Act 2008
Number: 12/2008
Date enacted: 9/7/2008
Commencement date: 9/7/2008

Local Government Services (Corporate Bodies) (Confirmation of Orders) Act 2008
Number: 9/2008
Date enacted: 20/5/2008
Commencement date: 20/5/2008

Mental Health Act 2008
Number: 19/2008
Date enacted: 30/10/2008
Commencement date: 30/10/2008

Motor Vehicle (Duties and Licences) Act 2008
Number: 5/2008
Date enacted: 26/3/2008
Commencement date: 26/3/2008

Motor Vehicle (Duties and Licences) (No 2) Act 2008
Number: 24/2008
Date enacted: 22/12/2008
Commencement date: 22/12/2008

Nuclear Test Ban Act 2008
Number: 16/2008
Date enacted: 16/7/2008
Commencement date: Commencement order(s) to be made (per s17(2) of the act)

Passports Act 2008
Number: 4/2008
Date enacted: 26/3/2008
Commencement date: Commencement order(s) to be made (per s1(2) of the act): 1/11/2008 for all sections of the act, other than s14(8) and (9) (per SI 412/2008)

Prison Development (Confirmation of Resolutions) Act 2008
Number: 10/2008
Date enacted: 2/7/2008
Commencement date: 2/7/2008

Social Welfare and Pensions Act 2008
Number: 2/2008
Date enacted: 7/3/2008
Commencement date: 1/4/2008 for s3, 8/5/2008 for s8, 5/6/2008 for s9 and 1/6/2005 for s10 (per s 1(5) and the particular sections of the act); commencement orders to be made for sections 5, 12 to 17, 18(2) to (4) and 27 to 31 (per s1(6) of the act); 7/3/2008 for all other sections (per s1(4) of the act); 14/4/2008 for ss26, 29, 30 and 31 (per SI 84/2008); 1/11/2008 for s27 other than insofar as s27 relates to the insertion of s64P into the *Pensions Act 1990* (per SI 398/2008)

Social Welfare (Miscellaneous Provisions) Act 2008
Number: 22/2008
Date enacted: 17/12/2008
Commencement date: Commencement order(s) to be made for ss8, 22, 24, 26-29 and for part 5 (ss30-38, 'Dissolution of Combat Poverty Agency'). Various commencement dates for other sections – see act for details

Voluntary Health Insurance (Amendment) Act 2008
Number: 6/2008
Date enacted: 15/4/2008
Commencement date: Commencement order(s) to be made (per s22(3) of the act): 5/6/2008 for all sections of the act other than ss3, 4, 5 and s21 and the schedule insofar as they relate to the repeal of the provision of the *Health Insurance Act 1994* specified at reference number 2 in the schedule (per SI 171/2008) G

Prepared by the Law Society Library

CRIMINAL LAW COMMITTEE

Law Society of Ireland

SEMINAR

AMBER SPRINGS HOTEL, GOREY, CO WEXFORD. SATURDAY 21 MARCH 2009, 9.30AM – 1PM

REGISTRATION: 9am
SEMINAR: 9.30am – 1pm
CPD HOURS: Three hours (group study)

€130 per person
(€60 – trainee solicitors)
(includes materials, morning coffee and lunch)

The Criminal Law Committee of the Law Society of Ireland will hold its annual seminar on Saturday 21 March 2009. The seminar topics will be:

- **Advising clients in custody (incorporating the *Criminal Justice Acts 2006 and 2007*)**
  Speaker: Michael Staines, solicitor
- **Road traffic law update**
  Speaker: Dara Robinson, solicitor
- **Hostile witnesses and s16 of the *Criminal Justice Act 2006***
  Speaker: Hugh Sheridan, State Solicitor, Sligo

BOOKING FORM

Name(s): _____

_____

Firm: _____

Please reserve _____ place(s). Cheque in the sum of € _____ attached.

Please forward booking form and payment (to be received no later than 16 March 2009 and made out to the Law Society of Ireland) to:
Colette Carey, solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

NOTICE: THE HIGH COURT

RECORD NO: 2008 no 60SA
In the matter of David C Howard, a solicitor previously practising as Howard & Company, Solicitors, at 2nd Floor, 15 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2002*

Take notice that, by order of the High Court made on Monday 1 December 2008, it was ordered that the said David C Howard, solicitor, formerly practising as Howard & Company, Solicitors, at 2nd Floor, 15 South Mall, Cork, be suspended from practice as a solicitor until further notice.

John Elliot,
Registrar of Solicitors,
Law Society of Ireland
16 December 2008

Solicitors Disciplinary Tribunal

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

In the matter of Michael McDarby and Sean Acton, solicitors practising under the style of Michael McDarby & Company, Solicitors, Glebe Street, Ballinrobe, Co Mayo, and in the matter of an application by a named client of the respondent solicitors to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2002* [4200-7533/DT31/07]
A named client of the respondent solicitors
(applicant)
Michael McDarby
(first-named respondent solicitor)
Sean Acton
(second-named respondent solicitor)

On 18 September 2008, the Solicitors Disciplinary Tribunal found the respondent solicitors guilty of misconduct in their practice as solicitors in respect of the following complaints set out in the affidavit of the applicant sworn on 22 February 2007:

a) The applicant subsequently engaged Sean Acton, of Michael McDarby & Co, to pursue her civil action arising out the damage to her vehicle and injuries sustained in the accident. The applicant was not aware, nor did Sean Acton make her aware, that his partner, Michael McDarby, in the firm of solicitors Michael McDarby & Co, was or had already acted for one of the other parties involved in the accident. The applicant believes he should have told her, and she believes that he should have been aware of that fact, as there is a duty and responsibility on him to know those things. He had advised her to plead in the District Court to careless driving and had represented her in that court and obtained a full booklet of statements from the gardaí at that time, and the applicant cannot believe or see how either he or his partner Michael McDarby could not be aware of that fact.
b) The applicant believes that the first thing Michael McDarby would have done in representing the other party is to obtain the booklet of statements from the gardaí, and there wouldn't be much point in obtaining statements from the gardaí if her solicitor, Sean Acton, in the same office, had already obtained them. Furthermore, the applicant believes that it would be necessary for Michael McDarby to ascertain what transpired in the District Court and how the prosecution against her had concluded. The applicant finds it difficult to believe that, in making those enquiries, he would not have ascertained that his partner, Sean Acton, had acted for her in the District Court and hence he would have been aware that there was a clear conflict of interest in members of his solicitors' firm acting for two sides of proceedings arising out of the same traffic accident, where it was obvious that a conflict of interest not alone had, but would, arise.
c) Not alone did Sean Acton act for the applicant in the criminal case, but he was also pursuing a civil action at the same time as his partner Michael McDarby was pursuing a civil action for another party involved in the same action.

The tribunal ordered that the respondent solicitors:

a) Stand admonished and advised,
b) Pay a sum of €500 to the compensation fund,
c) Pay 25% of the costs of the applicant as taxed by a taxing master of the High Court in default of agreement.

In the matter of James Dennison, a solicitor of Dennison Solicitors, Main Street, Abbeyfeale, Co Limerick, and in the matter of an application by named clients of the respondent solicitor to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2002* [7883/DT54/07]
Named clients of the respondent solicitor
(applicants)
James Dennison
(respondent solicitor)

On 30 September 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Acted in a deceitful and duplicitous manner in the course of acting on behalf of a client in the purchase of property,
b) Caused financial loss and suffering to a client as a result of negligence and unprofessional conduct during a property transaction while acting as a solicitor,
c) Failed to act in the interest of his client by failing to give correct advice or knowingly gave incorrect advice in relation to planning matters.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay the sum of €10,000 to the compensation fund,
c) Pay the sum of €3,630 in restitution to the applicants, without prejudice to any legal right of such party,
d) Pay the applicants reasonable

expenses for attending the hearings of the tribunal.

In the matter of Matthew Breslin, a solicitor of Donal O'Neill & Company, 3 Denny Street, Tralee, Co Kerry, and in the matter of an application by a named client of the respondent solicitor to the Solicitors Disciplinary Tribunal and in the matter of the *Solicitors Acts 1954-2002* [7159/DT14/08]
A named client of the respondent (applicant)
Matthew Breslin (respondent solicitor)

On 30 October 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Kept information and documents back,
b) Dragged out paperwork without any explanations.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €4,000 to the compensation fund,
c) Pay the whole of the expenses of the applicant and his witnesses attending before the tribunal on 23 July 2008 and 30 October 2008, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Keith Finnan, a solicitor practising as Keith Finnan & Company, Solicitors, Humbert Mall, Main Street, Castlebar, Co Mayo, and in the matter of the *Solicitors Acts 1954-2002* [4346/DT57/08]
Law Society of Ireland (applicant)
Keith Finnan (respondent solicitor)

On 9 December 2008, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Delayed in the discharge of his undertaking to furnish a deed of discharge for a named property, having only furnished same in January 2008,
b) Failed to furnish the necessary documentation to the complainant to allow their clients to obtain ownership of named properties in accordance with the terms of the contract dated 23 February 2005 and set out in the complainant's letter of 14 February 2008 in a timely manner or at all,
c) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 31 July 2007, 13 August 2007, 21 August 2007, 3 September 2007, 1 October 2007, 13 November 2007, 3 December 2007,
d) Failed to attend the meetings on 26 September 2007 and 28 November 2007, despite being required to do so,
e) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 28 November 2007 to pay the sum of €450 towards the cost of the investigation.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay the sum of €3,500 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

Information on complaints about solicitors published in accordance with section 22 of the *Solicitors (Amendment) Act 1994*

IN RELATION TO COMPLAINTS RECEIVED BY THE SOCIETY FROM 1 SEPTEMBER 2007 TO 31 AUGUST 2008

Allegations of misconduct:

Delay	12
Failure to communicate	88
Failure to hand over	148
Failure to account	68
Undertaking	565
Conflict of interest	25
Dishonesty or deception	14
Witnesses' expenses	4
Advertising	2
Other	99
Total	**1,025**

Allegations of inadequate professional services:

Delay	224
Failure to communicate	123
Shoddy work	152
Other	48
Total	**550**

Allegations of overcharging:

Conveyancing	20
Probate	24
Litigation	49
Matrimonial	58
Other	19
Total	**170**

GRAND TOTAL 1,745

Number of complaints referred to the Solicitors Disciplinary Tribunal:

Delay, failure to communicate, failure to respond to Society	10
Undertakings	19
Failure to hand over file	4
Breaches of section 68, deductions from settlements	2
Dishonesty/deception	2
Failure to account	1
Conflict of interest	2
Failure to carry out instructions	6
Improper solicitation of instructions	1
Failure to comply with direction of CCRC	1
Making a false complaint against a colleague	1
Total	**49**

Outcome of the investigation of above complaints by the Solicitors Disciplinary Tribunal:

Solicitors struck off (relates to seven separate complaints)	2
Recommendations to restrict the solicitor's practising certificate	3
Part heard	2
No misconduct	1
Judicial review	1
Referrals rescinded	2
Referral withdrawn	1
Solicitor advised and admonished	1
Solicitors censured and fined	8
Cases awaiting hearing	23

As of 4 February 2009

firstlaw update

News from Ireland's online legal awareness service
Compiled by Bart Daly for FirstLaw

CONSTITUTIONAL LAW

Administrative law

Education – ultra vires – *whether the fixing of a quota for non-European medical students was unlawful and/or unconstitutional and whether a European citizen could take the place of a non-European citizen upon payment of the relevant fee.*

The plaintiff unsuccessfully applied on two separate occasions for entry to medical schools in Ireland. The plaintiff failed to attain sufficient points in his Leaving Certificate examination to secure a place. However, the points achieved by the plaintiff would have been sufficient for a non-European applicant to secure a place due to the fact that the Irish government reserved a fixed quota of places in medical schools for European citizens and created a separate quota for non-European citizens at a lower threshold. Non-European medical students were required to pay fees in order to study in Ireland. The income from those fees contributed to the cost of running medical schools and training medical graduates. A new policy for educating doctors in Ireland, based on a report known as the *Fottrell Report*, was adopted in 2006 through the ministers for education and health, and by suggestion from them, by the Higher Education Authority. In this case, the plaintiff alleged that setting a quota on places available to European Union students was unlawful, that any such direction was beyond the powers conferred on the defendants by the *Higher Education Authority Act 1971*, that the quota system was unconstitutional and was contrary to the relevant treaties of the European Union. The plaintiff maintained that he ought to be able to purchase one of the places set aside for non-European students.

Charleton J dismissed the case, holding that the Higher Education Authority had clear statutory powers to make policy decisions in relation to institutions of higher education and to provide grants of money to those institutions based on conditions that were within its competence under the *Higher Education Authority Act 1971*. The government was entitled to set a policy for the training of a specific number of medical graduates to meet the needs of the state, to decide what funds were appropriate to be disbursed in that regard, to decide that particular forms of education should be free or should be contributed to by fees, and to decide that foreign students could take up space places at an economic cost to the benefit of the economy. The unequal treatment of European and non-European citizens was based on a reasonable resolution of the conflict of constitutional rights and was neither arbitrary nor capricious. Furthermore, the system did not breach competition law.

***Prendergast (plaintiff) v The Higher Education Authority & Others (defendants)*, High Court, 30/7/2008** [FL15648]

Electoral law

Local government – interlocutory injunction – casual vacancy – Limerick Co Council – co-opting of new member – challenge to constitutionality – Local Government Act 2001.

An interlocutory injunction was sought restraining the defendants from co-opting a new member to fill a casual vacancy arising in a county council on foot of a resignation. The plaintiff also sought to challenge the constitutionality of s19 of the *Local Government Act 2001*, on account of the fact that such vacancies were required by law to be filled by way of direct elections.

Sheehan J held that the grant of the injunction would deprive the residents of the area of an official. The balance of convenience lay with the defendants, and the application would be refused.

***O'Doherty (plaintiff/applicant) v Attorney General & Others (defendant/respondent)*, High Court, 10/6/2008** [FL13638]

CONTRACT LAW

Interlocutory injunction

Adequacy of damages – whether there was fair issue to be tried and whether damages would be an adequate remedy in circumstances where it was submitted that the winding up of the plaintiff company was inevitable.

The plaintiff sought an interlocutory injunction restraining the termination of a maintenance agreement pending the hearing of proceedings for declaratory relief. The plaintiff had previously entered into a maintenance and service agreement with Statoil, prior to its acquisition by the defendant company. The plaintiff later entered into a maintenance agreement with the defendant, which the defendant sought to terminate by way of fax message sent on 6 March 2008, giving three months' notice of termination. The plaintiff alleged that the agreement was not validly terminated and submitted that the agreement could only be terminated if there was fault on the part of the plaintiff. The defendant argued that the agreement could be terminated at will having regard to clause 16 of the agreement. The maintenance contracts with the defendant generated 26% of all the plaintiff's annual maintenance revenues, amounting to €150,000. The plaintiff submitted that, if these proceedings were unsuccessful and its maintenance contract with the defendant were terminated, the plaintiff company would be forced into liquidation. However, it was accepted that the defendant would be a mark for any award of damages.

Peart J refused the application, holding that there was a fair issue to be tried. There was at least an arguable case made out by the plaintiff that the agreement operated by the parties did not contain, in the version of the agreement being operated at the time of the proceedings, the provisions as to termination in clause 16. Since the losses were clearly quantifiable, were purely commercial in nature, and the defendant was a mark for those damages, an award of damages would be an adequate remedy, even if a winding up of the plaintiff company was inevitable.

***Wesumat (Ireland) Ltd (plaintiff) v Topaz Energy Ltd (defendant)*, High Court, 17/6/2008** [FL15627]

PLANNING AND DEVELOPMENT LAW

Judicial review

Development plan – Planning and Development Act 2000 – *whether the court could exercise its discretion to refuse leave to apply for judicial review on the basis*

that the application for planning permission would in any event be unsuccessful.

The appellants were refused permission to build a house in a rural area both by the council and An Bord Pleanála. The basis of the refusal was that the proposed site was an 'area under development pressure' according to the relevant development plan and the appellants did not fall within the class of persons entitled to a positive presumption in favour of the building of a one-off house. The second reason for refusal combined a number of specific planning reasons related to the character of the proposed development. The grounds put forward by the appellants supporting their application for leave to apply for judicial review related solely to the issue of positive presumption and they sought a declaration that they were entitled to the benefit of such a presumption. The trial judge refused the application for leave but granted a certificate pursuant to the provisions of s50(4)(f)(i) of the 2000 act, stating that there were points of exceptional public importance and that it was desirable in the public interest that an appeal be taken to the Supreme Court. This court was asked whether the court, when hearing an application for leave pursuant to the 2000 act, was entitled to exercise its discretion to refuse leave on the ground that no benefit would in any event accrue to the applicant and, if the court was so entitled, was it permissible to reach a conclusion that leave should be so refused by drawing an inference from the material put before the court that any future application for planning permission would be refused in any event on a ground(s) that was/were not sought to be impugned in the proceedings for judicial review.

Fennelly J (Finnegan J concurring, Kearns J dissenting) allowed the appeal, set aside the order of the High Court and remitted the matter to the High Court, holding that it was accepted by counsel for the appellants that a judge could not be precluded as a matter of law, in a proper case, from exercising a judicial discretion to refuse leave to apply for judicial review. However, the judge was not entitled to presume in advance what the outcome of an application for planning permission would be. That was exclusively a matter for the statutory bodies charged with those functions. In this case, as the court did not hear full argument on the question of the grant of leave, it was appropriate that the matter be remitted to the High Court for determination.

***Talbot and Another (applicants/appellants) v An Bord Pleanála and Others (respondents/respondents)*, Supreme Court, 23/7/2008** [FL15636]

PRACTICE AND PROCEDURE

Bankruptcy law

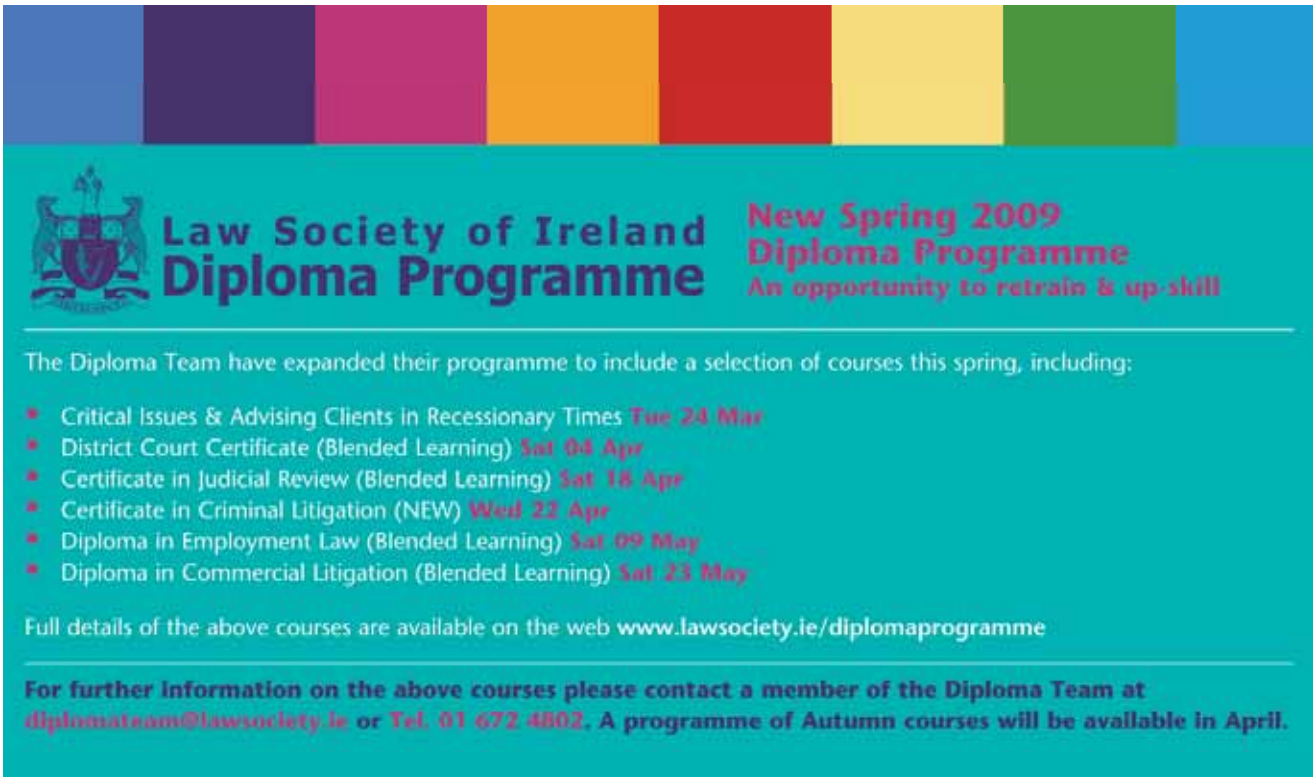
Liberty to issue and serve a bankruptcy summons – execution order – no return of nulla bona – Bankruptcy Act 1988.

The Collector General obtained judgments against the defendant and demand was served. No execution order had been filed and there was no return of *nulla bona*. The issue arose as to whether the plaintiff had to comply with the practice of the High Court that the plaintiff would not be allowed to issue a bankruptcy summons unless judgment had been obtained and unless there was evidence to show that the plaintiff had sought to execute the judgment unsuccessfully. No reason was given as to the failure to obtain a return of *nulla bona*. The issue arose as to the discretion of the court.

Dunne J held that the legislature had intended to confer a discretion on the court and for that reason bankruptcy summons could not be issued without the leave of the court. The practice of requiring a return of *nulla bona* was not an absolute prerequisite for the issue of a bankruptcy summons, but it was not appropriate for the court to issue the summons in the absence of a return of *nulla bona*.

***Harrahill (plaintiff) v C(E) (defendant)*, High Court, 21/7/2008** [FL15675] G

This information is taken from FirstLaw's legal current awareness service, published every day on the internet at www.firstlaw.ie.



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

Charleroi: *Ryanair v Commission*

On 17 December last, Ryanair successfully overturned, in the Court of First Instance, the European Commission's decision (2004/393/EC, 12 February 2004) finding that the Irish airline had received illegal state aid in connection with its operations in Charleroi (Case T-196/04, *Ryanair Ltd v Commission*).

The commission may still appeal the judgment to the European Court of Justice or open a new investigation, but the CFI's judgment is worth studying because of the lessons that can be deduced from it.

Background

Charleroi airport was a publicly owned, loss-making, remote, secondary airport without ground transport links and with only 50 scheduled passengers a day in the mid-1990s. It went in search of airlines to operate there. It approached several airlines, but only one was willing to contemplate operating at the airport – namely, Ryanair. The airline commenced services between Charleroi and various airports. It then sought to open its first continental European base alongside its existing bases in Ireland and Britain. Charleroi was chosen.

The agreement to base aircraft at Charleroi was beneficial to the airport because it meant that it would have more flights, including early morning and late evening flights (as the aircraft would be based there), and so would attract more business. Having more passengers going through the airport would also mean that the airport would earn more ancillary revenue (for example, concessions from car-hire companies, as well as profits from shops/restaurants/kiosks) on top of the aeronautical revenue that it would earn from the airlines (such as landing charges).

Both Ryanair and the airport were taking chances on concluding such an agreement. Ryanair was committing to base expensive assets for 15 years at an untried airport that had been largely loss making and unwanted by airlines for three quarters of a century. The airport was also taking a chance on the airline because it was waiving certain fees and providing some benefits to the airline. The airport was acting much like a shopping-centre developer who was trying to attract an anchor tenant in the hope that other airlines would follow; a hope that, in this case, was fulfilled because other airlines did follow Ryanair to Charleroi, and today the airport has expanded out of all proportion and has even opened a new terminal.

Crucially important, part of the alleged aid was provided by the Walloon Region, while the other part of the aid was provided by the airport itself (even though the airport was very much a state-owned entity anyway). However, for reasons of national law, the package was paid over in two parts: one by the Walloon Region and the other part by the airport company (the BSCA). The BSCA was a public-sector company that managed and operated the airport. The BSCA was the concessionaire for operating the airport.

The commission commenced an investigation following a complaint that there was state aid. The commission ultimately decided on 12 February 2004 that there was state aid in respect of some of the package, that it was illegal state aid, and therefore it should be recovered by Belgium from Ryanair.

Ryanair appealed the commission decision to the CFI, who ultimately annulled the decision in its entirety.

Practice points

Several practice points emerge. The law on state aid is uncertain. The divergence of approach between the commission and the CFI is testament to that fact.

The commission developed the principles on state aid and airports in guidelines that came after it made its decision in 2004 (see the community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ 2005 C 312/1). See also commission press release IP/05/1097). So there is an element of unfairness, in that no one airline or airport could have known that there was an issue when the agreement was concluded because the guidelines had not even been adopted.

State aid disputes are fundamentally between the commission and the member state. The recipient, in this case Ryanair, is like the child in a custody battle between parents: the commission may well listen to the views of the recipient, but power rests with the commission and the member state. Two aspects of this case illustrate this clearly.

Firstly, a recipient that has a suspicion that there is state aid may not notify the arrangement itself to the commission to seek authorisation (because only member states may do so), which means that recipients cannot do much to legitimate the situation and are really at the mercy of member states (see Power, 'A proposal for state aid reform: beneficiaries of potential state aid should be able to notify the European Commission of the proposed aid' [2005] ECLR 1).

Secondly, whether there is a challenge to the commission's assertion that there is state aid is largely dependent on whether the state in question is willing to fight the commission. The state has an even bet in some circumstances: if it is forced to recover the illegal aid and the stimulant effect has worked, then it can recover the aid from the recipient but still enjoy the stimulant effect brought about by the recipient. In this case, Belgium did not appeal the commission decision – the appeal was left to Ryanair. Therefore, recipients of state aid should not always assume that the member state will defend or vindicate the position of the recipient.

As the commission found that there was illegal state aid and ordered recovery, Belgium

Is it a bird? Is it a plane? Philosophers are still stumped

sought recovery from Ryanair of the assistance through the Irish courts. This was the correct procedure: if the commission finds that aid has been provided, then the state has to recover it through the member state courts unless the recipient repays voluntarily. It is not possible to recover through actions before the European courts because the recipient undertaking is not subject to the jurisdiction of those courts. Instead, the proceedings were commenced in the Irish High Court.

A commission investigation in this type of case can last between one and three years. Approvals by the commission of state aid are quicker. Cases that go all the way through to an ECJ judgment can take several years.

A decision by the commission is capable of being challenged before the Court of First Instance, and that appeal took four-and-a-half years in this case from the institution of the appeal (which must be done expeditiously) to the delivery of the judgment. The procedure is mainly written, with the hearing in this case lasting less than a morning. Economic and other expert evidence can be submitted as part of the pleadings, but no testimony was given in this case.

Overall, the case demonstrates that it is possible to successfully challenge commission decisions in state-aid matters. The CFI held that the commission must look at all the circumstances in a case – the commission's refusal to examine together all the advantages granted by the Walloon Region and the airport and to determine whether those two entities acted as rational investors in a market economy was vitiated by an error in law. The CFI also held that, since the BSCA was an entity that was economically dependent on the region, the commission ought to have considered them to be one and same entity for the purposes of determining whether, taken together, they had acted as rational operators in a market economy. The court also held that the region was actually carrying out activities of an economic nature (that is, not a regulatory function). It held that the fixing of the amount of landing charges and the accompanying indemnity was an activity directly connected with the management of airport infrastructure that constituted, by reason of its nature, purpose and the rules to which it was subject, an economic activity.

The CFI stated that the mere fact that an activity was carried out in the public sector does not mean that it can be categorised as the exercise of public authority powers. Similarly, the CFI stated that the mere fact that a scheme reduced charges ought not to be examined by reference to the market economy investor principle, since such a scheme could have been put in place also by a private operator (such as the BSCA).

The case will have a greater significance than in the realm of airports. It is an important case in the context of how the public sector generally engages in the commercial arena. G

Dr Vincent Power, A&L Goodbody, acted for Ryanair in this matter. All comments are personal and based on publicly-available information.

Recent developments in European law

EMPLOYMENT LAW

Case C-303/06, *Coleman v Attridge Law and Steve Law*, 17 July 2008. Ms Coleman worked in a firm of solicitors in London as a legal secretary from January 2001. In 2002, she gave birth to a disabled child, whose health condition requires specialised and particular care that is provided primarily by her. On 4 March 2005, she accepted voluntary redundancy from her post. In August 2005, she lodged a claim with an employment tribunal arguing that she had been treated less favourably than other employees because she was the primary carer of a disabled child and had been constructively dismissed. She claimed to have been treated differently than parents of non-disabled children. Her employer had refused to allow her to return to her previous job on her return from maternity leave, had refused to allow her flexibility as regards working hours, and she claimed that abusive and insulting comments had been made about both her and her child. The Employment Tribunal made a reference to the ECJ asking whether directive 2000/78/EC on equal treatment in employment must be interpreted as prohibiting direct discrimination on grounds of disability only in respect of an employee who is himself disabled or whether it applies equally to an employee who is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition. The ECJ noted that the directive includes certain provisions designed to accommodate specifically the needs of disabled people. However, this does not mean that the directive should be interpreted strictly as applying only to direct discrimination on grounds of disability and relating exclusively to disabled people.

The purpose of the directive is to combat all forms of discrimination. Thus, it applies not to a particular category of person but to the nature of the discrimination. An interpretation limiting its application only to people who are themselves disabled is liable to deprive the directive of an important element of its effectiveness and to reduce the protection that it is intended to guarantee. The court held that, if the applicant established the facts from which it may be presumed that there has been direct discrimination, the effective application of the principle of equal treatment then requires that the burden of proof should fall on her employer, who must then prove that there has been no breach of that principle.

FAMILY LAW

Case C-195/08, *PPU Rinau*, 11 July 2008. This was the first urgent preliminary ruling procedure. This new procedure was established with effect from 1 March 2008 to enable the court to deal much more quickly with issues relating to the area of freedom, security and justice. The issue arose here in proceedings concerning parental responsibility. The jurisdiction of the Supreme Court of Lithuania depended on the answer to the question referred for a preliminary ruling. An application had been made to it for non-recognition in Lithuania of a judgment delivered by a German court that had awarded custody of a child to the father, who is resident in Germany, and ordered the mother, resident in Lithuania, to return the child to the father. The couple had married and lived in Germany – the wife is a Lithuanian national and the husband a German national. Mrs Rinau left Germany for Lithuania with their daughter after divorce proceedings were initiated. She had her husband's consent to travel with her daughter for two weeks, but remained in Lithuania from July 2006 onwards. The German courts granted a divorce and awarded custody to the husband. It issued a certificate under the *Brussels IIa Regulation* conferring enforceability on its decision ordering Mrs Rinau to return the child to Germany. This enables it to be automatically recognised in other member states. Simultaneously, there had been Lithuanian proceedings, initially refusing an order to return the child to Germany and then, on appeal, reversing that decision. Mrs Rinau then brought an action in the Lithuanian courts seeking the non-recognition of the decision of the German courts. The ECJ held that the certificate relating to enforceability cannot be issued unless a decision of non-return has been delivered beforehand. The reversal by the Lithuanian court of appeal of the initial refusal decision does not prevent the German court from issuing the certificate. Procedural incidents that, after a decision of non-return has been given, occur or reoccur in the state of enforcement are not decisive and can be regarded as irrelevant for the purposes of implementing the regulation in question. If the position was otherwise, there would be a risk of the regulation being deprived of its useful effect. The objective of the immediate return of the child would remain subject to the condition that the redress procedures allowed under the domestic law of the member state in which the child is being wrongfully retained have been exhausted. Once a decision of non-return has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate conferring enforceability on the decision of that court, that the initial decision of non-return has been suspended, reversed, set aside, or in any event, not become *res judicata* or has been replaced by a decision of return, insofar as the return of the child has not actually taken place.

FREE MOVEMENT OF PERSONS

Case C-33/07, *Ministerul Administratiei si Internelor – Directia Generalã de Pasapoarte Bucures v Jipa*, 10 July 2008. Mr Jipa left Romania on 10 September 2006 to travel to Belgium. He was repatriated to Romania on 26 November 2006 by virtue of his "illegal residence" in Belgium. This was done on foot of a 1995 readmission agreement between the two states. The Director General for Passports applied to the Romanian courts for a measure prohibiting Mr Jipa from travelling to Belgium for a period of up to three years. The Romanian court asked the ECJ whether EC law, in particular directive 2004/38 on the right of European citizens to move and reside freely within the territory of the EU, precludes Romanian legislation that allows the right of a national of a member state to travel to another member state to be restricted. The ECJ held that Mr Jipa is an EU citizen and may therefore rely on the rights pertaining to this. He has the right to move and reside freely within the territory of the member states and may rely on this right against his state of origin. The right of freedom of movement includes both the right for citizens of the EU in possession of a valid identity card or passport to enter a member state other than the one of origin and the right to leave the state of origin. This right is subject to limitations and conditions imposed by the treaty, in particular on grounds of public policy or public security. Member states are competent to determine the requirements of public policy and public security in accordance with their national needs. In the EC context, those requirements must be interpreted strictly, so that their scope cannot be determined unilaterally by each member state without any control by the EC institutions. To be justified, such measures must be based exclusively on the personal conduct of the individual concerned. Justifications that are isolated from the particulars of the case in question or that rely on considerations of general prevention cannot be accepted. A measure limiting freedom of movement must be adopted in the light of considerations relating to the protection of public policy or public security in the member state imposing the measure. Thus, a measure cannot be based exclusively on reasons advanced by another member state to justify a decision to remove an EC national from the territory of the latter state. However, that consideration does not rule out the possibility of such reasons being taken into account in the context of the assessment that the competent national authorities undertake for the purpose of adopting the measure restricting freedom of movement. The ECJ observed that, in this case, the Romanian authorities seem to rely solely on the repatriation measure, with no specific assessment of Mr Jipa's personal conduct and no reference to any threat that he might constitute public policy or public security. G

NOTICE – AGM • Solicitors' Benevolent Association

Notice is hereby given that the 145th annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 20 April 2009 at 12.30pm:

1) To consider the annual report and accounts for the year ended 30 November 2008.
2) To elect directors.
3) To deal with other matters appropriate to a general meeting.

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 6 March 2009)

Law Society Gazette

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICE SECTION ARE AS FOLLOWS:

- **Lost land certificates** – €144.50 (incl VAT at 21.5%)
- **Wills** – €144.50 (incl VAT at 21.5%)
- **Title deeds** – €144.50 per deed (incl VAT at 21.5%)
- **Employment / miscellaneous** – €144.50 (incl VAT at 21.5%)

These rates will apply from January 2009 until further notice

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for April *Gazette*: 18 March 2009. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

Regd owner: John Joseph Cullen, Killadoon, Loughduff, Co Cavan; folio: 11811; lands: Killydoon, Legwee and Urbal; **Co Cavan**

Regd owner: Patrick Joseph Reilly, c/o HL Fitzpatrick & Company, Solicitors, Main Street, Ballyconnell, Co Cavan; folio: 13675; lands: Gortmore; **Co Cavan**

Regd owner: Gerard Kelly; folio: CE27064; lands: townland of Terrovannan and barony of Tulla Lower; **Co Clare**

Regd owner: Brendan O'Callaghan; folio: 37077F; lands: townland of Killeenagh and barony of Moyarta; **Co Clare**

Regd owner: Denis Feehan; folio: 7977F; lands: plot of ground situate in the townland of Glashaboy South and barony of Barrymore in the county of Cork; **Co Cork**

Regd owner: Edmund Fraher; folio: 6867; lands: plot of ground situate in the townland of Toorreagh and barony of Condons and Clangibbon in the county of Cork; **Co Cork**

Regd owner: Patrick Hennessy (deceased); folio: 1777; lands: plot of ground situate in the townland of Ballydaniel (ED Kilmacdonogh) and barony of Imokilly in the county of Cork; **Co Cork**

Regd owner: Ronan Hudson and Miriam Hudson; folio: DN49606F; lands: property situate to the south of Nangor Road in the town and parish of Clondalkin; **Co Dublin**

Regd owner: John Ross McCluskey; folio: DN11589; lands: property situate in the townland of Kilgobbin and barony of Rathdown; **Co Dublin**

Regd owner: Sean Lattin and Kathleen Lattin; folio: 368F; lands: a plot of ground situated to the south of Collins Avenue in the parish of Artane and district of Clonturk; area: 0.018 hectares; **Co Dublin**

Regd owner: Colm Malone and Helen Boylan; folio: DN1174444F; lands: property known as site no 7, Elmfield Close, Clare Hall, Grange Road, situate in the parish of Balgriffin and district of Kilbarrack; **Co Dublin**

Regd owner: John McGrath and Christine McGrath; folio: 38903L; lands: townland of Ballinteer and barony of Rathdown; **Co Dublin**

Regd owner: James Dervan; folio: 53041; lands: townland of Kilbocht and Drought and barony of Leitrim; **Co Galway**

Regd owner: Ignatius Creavin, Manin, Craughwell, Co Galway; folio: 30581F; lands: townland of Aggard Beg, Mannin, Ballynamannin, Raford, and barony of Dunkellin, Athenry; **Co Galway**

Regd owner: Michael Hanley; folio: 3394F; lands: townland of Oakfield or Gortnadarragh and barony of Moycullen; area: 3 acres, 3 roods, 13 perches; **Co Galway**

Regd owner: Christine Murphy, Knocknagreana, Turbo, Co Galway; folio: 6601F; lands: townland of Knocknagreana and barony of Moycullen; **Co Galway**

Regd owner: Sean Buckley; folio: KY50745F; lands: townland of Lisheennacannina and barony of Magunihy; **Co Kerry**

Regd owner: Eamon McElligott; folio: 13350; lands: townland of Kilcolman and barony of Iraghticonnor; **Co Kerry**

Regd owner: Kildare County Council, St Mary's, Naas, Co Kildare; folio: 15569; lands: townland of Sallins and barony of Naas North; area: 1.9147; **Co Kildare**

Regd owner: Christopher McNamee, Toka Road, Robertstown, Naas, Co Kildare; folio: 6511; lands: townland of Robertstown and barony of Connell; area: 0.1011 hectares; **Co Kildare**

Regd owner: John Hoynes; folio: 13361F; lands: Gorteens and barony of Ida; **Co Kilkenny**

Regd owner: John Ramshaw and Maria Ramshaw; folio: 17806; lands: Wallstown and barony of Crannagh; **Co Kilkenny**

Regd owner: Liam Ashe and Imelda Ashe; folio: 4331F; lands: Derrynaseera and barony of Upperwoods; **Co Laois**

Regd owner: Mary Dowling; folios: 1723 and 1755; lands: Gortnaclea and barony of Clarmallagh; **Co Laois**

Regd owner: Michael Coffey and Andreina Coffey; folio: LK25807F; lands: townland of Newcastle and barony of Clanwilliam; **Co Limerick**

Regd owner: William Foley; folio: LK189L; lands: townland of the parish of St John and barony of the city of Limerick; **Co Limerick**

Regd owner: Chevron (Ireland) Limited (formerly Texaco (Ireland) Ltd); folio: 16870; lands: townland of Ballycummin and barony of Pubblebrien; **Co Limerick**

Regd owner: Michael Joseph Johnson, Knockbaun, Clogherhead, Co Louth; folio: 8343; lands: Callystown; regd owner: Michael Johnson, Knockbawn, Termonfeckin, Co Louth; folio: 8334; lands: Crustown and Callystown; **Co Louth**

Regd owner: Patrick Geraghty and Mary Geraghty; folio: 39592F; lands: townland of Dalgan Demesne and barony of Kilmaine; area: 0.2940 hectares; **Co Mayo**

Regd owner: Padraig Joyce; folio: 23951F; lands: townland of Drumdrishaghaun, Curraghmore and barony of Carra; **Co Mayo**

Regd owner: Adrian Kenny; folio: 4446; lands: townland of Kilgarriff (ED Knock South) and barony of Costello; **Co Mayo**

Regd owner: Margaret Mary (orse Peggy) Walsh; folio: 9465; lands: townland of Loona Beg and barony of Carra; area: 0.4578 hectares; **Co Mayo**

Regd owner: Patrick Noel Malone; folio: 17184; lands: townland of Mace North and Knockroosky and barony of Burrishoole; **Co Mayo**

Regd owner: Ann Marie O'Grady, Moate, Ballyhaunis, Co Mayo; folio: 36952F; lands: townland of Carrickacat and barony of Costello; area: 0.1660; **Co Mayo**

Regd owner: John Lydon (deceased); folio: 51295; lands: townland of Trean, Islands in Lough Mask, Gortmore and barony of Ross; **Co Mayo**

Regd owner: Patrick Simpson, 62 Lorcan Avenue, Santry, Co Dublin; folio: 25352; lands: Killegland; **Co Meath**

Regd owner: Dolores Roche, Carnistown, Navan, Co Meath;

folio: 17878F; lands: Kennastown; **Co Meath**

Regd owner: Michael Keegan, Drumboat, Inniskeen, Dundalk, Co Louth; folio: 2960F; lands: Drumboat; **Co Monaghan**

Regd owner: John Kelly; folio: 93L; lands: Edenderry and barony of Coolestown; **Co Offaly**

Regd owner: Noel Minnock; folio: 5272F; lands: Clonkelly and barony of Ballybritt; **Co Offaly**

Regd owner: Mary Keenan, Corramore, Kiltoom, Athlone, Co Roscommon; folio; 3045F; lands: townland of Corramore and barony of Athlone South; **Co Roscommon**

Regd owner: Michael McDonnell; folio: 19445; lands: townland of Cloonkeen and barony of Athlone South; **Co Roscommon**

Regd owner: Joseph O'Neill (deceased); folio: 31711; lands: townland of Frenchpark Demesne and barony of Frenchpark; **Co Roscommon**

Regd owner: Douglas Wright; folio: 11805F; lands: townland of Caddellbrook and barony of Castlerea; **Co Roscommon**

Regd owner: Anthony Farrell and Bernadette Farrell; folio: 23101; lands: townland of Portavade; **Co Sligo**

Regd owner: Michael Darcy and Noreen Darcy; folio: TY3654F; lands: townland of Drangan More and barony of Clanwilliam; **Co Tipperary**

Regd owner: Mary Lovett, 27 St Patrick's Terrace, Athlone, Co Westmeath; folio: 441L; lands: Athlone; **Co Westmeath**

Regd owner: Paul G Rosler (deceased); folios: (1) 8703, (2) 11225; lands: (1) Knockadilly, (2) Ballinvack and barony of Ballaghkeen North; **Co Wexford**

Regd owner: Ballyfree Farms Limited; folio: 3627F; lands: townland of Drumdangan and barony of Newcastle; **Co Wicklow**

WILLS

Cowman, Moses (deceased), late of Shroughmore, Ballindaggin, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 22 October 1958, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 611, fax: 053 923 5234

Gibbons, Thomas J (deceased), late of Ryvale Nursing Home, Leixlip, Co Kildare, and formerly of 50 Eaton Square, Terenure, Dublin, and Emlagh, Louisburgh in the county of Mayo. Would any person having knowledge of a will executed by the above-named deceased, who died on 15 May 2007, please contact Oliver P Morahan & Son, Solicitors, James Street, Westport, Co Mayo; tel: 098 25075, email: info@morahans.ie

Holmes, Thomas (deceased), late of Clashbane, Pallasgreen, Co Limerick (having a former address at Rathwood, Murroe, Co Limerick). Would any person having knowledge of a will made by the above-named deceased, who died on 16 January 2009, please contact William Donovan of Holmes O'Malley Sexton Solicitors, Bishopsgate, Henry Street, Limerick; tel: 061 445 504, email: william.donovan@homs.ie

Hunt, Elizabeth (Lizzie) (deceased), late of Moneyquid, Killeigh, Co Offaly, who died on 14 July 2008 at Midland Regional Hospital, Tullamore, Co Offaly, personal representative, Frank Duggan. Would any person having knowledge of a will made by the above-named deceased please contact Dennison Solicitors, Dennison House, Main Street Abbeyfeale, Co Limerick; DX 58006; tel: 063 31169, fax: 068 31614

Irvine, Raymond Robert (deceased), would any solicitor or other person holding or having knowledge of a will by the above-named deceased, who resided formerly at 241 Muirhall Terrace, Salsburgh, Shotts, and who died on 17 September 2007, please contact Alan Bayley, solicitor, Stodarts, 95 Almada Street, Hamilton, Scotland; tel: 0044 1698 200 302

Lanigan, Julia (deceased), late of Ballydaniel, Threecastles, Co Kilkenny. Would any person having knowledge of a will executed by the above-named deceased, who died on 12 December 2008, please contact James Harte & Son, Solicitors, 39 Parliament Street, Co Kilkenny; tel: 056 772 1091, fax: 056 776 3041

McCann, Kathleen (deceased), late of 26 St Vincent's Avenue, Dundalk, Co Louth, and previously of Dublin, who died on 27 December 2008 at Our Lady of Lourdes Hospital, Drogheda, Co Louth. Would any person having a knowledge of a will made by the above-named deceased please contact MacGuill & Company, Solicitors, 5 Seatown, Dundalk, Co Louth; DX24002 Dundalk; fax: 042 933 4897 or email: info@macguill.ie

Purcell, Teresa (deceased), late of 42 Mountdillon Court, Artane, Dublin 5. Would any person having knowledge of a will executed by the above-named deceased, who died on 13 August 2008, please contact Brendan D O'Connor & Co, Solicitors, 179 Crumlin Road, Dublin 12; tel: 01 453 6218, email: brendandoconnor@eircom.net

Quigley, Louise (orse Louisa) (deceased), late of La Verna Nursing Home, Clontarf, Dublin 3, and formerly of 53 Carlton Road, Marino, Dublin 3. Would any person having knowledge of a will executed by the above-named deceased, who died on 7 February 2005, please contact O'Donohoe, Solicitors, 11 Fairview, Dublin 3; tel: 01 833 2204, email: reception@odonohoes.com

Sherwin, Teresa (deceased), late of 37 New Ireland Road, Rialto, Dublin 8. Would any person having knowledge of a will executed by the above-named deceased, who died on 12 February 2008, please contact James Aitken & Co, Solicitors, 107 Trees Road Upper, Mount Merrion, Co Dublin; tel: 01 288 2772, fax: 01 288 8204, email: jamesdaitken@eircom.net

Shiels, Kathleen (deceased), late of Nazareth House Nursing Home, Malahide Road, Dublin 3. Would any person having knowledge of a will made by the above-named deceased, who died on 14 April 2003, please contact Maguire McNeice & Co, Solicitors, Bray House, 2 Main Street, Bray, Co Wicklow; tel: 01 286 2399, fax: 01 282 9428

Weldon, Richard (deceased), late of Westvale Nursing Home, Old Hall Road, Great Sankey, Warrington, Cheshire, who died on 16 December 2006. Any person having a claim against or interest in the abovementioned estate are required to send particulars in writing to the executor: Fiona Bruce, Fiona Bruce & Co LLP, Justice House, 3 Grappenhall Road, Stockton Heath, Warrington, WA4 2AH

MISCELLANEOUS

Reduce your overheads – outsource your bookkeeping/ accounts. Westside Bookkeeping Services. Specialising in all aspects of solicitors' accounts/payroll. Experienced bookkeeper available on a contract basis – on-site. Excellent references available. Contact: Michelle Ridge at 087 293 0347, email: mridge@indigo.ie

For sale – seven-day ordinary publican's licence. Contact: Kelliher Coghlan & Co, Solicitors, Kealgorm House, Limerick Road, Castleisland, Co Kerry; tel: 066 714 1315, email: kellsolr@iol.ie

Solicitor qualified in Ireland and Eastern Europe with PQE in Ireland and experienced in legal translations would like to take a new step in career development. I can develop and retain Eastern European clients residing or having businesses in Ireland. I am looking for a practitioner in Dublin who is interested in extending client list by attracting foreign clients residing in Ireland. To discuss, please phone: 086 038 0385

Seven-day intoxicating liquor licence for sale. Contact Eamonn Greene & Company, Solicitors, 19 Clanwilliam Square, Dublin 2; tel: 01 678 0020 or email: law@eamonngreene.ie

Solicitor's office at Essex Quay. Fully furnished and in excellent condition, located opposite the Four Courts and adjacent Dublin City Council. Suitable for three persons, excellent storage provided, also toilets and small kitchen. Own door. Very flexible lease length and attractive terms. Ward Property Consultants; tel: 01 662 3055, mobile: 086 243 7912

TITLE DEEDS

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* and in the matter of an application by Okal Provisions

Take notice any person having interest in the freehold estate or any other estate in the following property: 84 Ballyhooley Road, parish of St Anne Shandon in the city of Cork.

Take notice that Okal Provisions Ltd intends to submit an application to the county registrar of the county of Cork for the acquisition of the freehold interest and all superior interests in the aforesaid property, and any party ascertaining that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days of this notice.

In particular, such persons who are entitled to the interest of R Cudmore Ltd, pursuant to a lease of 27 November 1972 between R

Cudmore Ltd of the one part and John O'Mahony of the other part for a term of 62 years less last three days thereof from 25 March 1972, should provide evidence of their title to the below named.

Further, such persons who are entitled to the interest of the lessor pursuant to an indenture of lease of 13 October 1933 between Halgena Everard Potter Ransom, Mary Dorothea Mitchell and Theodora Potter MacKenzie Grieve of the one part and Georgina Violetta Carleton of the other part for a term of 99 years from 1 May 1935 should show evidence of their title to the below named.

Further, any person having an interest in property comprised in a lease of 5 July 1934 between the said Georgina Violetta Carleton of the one part and Edward Manley and William Edward Manley of the other part for a term of 101 years from 25 March 1933 should provide evidence of the title to the below named.

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

Date: 6 March 2009

Signed: Fitzgerald, Solicitors, 6 Lapps Quay, Cork

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the *Landlord and Tenant (Amendment) Act 1984* and in the matter of premises situate at Ballinlough, Carrigeen, Co Kilkenny, being part of the premises known as Carrigeen Creamery, Mooncoin, Co Kilkenny: an application by Glanbia Foods Society Limited

Take notice that any person having any interest in the freehold estate of, or any superior or intermediate interest in, the hereditaments and premises situate at Ballinlough, Carrigeen, Mooncoin, in the barony of Iverk and county of Kilkenny, being part of the property now known as Carrigeen Creamery, Mooncoin, in the county of Kilkenny, which property was held under indenture of lease made 18 May 1895 between Elizabeth Laura Newman of the one part and the Carrigeen Cooperative Dairy Society Limited of the other part for the term of 99 years from 25 March 1895, should give notice to the undersigned solicitors.

Take notice that the applicant, Glanbia Foods Society Limited, intends to apply to the county registrar for the county of Kilkenny for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below named solicitors within 21 days from the date hereof.

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

CALCUTTA RUN 2009

www.calcuttarun.com

Saturday 16th May, 2pm

HITTING THE STREETS SO THEY DON'T HAVE TO

In 2008, Calcutta Run raised an amazing €340k hitting our 10 year target of €2 million for our two charities – GOAL's orphanages in Calcutta and Peter McVerry's Trusts projects in Dublin.

2009 is shaping up to be a hard year for many people and these charities are going to need our support more than ever. This year we have set a target of €200k to help make a difference, and all you need to do to make a difference is run, jog or walk the scenic 10k and help us meet our target. After the run/walk join in the fun with a monster barbeque, musical entertainment, activities for the family and lots lots more.

So now you know the date, why don't you strap on your running shoes, grab a few friends, get into training. To help us raise our target we need you to try and raise a minimum of €150 sponsorship. See our website for further information.

Sponsorship cards are available from our website www.calcuttarun.com or email us at calcuttarun@lawsociety.ie

So sign up now and bring your family along for this really fun day out donations over €250 are tax deductable.
For more information, contact your firm's Calcutta Run representative or visit www.calcuttarun.com

PROFESSIONAL NOTICES

the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Kilkenny for such direction as may be appropriate on the basis that the person or persons beneficially entitled to such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 6 March 2009
Signed: Kearney Roche & McGuinn (solicitors for the applicant), 9 The Parade, Kilkenny

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 the Aids Fund in the matter of the properties situate at 10 Granby Lane, Dublin 1, and 15 and 16 Granby Row, Dublin 1, in the city of Dublin
Take notice any person having an interest in the freehold estate or any superior interest of the following properties: 10 Granby Lane – all that and those the premises known as 10 Granby Lane in the parish of St Mary and city of Dublin, held under indenture of lease dated 26 August 1915 and made between Sir John William Moore of the one part and Thomas Price of the other part for a term of 100 years from 1 July 1915, subject to an annual rent of €7.62; 15 Granby Row – all that and those the premises known as 15 Granby Row in the parish of St Mary and city of Dublin, held under an indenture of lease dated 9 April 1951 and made between Winifred Allen, Charles Ernest, Basil Dowker Kidd and Russell Mills of the one part and Sheila O'Brien of the other part for a term of 99 years from 7 July 1950, subject to an annual rent of €190.46; 16 Granby Row – all that and those the premises known as 16 Granby Row in the parish of St Mary and city of Dublin held under an indenture of lease dated 24 August 1951 and made between Frances Ellen Orpen and Margaret Mary Byrne of the first part, Margaret Robinson, Nora Mary Robinson, Richard Gabriel Robinson, Emma Bodkin, Aileen Bodkin, Mary Vaughen, Anne Parker, Elizabeth Bodkin, Helen Bodkin and Bridget Bodkin of the second part, Andrew John Horan of the third part, Emma Bodkin and Thomas Bodkin of the fourth part, Emma Bodkin of the fifth part and Sheila O'Brien of the sixth part for a term of 99 years from 7 July 1950, subject to an annual rent of €198.48.

Take notice that the Aids Fund intends to apply to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid properties (or any of them) are called upon to furnish evidence of title to the aforesaid properties to the below named within 21 days from the date of this notice.

In default of any such notice being received, the Aids Fund 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 properties are unknown or ascertained.
Date: 6 March 2009
Signed: John O'Connor Solicitors (solicitors for the applicant), 168 Pembroke Road, Ballsbridge, Dublin 4

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

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In the matter of the *Landlord and Tenant Acts 1967-2004* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Jarmar Properties Limited
Take notice that any person having any interest in the freehold estate of the following property: all that and those the property demised by an indenture of lease dated 14 February 1977, made between Julius Lipschitz of the one part and James Gleeson of the other part and therein described as the dwellinghouse and premises known as no 152 Upper Sheriff Street in the parish of St Thomas and city of Dublin, excepting and reserving with the lessor the full and free right to retain, construct, erect, maintain and keep on the gable wall on the sides of the building advertising board, hoarding or bill-poster. The lease granted the said property subject as therein for the term of 190 years from 1 July 1975, and subject to the yearly rent of £10 and to the covenants and conditions in the said lease contained.

Take notice that the applicant, Jarmar Properties Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforementioned property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Jarmar Properties Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 6 March 2009
Signed: Cathal N Young, O'Reilly & Co (solicitors for the applicant), 39 Fleet Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2004* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Jarmar Properties Limited
Take notice that any person having any interest in the freehold estate of the following property: all that and those the dwellinghouse and premises known as no 153 Upper Sheriff Street in the parish of St Thomas and city of Dublin, held on foot of an indenture of lease of 12 May 1969 and made between Julius Lipschitz as lessor of the one part and Christopher O'Neill of the other part. The lease granted the said property as therein for a term of 200 years from 1 January 1969 and subject to the yearly rent of £6 and subject to the covenants and conditions in the said lease contained.

Take notice that the applicant, Jarmar Properties Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforementioned property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Jarmar Properties Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county

of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 6 March 2009
Signed: Cathal N Young, O'Reilly & Co (solicitors for the applicant), 39 Fleet Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2004* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Jarmar Properties Limited
Take notice Annie Farrelly, Rose Farrelly, Alice Roos (formerly Farrelly), John Farrelly and Rita Fleming (formerly Farrelly) or any person having any interest in the freehold estate of the following property: all that and those the property more particularly described in an indenture of lease made 17 July 1869 between Richard Martin of the one part and Simon Murray of the other part and therein described as "all that and those that piece or plot of ground being part of the North Lotts and situate in the parish of St Thomas and the county of the city of Dublin and as more particularly shown on the map in the margin of said lease which said piece or plot of ground contained on the part thereof to Upper Sheriff Street 40ft, in the rear 40ft and from front to rear 85 ft bounded on the north by Upper Sheriff Street aforesaid, on the south by ground belonging to said Richard Martin, on the east by Fish Street and on the west by ground belonging to the said Richard Martin". This application pertains only to the part of the said premises now know as no 2 Castleforbes Road, formerly known as no 2 Fish Street. The lease granted the said property subject as therein for a term of 300 years from 1 July 1869 subject to a yearly rent of £15 and to the covenants and conditions in the said lease contained.

Take notice that the applicant, Jarmar Properties Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforementioned property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Jarmar Properties Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 6 March 2009
Signed: Cathal N Young, O'Reilly & Co (solicitors for the applicant), 39 Fleet Street, Dublin 2

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Jarmar Properties Limited
Take notice that any person having any interest in the freehold estate in the following property: 154A and 156 Upper Sheriff Street, Dublin, and more particularly described in the indenture of lease dated 25 April 1878 between Richard Martin of the one part and James McDonnell of the other part (hereinafter called 'the lease') as "all that and those that piece of ground being part of North Lotts, and situate in the parish of St Thomas and the county of the city of Dublin and is more particularly shown on the map or terchart thereof in the margin of these presents, which said piece or parcel of ground contains in the front thereof to Sheriff Street 30ft and in the rear 30ft and from front to rear 85ft bounded on the north by Sheriff Street, and on the south by land in the possession of the said Richard Martin, and on the east by land in the possession of James Flood, and on the west by Isaac Beckett's holding, be the said admeasurements more or less and held under the lease for a term of 200 years from 1 April 1878, and subject to the yearly rent of £30 and to the covenants and conditions on the part of the lessee therein contained".

Take notice that the applicant, Jarmar Properties Limited, intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest and all superior interests in the aforementioned property, and any party asserting that they hold a superior interest in the aforementioned property are called upon to furnish evidence of title to the property to the below named within 21 days from the date hereof.

In default of any such notice being received, the applicant, Jarmar Properties Limited, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.
Date: 6 March 2009
Signed: Cathal N Young, O'Reilly & Co (solicitors for the applicant), 39 Fleet Street, Dublin 2

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*.

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Law Society of Ireland

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Law Society of Ireland